

2004 No. 197

SHERIFF COURT

**Act of Sederunt (Ordinary Cause, Summary Application,
Summary Cause and Small Claim Rules) Amendment
(Miscellaneous) 2004**

Made - - - - *22nd April 2004*

Coming into force - - *21st May 2004*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of that Act, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 and shall come into force on 21st May 2004.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of Ordinary Cause Rules

2.—(1) The Ordinary Cause Rules 1993(b) are amended in accordance with paragraphs (2) to (13).

(2) In rule 3.5 (warrants and precepts of arrestment)—

(a) in paragraph (2), omit “clerk”; and

(b) after paragraph (2), insert—

“(3) Averments to justify the granting of a warrant to arrest on the dependence, or a precept of arrestment, shall be included in the condescendence of an initial writ or the statement of claim in a counterclaim.”.

(3) In rule 5.1 (signature of warrants)—

(a) in paragraph (1), for “, intimation or arrestment on the dependence” substitute “ or intimation”; and

(b) for paragraph (2)(b) substitute—

“(b) a warrant for arrestment to found jurisdiction;

(a) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c.48).

(b) The Sheriff Courts (Scotland) Act 1907 (c.51), Schedule 1. Schedule 1 was substituted by S.I. 1993/1956, and amended by S.I. 1996/2167 and 2445 and by S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 560 and 2003/25 and 26.

- (ba) a warrant for arrestment on the dependence;”.
- (4) In rule 5.5 (service on persons furth of Scotland)–
- (a) in paragraph (1)–
 - (i) at the end of sub-paragraph (b)(v), insert “or”; and
 - (ii) omit sub-paragraph (d);
 - (b) after paragraph (1), insert–
 - “(1A) In a country to which the Council Regulation applies, service–
 - (a) may be effected by the methods prescribed in paragraph (1)(b)(ii) and (iii) only in exceptional circumstances; and
 - (b) is effected only if the receiving agency has informed the person that acceptance of service may be refused on the ground that the document has not been translated in accordance with paragraph (6).”;
 - (c) in paragraph (6), omit from “an official language” to the end of that paragraph and insert on a new line–
 - “(a) an official language of the country in which service is to be executed; or
 - (b) in a country to which the Council Regulation applies, a language of the member state of transmission that is understood by the person on whom service is being executed.”; and
 - (d) after paragraph (7), insert–
 - “(8) In this rule “the Council Regulation” means Council Regulation (EC) No. 1348/2000(a) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.”.
- (5) In rule 8.1 (reponing)–
- (a) in paragraph (1)–
 - (i) after “defender”, insert “or any party with a statutory title or interest”; and
 - (ii) after “defence”, insert “or the proposed order or direction,”;
 - (b) in paragraph (2), after “pursuer” insert “and any other party”;
 - (c) in paragraph (3)–
 - (i) after “if”, insert–
 - “_
 - (a) ”; and
 - (ii) at the end, insert–
 - “; or
 - (b) the party seeking the order or direction had lodged the appropriate application on the date when the decree was recalled”; and
 - (d) in paragraph (4), after “pursuer” insert “and any other party”.
- (6) In rule 9.12 (options hearing) in paragraph (3)(c), for “justifies a debate” substitute “if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree”.
- (7) Omit rules 9.13 to 9.15.

(a) O.J. No. L 160, 30.06.00, p.37.

(8) After Chapter 9 (standard procedure in defended causes), insert–

“CHAPTER 9A DOCUMENTS AND WITNESSES

Application of this Chapter

9A.1. This Chapter applies to any cause proceeding under Chapters 9 and 10.

Inspection and recovery of documents

9A.2.—(1) Each party shall, within 14 days after the date of the interlocutor allowing proof or proof before answer, intimate to every other party a list of the documents, which are or have been in his possession or control and which he intends to use or put in evidence at the proof, including the whereabouts of those documents.

(2) A party who has received a list of documents from another party under paragraph (1) may inspect those documents which are in the possession or control of the party intimating the list at a time and place fixed by that party which is reasonable to both parties.

(3) A party who seeks to use or put in evidence at a proof a document not on his list intimated under paragraph (1) shall, if any other party objects to such document being used or put in evidence, seek leave of the sheriff to do so; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(4) Nothing in this rule shall affect–

- (a) the law relating, or the right of a party to object, to the inspection of a document on the ground of privilege or confidentiality; or
- (b) the right of a party to apply under rule 28.2 for a commission and diligence for recovery of documents or an order under section 1 of the Administration of Justice (Scotland) Act 1972(a).

Exchange of lists of witnesses

9A.3.—(1) Within 28 days after the date of the interlocutor allowing a proof or proof before answer, each party shall–

- (a) intimate to every other party a list of witnesses, including any skilled witnesses, on whose evidence he intends to rely at proof; and
- (b) lodge a copy of that list in process.

(2) A party who seeks to rely on the evidence of a person not on his list intimated under paragraph (1) shall, if any other party objects to such evidence being admitted, seek leave of the sheriff to admit that evidence whether it is to be given orally or not; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(3) The list of witnesses intimated under paragraph (1) shall include the name, occupation (where known) and address of each intended witness.

(a) 1972 c.59; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73); section 19 and Schedule 2, paragraph 15.

Applications in respect of time to pay directions, and arrestments

9A.4. An application for a time to pay direction under section 1(1) of the Debtors (Scotland) Act 1987(a), or for the recall or restriction of an arrestment under section 2(3) or 3(1) of that Act, in a cause which is defended, shall be made by motion lodged before the sheriff grants decree.”.

(9) In rule 10.6 (procedural hearing) in paragraph (3)(c), for “justifies a debate” substitute “if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree”.

(10) In rule 19.2 (warrants for diligence on counterclaims)–

- (a) in paragraph (2)(b), after “made” insert “by application”; and
- (b) in paragraph (3), omit “clerk”.

(11) After rule 29.2 (remit to persons of skill), insert–

“Written statements

29.3. Where a statement in a document is admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988(b), any party who wishes to have that statement received in evidence shall–

- (a) docquet that document as follows:–

“(Place and date)

This document contains a statement admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988.

(Signed)

(Designation and address)”;

- (b) lodge that document in process; and
- (c) provide all other parties with a copy of that document.”.

(12) After rule 32.1 (taxation before decree for expenses), insert–

“Order to lodge account of expenses

32.1A. A party found liable in expenses may from 4 months after the date of the interlocutor finding him so liable apply by motion for an order ordaining the party entitled to expenses to lodge an account of those expenses in process.”.

(13) In rule 36.9 (applications for interim payment of damages)–

- (a) after paragraph (5)(b), omit “or”; and
- (b) at the end of paragraph (5)(c), insert–
 - “; or
 - (d) the person’s liability will be met by–
 - (i) an insurer under section 151 of the Road Traffic Act 1988(c); or
 - (ii) an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself.”.

(a) 1987 c.18; section 1 was repealed in part by the Social Security Act 1998 (c.14) (“the 1998 Act”), Schedule 8 and by the Abolition of Poidings and Warrant Sales (Scotland) Act 2001 (asp 1) (now repealed), Schedule, Part 1 and was amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 8, the Local Government Finance Act 1992 (c.14), Schedule 13, paragraph 53, the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 9, paragraph 1, and the Water Industry (Scotland) Act 2002 (asp 3), schedule 7, paragraph 17.

(b) 1988 c.32.

(c) 1988 c.52; section 151 repealed in part by the Road Traffic Act 1991 (c.40), Schedule 8.

Amendment of Summary Application Rules

3.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(a) is amended in accordance with paragraphs (2) to (7).

(2) In rule 2.4 (the initial writ), insert at the end—

“(9) Where warrant to arrest on the dependence is sought, the initial writ shall include averments to justify the grant of such a warrant.”.

(3) In rule 2.6 (time limits) in paragraph (1), after “application” where it second occurs insert “, being an appeal under statute or an application in the nature of an appeal,”.

(4) In rule 2.7 (warrants, forms and certificate of citation)—

(a) in paragraph (1), for “, intimation or arrestment on the dependence” substitute “or intimation”; and

(b) after paragraph (1), insert—

“(1A) A warrant for arrestment on the dependence may be signed by the sheriff, if the sheriff considers it appropriate.”.

(5) In rule 2.12 (service on persons furth of Scotland)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (b)(v), insert “or”;

(ii) at the end of sub-paragraph (c), omit “or”; and

(iii) omit sub-paragraph (d);

(b) after paragraph (1) insert—

“(1A) In a country to which the Council Regulation applies, service—

(a) may be effected by the methods prescribed in paragraph (1)(b)(ii) or (iii) only in exceptional circumstances; and

(b) is effected only if the receiving agency has informed the person that acceptance of service may be refused on the ground that the document has not been translated in accordance with paragraph (6).”;

(c) in paragraph (6), omit from “an official language” to the end of that paragraph and insert on a new line—

“(a) an official language of the country in which service is to be executed; or

(b) in a country to which the Council Regulation applies, a language of the member state of transmission that is understood by the person on whom service is being executed.”; and

(d) after paragraph (7), insert—

“(8) In this rule “the Council Regulation” means Council Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.”.

(6) In rule 3.15.2 (application)—

(a) at the end of paragraph (e), omit “and”; and

(b) after paragraph (e), insert—

“(ea) an application by the Commission under section 71E(b) for an order requiring a person to furnish any information required by a compliance notice; and”.

(7) For rule 3.16.3 (place of any hearing) substitute—

(a) S.I. 1999/929; amended by S.S.I. 2000/148 and 387, 2001/142, and 2002/7, 129, 130, 146 and 563, and 2003/26, 27, 98, 261, 316, 346 and 556.

(b) Section 71E of the Race Relations Act 1976 (c.74) was inserted by the Race Relations (Amendment) Act 2000 (c.34), section 2.

“Place, and privacy, of any hearing

3.16.3. The sheriff may, where he considers it appropriate in all the circumstances, appoint that the hearing of an application or other proceedings shall take place–

- (a) in a hospital, or any other place than the court building;
- (b) in private.”.

Amendment of Summary Cause Rules

4.—(1) The Act of Sederunt (Summary Cause Rules) 2002(a) is amended in accordance with paragraphs (2) to (5).

(2) In rule 4.4 (authentication and effect of summons)–

(a) at the end of paragraph (1)(c), insert–

“; or

(d) a warrant for arrestment on the dependence, or to found jurisdiction, is sought”;

(b) in paragraph (2), for “, (b) or (c)” substitute “to (d)”; and

(c) after paragraph (3), insert–

“(4) Where a warrant for arrestment on the dependence, or to found jurisdiction, is sought, averments to justify that warrant must be included in the statement of claim.”.

(3) In rule 5.7 (service on persons outwith Scotland)–

(a) for paragraph (4), substitute–

“(4) If the document requires to be served in a country to which the Council Regulation applies, service–

(a) may be effected by the methods prescribed in paragraph (3)(b) or (c) only in exceptional circumstances; and

(b) is effected only if the receiving agency has informed the person that acceptance of service may be refused on the ground that the document has not been translated in accordance with paragraph (12).”;

(b) in paragraph (12), omit from “an official language” to the end of that paragraph and insert on a new line–

“(a) an official language of the country in which service is to be executed; or

(b) in a country to which the Council Regulation applies, a language of the member state of transmission that is understood by the person on whom service is being executed.”; and

(c) after paragraph (13), insert–

“(14) In this rule “the Council Regulation” means Council Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.”.

(4) In rule 10.1 (counterclaim)–

(a) in paragraph (4), omit from “and” where it first occurs to the end;

(b) after paragraph (4), insert–

“(4A) Where an application under paragraph (3) is made–

(a) the counterclaim must include averments to justify the grant of the warrant sought; and

(b) the sheriff may grant the application if he thinks it appropriate.

(a) S.S.I. 2002/132; amended by S.S.I. 2002/516 and 2003/26.

(4B) If the sheriff grants an application under paragraph (3), then the sheriff shall add to the counterclaim the words “Warrant granted as craved”, and authenticate the counterclaim in an appropriate manner.”.

(5) In rule 11.3 (warrants for diligence in a third party notice), after paragraph (1) insert–

“(1A) On an application under paragraph (1) being made–

- (a) the sheriff may grant the application if he thinks it appropriate; and
- (b) the sheriff shall not grant the application unless averments to justify the warrant sought have been made.”.

Amendment of Small Claim Rules

5.—(1) The Act of Sederunt (Small Claim Rules) 2002(a) is amended in accordance with paragraphs (2) to (4).

(2) In rule 4.4 (authentication and effect of summons)–

(a) at the end of paragraph (1)(c), insert–

“; or

(d) a warrant for arrestment on the dependence, or to found jurisdiction, is sought”;

(b) in paragraph (2), for “, (b) or (c)” substitute “to (d)”;

(c) after paragraph (3), insert–

“(4) Where a warrant for arrestment on the dependence, or to found jurisdiction, is sought, averments to justify that warrant must be included in the statement of claim.”.

(3) In rule 6.5 (service on persons outwith Scotland)–

(a) for paragraph (4), substitute–

“(4) If the document requires to be served in a country to which the Council Regulation applies, service–

(a) may be effected by the methods prescribed in paragraph (3)(b) or (c) only in exceptional circumstances; and

(b) is effected only if the receiving agency has informed the person that acceptance of service may be refused on the ground that the document has not been translated in accordance with paragraph (12).”;

(b) in paragraph (12), omit from “an official language” to the end of that paragraph and insert on a new line–

“(a) an official language of the country in which service is to be executed; or

(b) in a country to which the Council Regulation applies, a language of the member state of transmission that is understood by the person on whom service is being executed.”; and

(c) after paragraph (14), insert–

“(15) In this rule “the Council Regulation” means Council Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.”.

(a) S.S.I. 2002/133; amended by S.S.I. 2003/26.

(4) In rule 11.1 (counterclaim), for paragraphs (3) and (4) substitute–

“(3) Where a counterclaim stated in accordance with paragraph (1)(b)(i) seeks a warrant for arrestment on the dependence, the sheriff may authenticate the warrant if–

- (a) averments to justify the grant of the warrant are included in the counterclaim; and
- (b) the sheriff considers that appropriate.”.

Cullen of Whitekirk
Lord President IPD

Edinburgh
22nd April 2004

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes miscellaneous amendments to the rules of procedure in the sheriff court. It amends the Ordinary Cause Rules, the Summary Applications, Statutory Applications and Appeals etc. Rules, the Summary Cause Rules, and the Small Claim Rules.

The Ordinary Cause Rules are amended by article 2 of this Act, as follows:–

- (a) paragraphs (2) and (3) amend rules 3.5 and 5.1 to provide that the sheriff, and not the sheriff clerk, shall grant warrant to arrest on the dependence, or to found jurisdiction, and provides that averments to justify such a warrant shall be made;
- (b) paragraph (4) amends rule 5.5 to give further effect to Council Regulation (EC) No 1348/2000 on the service in the European Community of judicial and extrajudicial documents in a civil or commercial action, by specifying–
 - (i) the language that shall be used in the document being served; and
 - (ii) that service is not effected unless the person is told that acceptance can be refused where the document being served is not translated properly;
- (c) paragraph (5) amends rule 8.1 to provide that a person other than the defender may ask the court to recall a decree in absence, in order to allow the sheriff to deal with an otherwise competent application by that person;
- (d) paragraph (6) amends rule 9.12 to specify the grounds that justify the sheriff allowing a debate on the merits of a case;
- (e) paragraph (7) removes rules 9.13 to 9.15;
- (f) paragraph (8) inserts a new Chapter 9A, which restates rules 9.13 to 9.15 so that it is clear that those rules apply to procedure under both Chapters 9 (standard procedure) and 10 (additional procedure);
- (g) paragraph (9) amends rule 10.6 in the same way as paragraph (6) amends rule 9.12;
- (h) paragraph (10) amends rule 19.2 so that it is consistent with the amendments made by this instrument to rules 3.5 and 5.1 as detailed above;
- (i) paragraph (11) inserts a new rule 29.3, the previous rule of that number having been deleted by S.S.I. 2000/239, and thereby provides for the lodging of any document that contains a statement made otherwise than by a witness in the course of the proof of the action in question;
- (j) paragraph (12) inserts a new rule 32.1A, which enables the court on request to deal with any delay in lodging an account of expenses by the party entitled to them; and
- (k) paragraph (13) amends rule 36.9 to permit the court to grant interim decree in cases where the insurer, or the Motor Insurers Bureau, is bound to make the payment on behalf of a defender.

The Summary Application Rules are amended by article 3 of this Act, as follows:–

- (a) paragraphs (2) and (4) make similar amendments to rules 2.4 and 2.7 to those made by article 2 of the this Act to rules 3.5, 5.1 and 19.2 of the Ordinary Cause Rules;
- (b) paragraph (3) amends rule 2.6 to specify the types of procedure covered by that rule;
- (c) paragraph (5) makes the same amendment to rule 2.12 as is made by article 2 of this Act to rule 5.5 of the Ordinary Cause Rules;
- (d) paragraph (6) amends rule 3.15 so that it an application under section 71E of the Race Relations Act 1976 will be by summary application; and
- (e) paragraph (7) substitutes a new rule 3.16.3, to make it clear that the sheriff may order that a hearing under the Adults with Incapacity (Scotland) Act 2000 can take place in private.

The Summary Cause Rules are amended by article 4 of this Act, so that similar amendments to those made to—

- (a) rule 5.5 of the Ordinary Cause Rules by article 2 of this Act are made to rule 5.7 of the Summary Cause Rules (paragraph (3)); and
- (b) rules 3.5, 5.1 and 19.2 of the Ordinary Cause Rules by article 2 of this Act are made to rules 4.4, 10.1 and 11.3 of the Summary Cause Rules (paragraphs (2), (4) and (5)).

The Small Claim Rules are amended by article 5 of this Act, so that the similar amendments to those made to—

- (a) rule 5.5 of the Ordinary Cause Rules by article 2 of this Act are made to rule 6.5 of the Small Claim Rules (paragraph (3)); and
- (b) rules 3.5, 5.1 and 19.2 of the Ordinary Cause Rules by article 2 of this Act are made to rules 4.4 and 11.1 of the Small Claim Rules (paragraphs (2) and (4)).

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