

2006 No. 509

SHERIFF COURT

**Act of Sederunt (Ordinary Cause, Summary Application,
Summary Cause and Small Claim Rules) Amendment (Equality
Act 2006 etc.) 2006**

Made - - - - *13th October 2006*

Coming into force - - *3rd November 2006*

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), section 66B of the Sex Discrimination Act 1975(b); section 67A of the Race Relations Act 1976(c); section 59A of the Disability Discrimination Act 1995(d); section 71 of the Equality Act 2006(e) 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 the said Act of 1971, 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 (Equality Act 2006 etc.) 2006 and shall come into force on 3rd November 2006.

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

Amendment of the Ordinary Cause Rules

2.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(f) shall be amended in accordance with the following sub-paragraphs.

(2) Part V (Sex Discrimination Act 1975) of Chapter 36 (actions of damages)(g) shall be omitted.

(3) After Chapter 43 (causes relating to Articles 81 and 82 of the Treaty establishing the European Community)(h) there shall be inserted the following:—

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- (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, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2), and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49.
- (b) 1975 c.65; section 66B was inserted by the Equality Act 2006 (c.3), section 87.
- (c) 1976 c.74; section 67A was inserted by the Race Relations (Amendment) Act 2000 (c.34), section 8 and amended by the Equality Act 2006, section 90.
- (d) 1995 c.50; section 59A was inserted by the Equality Act 2006 (c.3), section 89.
- (e) 2006 c.3.
- (f) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445, S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 566, 2003/25 and 26, 2004/197 and 350, 2005/20, 189, 638 and 648 and 2006/207, 293 and 410.
- (g) Part V of Chapter 36 was amended by S.I. 1996/2445.
- (h) Chapter 43 was inserted by S.S.I. 2006/293.

“CHAPTER 44
EQUALITY ENACTMENTS

Application and interpretation

44.1.—(1) This Chapter applies to claims under the equality enactments.

(2) In this Chapter, “claims under the equality enactments” means proceedings in reparation for breach of statutory duty under any of the following enactments:—

- (a) Sex Discrimination Act 1975;
- (b) Race Relations Act 1976;
- (c) Disability Discrimination Act 1995;
- (d) Equality Act 2006.

Relevant Commission

44.2.—(1) The pursuer shall send a copy of the initial writ to the relevant Commission by registered or recorded delivery post.

(2) The relevant Commission is—

- (a) for proceedings under the Sex Discrimination Act 1975, the Equal Opportunities Commission;
- (b) for proceedings under the Race Relations Act 1976, the Commission for Racial Equality;
- (c) for proceedings under the Disability Discrimination Act 1995, the Disability Rights Commission;
- (d) for proceedings under the Equality Act 2006, the Commission for Equality and Human Rights.

Assessor

44.3.—(1) The sheriff may, of his own motion or on the motion of any party, appoint an assessor.

(2) The assessor shall be a person who the sheriff considers has special qualifications to be of assistance in determining the cause.

Taxation of Commission expenses

44.4.—(1) The expenses incurred by the Commission within the meaning and for the purposes of the sections referred to in paragraph (2) shall be taxed by the auditor of the sheriff court in which such proceedings under the relevant Act were taken or would have been taken but for any compromise or settlement, as if they were outlays incurred by a solicitor on behalf of a client.

(2) The sections are as follows:—

- (a) section 75(3) (assistance by Commission) of the Sex Discrimination Act 1975;
- (b) section 66(5) (assistance by Commission) of the Race Relations Act 1976.

National security

44.5.—(1) Where, on a motion under paragraph (3) or of his own motion, the sheriff considers it expedient in the interests of national security, he may—

- (a) exclude from all or part of the proceedings—
 - (i) the pursuer;

- (ii) the pursuer’s representatives;
 - (iii) any assessors;
 - (b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he is excluded;
 - (c) take steps to keep secret all or part of the reasons for his decision in the proceedings.
- (2) The sheriff clerk shall, on the making of an order under paragraph (1) excluding the pursuer or his representatives, notify the Advocate General for Scotland of that order.
- (3) A party may apply by motion for an order under paragraph (1).
- (4) The steps referred to in paragraph (1)(c) may include the following:–
- (a) directions to the sheriff clerk; and
 - (b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or his representatives are excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)–
 - (i) on any matter discussed or referred to;
 - (ii) with regard to any material disclosed,
- during or with reference to any part of the proceedings from which the pursuer or his representatives are excluded.
- (5) Where the sheriff has made an order under paragraph (4)(b), the person appointed to represent the interests of the pursuer may apply by motion for authority to seek instructions from or otherwise communicate with an excluded person.”.

Amendment of the Summary Application Rules

- 3.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(a) shall be amended in accordance with the following sub-paragraphs.
- (2) Part XIII (Sex Discrimination Act 1975) and Part XV (Race Relations Act 1976) shall be omitted.
- (3) After Part XXXII (Animal Health and Welfare) there shall be inserted the following:–

“PART XXXIII
EQUALITY ENACTMENTS

Application and interpretation

- 3.33.1.—(1) Subject to paragraph (3), this Part applies to applications under the equality enactments.
- (2) In this Chapter, “the equality enactments” means any of the following enactments:–
- (a) Sex Discrimination Act 1975;
 - (b) Race Relations Act 1976;
 - (c) Disability Discrimination Act 1995;
 - (d) Equality Act 2006.
- (3) This rule does not affect any provision of the equality enactments which provides for a claim to be the subject of proceedings in like manner as any claim in reparation for breach of statutory duty.

(a) S.I. 1999/929, amended by S.S.I. 2000/18 and 387, 2001/142, 2002/7, 129, 130, 146 and 583, 2003/26, 27, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455; 2005/61, 473, 504 and 648 and 2006/410 and 437.

Relevant Commission

3.33.2.—(1) The applicant shall, except where the applicant is the relevant Commission, send a copy of the initial writ to the relevant Commission by registered or recorded delivery post.

(2) The relevant Commission is—

- (a) for proceedings under the Sex Discrimination Act 1975, the Equal Opportunities Commission;
- (b) for proceedings under the Race Relations Act 1976, the Commission for Racial Equality;
- (c) for proceedings under the Disability Discrimination Act 1995, the Disability Rights Commission;
- (d) for proceedings under the Equality Act 2006, the Commission for Equality and Human Rights.

Assessor

3.33.3.—(1) The sheriff may, of his own motion or on the motion of any party, appoint an assessor.

(2) The assessor shall be a person who the sheriff considers has special qualifications to be of assistance in determining the cause.

Taxation of Commission expenses

3.33.4.—(1) The expenses incurred by the Commission within the meaning and for the purposes of the sections referred to in paragraph (2) shall be taxed by the auditor of the sheriff court in which such proceedings under the relevant Act were taken or would have been taken but for any compromise or settlement, as if they were outlays incurred by a solicitor on behalf of a client.

(2) The sections are as follows:—

- (a) section 75(3) (assistance by Commission) of the Sex Discrimination Act 1975;
- (b) section 66(5) (assistance by Commission) of the Race Relations Act 1976.

National security

3.33.5.—(1) This rule applies to—

- (a) proceedings in respect of alleged discrimination contrary to the Disability Discrimination Act 1995 (including anything treated by virtue of that Act as amounting to discrimination contrary to that Act); and
- (b) proceedings brought under the Race Relations Act 1976.

(2) Where, on a motion under paragraph (4) or of his own motion, the sheriff considers it expedient in the interests of national security, he may—

- (a) exclude from all or part of the proceedings—
 - (i) the pursuer;
 - (ii) the pursuer's representatives;
 - (iii) any assessors;
- (b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he is excluded;
- (c) take steps to keep secret all or part of the reasons for his decision in the proceedings.

(3) The sheriff clerk shall, on the making of an order under paragraph (2) excluding the pursuer or his representatives, notify the Advocate General for Scotland of that order.

(4) A party may apply by motion for an order under paragraph (2).

(5) The steps referred to in paragraph (2)(c) may include the following:–

- (a) directions to the sheriff clerk; and
- (b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or his representatives are excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)–
 - (i) on any matter discussed or referred to;
 - (ii) with regard to any material disclosed,

during or with reference to any part of the proceedings from which the pursuer or his representatives are excluded.

(6) Where the sheriff has made an order under paragraph (5)(b), the person appointed to represent the interests of the pursuer may apply by motion for authority to seek instructions from or otherwise communicate with an excluded person.”.

Amendment of the Summary Cause Rules

4.—(1) The Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(a) shall be amended in accordance with the following sub-paragraphs.

(2) After Chapter 35 (electronic transmission of documents) there shall be inserted the following:–

“CHAPTER 36

EQUALITY ENACTMENTS

Application and interpretation

36.1.—(1) This Chapter applies to claims under the equality enactments.

(2) In this Chapter, “claims under the equality enactments” means proceedings in reparation for breach of statutory duty under any of the following enactments:–

- (a) Sex Discrimination Act 1975;
- (b) Race Relations Act 1976;
- (c) Disability Discrimination Act 1995;
- (d) Equality Act 2006.

Relevant Commission

36.2.—(1) The pursuer shall send a copy of the summons to the relevant Commission by registered or recorded delivery post.

(2) The relevant Commission is–

- (a) for proceedings under the Sex Discrimination Act 1975, the Equal Opportunities Commission;
- (b) for proceedings under the Race Relations Act 1976, the Commission for Racial Equality;
- (c) for proceedings under the Disability Discrimination Act 1995, the Disability Rights Commission;

(a) S.S.I. 2002/132; amended by S.S.I. 2002/516, 2003/26, 2004/197 and 2005/648.

- (d) for proceedings under the Equality Act 2006, the Commission for Equality and Human Rights.

Assessor

36.3.—(1) The sheriff may, of his own motion or on the incidental application of any party, appoint an assessor.

(2) The assessor shall be a person who the sheriff considers has special qualifications to be of assistance in determining the cause.

Taxation of Commission expenses

36.4.—(1) The expenses incurred by the Commission within the meaning and for the purposes of the sections referred to in paragraph (2) shall be assessed by the sheriff clerk or taxed by the auditor, as the case may be, of the sheriff court in which such proceedings under the relevant Act were taken or would have been taken but for any compromise or settlement, as if they were outlays incurred by a solicitor on behalf of a client.

(2) The sections are as follows:—

- (a) section 75(3) (assistance by Commission) of the Sex Discrimination Act 1975;
- (b) section 66(5) (assistance by Commission) of the Race Relations Act 1976.

National security

36.5.—(1) Where, on an incidental application under paragraph (3) or of his own motion, the sheriff considers it expedient in the interests of national security, he may—

- (a) exclude from all or part of the proceedings—
 - (i) the pursuer;
 - (ii) the pursuer's representatives;
 - (iii) any assessors;
- (b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he is excluded;
- (c) take steps to keep secret all or part of the reasons for his decision in the proceedings.

(2) The sheriff clerk shall, on the making of an order under paragraph (1) excluding the pursuer or his representatives, notify the Advocate General for Scotland of that order.

(3) A party may make an incidental application for an order under paragraph (1).

(4) The steps referred to in paragraph (1)(c) may include the following:—

- (a) directions to the sheriff clerk; and
- (b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or his representatives are excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)—
 - (i) on any matter discussed or referred to;
 - (ii) with regard to any material disclosed,

during or with reference to any part of the proceedings from which the pursuer or his representatives are excluded.

(5) Where the sheriff has made an order under paragraph (4)(b), the person appointed to represent the interests of the pursuer may make an incidental application for authority to seek instructions from or otherwise communicate with an excluded person.

(6) The sheriff may, on the application of a party intending to lodge an incidental application in written form, reduce the period of two days specified in rule 9.1(2) or dispense with notice.

(7) An application under paragraph (6) shall be made in the written incidental application, giving reasons for such reduction or dispensation.”.

Amendment of the Small Claim Rules

5.—(1) The Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(a) shall be amended in accordance with the following sub-paragraphs.

(2) After Chapter 25 (electronic transmission of documents) there shall be inserted the following:—

“CHAPTER 26 EQUALITY ENACTMENTS

Application and interpretation

26.1.—(1) This Chapter applies to claims under the equality enactments.

(2) In this Chapter, “claims under the equality enactments” means proceedings in reparation for breach of statutory duty under any of the following enactments:—

- (a) Sex Discrimination Act 1975;
- (b) Race Relations Act 1976;
- (c) Disability Discrimination Act 1995;
- (d) Equality Act 2006.

Commission

26.2.—(1) The pursuer shall send a copy of the summons to the relevant Commission by registered or recorded delivery post.

(2) The relevant Commission is—

- (a) for proceedings under the Sex Discrimination Act 1975, the Equal Opportunities Commission;
- (b) for proceedings under the Race Relations Act 1976, the Commission for Racial Equality;
- (c) for proceedings under the Disability Discrimination Act 1995, the Disability Rights Commission;
- (d) for proceedings under the Equality Act 2006, the Commission for Equality and Human Rights.

Assessor

26.3.—(1) The sheriff may, of his own motion or on the incidental application of any party, appoint an assessor.

(2) The assessor shall be a person who the sheriff considers has special qualifications to be of assistance in determining the cause.

Taxation of Commission expenses

26.4.—(1) The expenses incurred by the Commission within the meaning and for the purposes of the sections referred to in paragraph (2) shall be assessed by the sheriff clerk of

(a) S.S.I. 2002/133, amended by S.S.I. 2003/26, S.S.I. 2004/197 and S.S.I. 2005/648.

the sheriff court in which such proceedings under the relevant Act were taken or would have been taken but for any compromise or settlement, as if they were outlays incurred by a solicitor on behalf of a client.

(2) The sections are as follows:–

- (a) section 75(3) (assistance by Commission) of the Sex Discrimination Act 1975;
- (b) section 66(5) (assistance by Commission) of the Race Relations Act 1976.

National security

26.5.—(1) Where, on an incidental application under paragraph (3) or of his own motion, the sheriff considers it expedient in the interests of national security, he may–

- (a) exclude from all or part of the proceedings–
 - (i) the pursuer;
 - (ii) the pursuer’s representatives;
 - (iii) any assessors;
- (b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he is excluded;
- (c) take steps to keep secret all or part of the reasons for his decision in the proceedings.

(2) The sheriff clerk shall, on the making of an order under paragraph (1) excluding the pursuer or his representatives, notify the Advocate General for Scotland of that order.

(3) A party may make an incidental application for an order under paragraph (1).

(4) The steps referred to in paragraph (1)(c) may include the following:–

- (a) directions to the sheriff clerk; and
- (b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or his representatives are excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)–
 - (i) on any matter discussed or referred to;
 - (ii) with regard to any material disclosed,

during or with reference to any part of the proceedings from which the pursuer or his representatives are excluded.

(5) Where the sheriff has made an order under paragraph (4)(b), the person appointed to represent the interests of the pursuer may make an incidental application for authority to seek instructions from or otherwise communicate with an excluded person.

(6) The sheriff may, on the application of a party intending to lodge an incidental application in written form, reduce the period of two days specified in rule 10.1(2) or dispense with notice.

(7) An application under paragraph (6) shall be made in the written incidental application, giving reasons for such reduction or dispensation.”.

A C HAMILTON
Lord President, I.P.D.

Edinburgh
13th October 2006

EXPLANATORY NOTE

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

This Act of Sederunt makes various amendments to the rules applicable in the sheriff court. Those amendments are consequential upon the Equality Act 2006. In particular, amendments are made to each of the Ordinary Cause Rules, the Summary Application, Statutory Applications and Appeals etc. Rules, the Summary Cause Rules and the Small Claim Rules.

The amendments make provision for the intimation of certain proceedings under the Sex Discrimination Act 1975; the Race Relations Act 1976; the Disability Discrimination Act 1995 and the Equality Act 2006 (“the equalities enactments”) to the Commission responsible under each of those pieces of legislation.

The amendments make provision for the appointment of assessors in cases under the equalities enactments and for the assessment of expenses incurred by the Commission in connection with proceedings under those enactments.

Provision is also made concerning cases under the equality enactments in which matters of national security are raised.

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SHERIFF COURT

Act of Sederunt (Ordinary Cause, Summary Application,
Summary Cause and Small Claim Rules) Amendment (Equality
Act 2006 etc.) 2006

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