
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 121

**Act of Sederunt (Sheriff Court Rules
Amendment) (Diligence) 2008**

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (Diligence) 2008 and shall come into force on 1st April 2008.

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

Abolition of sequestration for rent

2.—(1) The following provisions (which make provision in relation to actions for sequestration for rent) are revoked, namely—

(a) in the Ordinary Cause Rules(1), Part 1 of Chapter 34 and Form H1; and

(b) in the Summary Cause Rules(2), Chapter 31 and Forms 4, 4A, 4B, 28C and 28D.

(2) But those rules and forms continue to have effect for the purpose of any cause commenced before 1st April 2008.

Applications for time to pay orders

3.—(1) The Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988(3) is amended in accordance with subparagraph (2).

(2) In Form 2(4) in the Schedule, in the Extract from section 5(4) and (5) of the Debtors (Scotland) Act 1987—

(a) subsections (4)(c) and (e) are omitted;

(b) for subsection (5)(a) substitute—

“(a) articles belonging to the debtor have been attached and notice of an auction given under section 27(4) of the [Debt Arrangement and Attachment \(Scotland\) Act 2002](#)(5) (asp 17) but no auction has yet taken place;

(aa) money owed by the debtor has been attached and removed;”.

4. But the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988 as it applied immediately before 1st April 2008 continues to have effect for the purpose of any application for a time to pay order made before before 1st April 2008.

(1) 1907 c. 51. The Ordinary Cause Rules are contained in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c. 51), which 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, 410 and 509 and 2007/6, 339, 440 and 463.

(2) The Summary Cause Rules are contained in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132), which was amended by S.S.I. 2002/516, 2003/216, 2004/197, 2005/648, 2006/509 and 2007/6, 339, 440 and 463.

(3) S.I. 1988/2013, amended by S.I. 1991/1920, 1993/920, 1994/3086, 1995/1876, 1996/2709, 1999/1820 and S.S.I. 2002/560.

(4) Form 2 was amended by S.S.I. 2002/560.

(5) 2002 asp 17.

Interim diligence

- 5.—(1) The Ordinary Cause Rules are amended in accordance with subparagraphs (2) to (7).
- (2) Rule 3.5 (warrants and precepts for arrestment on dependence)(**6**) is revoked.
- (3) In rule 5.6 (service where address of person is not known) at the beginning insert—
 - “(A1) Subject to rule 6.A7 this rule applies to service where the address of a person is not known.”.
- (4) Chapter 6 is renamed “INTERIM DILIGENCE”.
- (5) At the beginning of that Chapter, insert—

“Interpretation

6.A1. In this Chapter—

“the 1987 Act” means the Debtors (Scotland) Act 1987(**7**); and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002(**8**).

Application for interim diligence

6.A2.—(1) The following shall be made by motion—

- (a) an application under section 15D(1) of the 1987 Act(**9**) for warrant for diligence by arrestment or inhibition on the dependence of an action or warrant for arrestment on the dependence of an admiralty action;
- (b) an application under section 9C of the 2002 Act(**10**) for warrant for interim attachment.

(2) Such an application must be accompanied by a statement in Form G4A.

(3) A certified copy of an interlocutor granting a motion under paragraph (1) shall be sufficient authority for the execution of the diligence concerned.

Effect of authority for inhibition on the dependence

6.A3.—(1) Where a person has been granted authority for inhibition on the dependence of an action, a certified copy of the interlocutor granting the motion may be registered with a certificate of execution in the Register of Inhibitions and Adjudications.

(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 6.A2 may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868(**11**); and such registration shall have the same effect as registration of a notice under that section.

Recall etc of arrestment or inhibition

6.A4. An application by any person having an interest—

- (a) to loose, restrict, vary or recall an arrestment or an interim attachment; or
- (b) to recall, in whole or in part, or vary, an inhibition,

(**6**) Rule 3.5 was amended by S.S.I. 2004/197.

(**7**) 1987 c. 18.

(**8**) 2002 asp 9.

(**9**) Section 15D was inserted by section 169 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(**10**) Section 9C was inserted by section 173 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(**11**) 1868 c. 101.

shall be made by motion.

Incidental applications in relation to interim diligence, etc

6.A5. An application under Part 1A of the 1987 Act⁽¹²⁾ or Part 1A of the 2002 Act⁽¹³⁾ other than mentioned above shall be made by motion.

Form of schedule of inhibition on the dependence

6.A6.—(1) An inhibition on the dependence shall be served by serving the schedule of inhibition on the defender in Form G4B.

(2) A certificate of execution shall be lodged with the sheriff clerk in Form G4C.

Service of inhibition on the dependence where address of defender not known

6.A7.—(1) Where the address of a defender is not known to the pursuer, an inhibition on the dependence shall be deemed to have been served on the defender if the schedule of inhibition is left with or deposited at the office of the sheriff clerk of the sheriff court district where the defender's last known address is located.

(2) Where service of an inhibition on the dependence is executed under paragraph (1), a copy of the schedule of inhibition shall be sent by the sheriff officer by first class post to the defender's last known address.”.

(6) Rule 6.2 (arrestment on dependence before service) is revoked.

(7) After Form G4 in Appendix 1 to Schedule 1, insert Forms G4A, G4B and G4C set out in Schedule 1 to this Act of Sederunt.

6.—(1) The Summary Cause Rules are amended in accordance with subparagraphs to (9).

(2) In rule 5.6 (service where address of person is not known) at the beginning insert—

“(A1) Subject to rule 6.A7 this rule applies to service where the address of a person is not known.”.

(3) Chapter 6 is renamed “INTERIM DILIGENCE”.

(4) At the beginning of that Chapter, insert—

“Interpretation

6.A1. In this Chapter—

“the 1987 Act” means the Debtors (Scotland) Act 1987; and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002.

Application for interim diligence

6.A2.—(1) The following shall be made by incidental application—

(a) an application under section 15D(1)⁽¹⁴⁾ of the 1987 Act for warrant for diligence by arrestment or inhibition on the dependence of an action or warrant for arrestment on the dependence of an admiralty action;

⁽¹²⁾ Part 1A was inserted by section 169 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

⁽¹³⁾ Part 1A was inserted by section 173 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

⁽¹⁴⁾ Section 15D was inserted by section 169 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

(b) an application under section 9C of the 2002 Act⁽¹⁵⁾ for warrant for interim attachment.

(2) Such an application must be accompanied by a statement in Form 15a.

(3) A certified copy of an interlocutor granting an application under paragraph (1) shall be sufficient authority for execution of the diligence concerned.

Effect of authority for inhibition on the dependence

6.A3.—(1) Where a person has been granted authority for inhibition on the dependence of an action, a certified copy of the interlocutor granting the application may be registered with a certificate of execution in the Register of Inhibitions and Adjudications.

(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 6.A2 may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868; and such registration shall have the same effect as registration of a notice under that section.

Recall etc of arrestment or inhibition

6.A4.—(1) An application by any person having an interest—

(a) to loose, restrict, vary or recall an arrestment or an interim attachment; or

(b) to recall, in whole or in part, or vary, an inhibition,

shall be made by incidental application.

(2) Paragraph (1) does not apply to an application made orally at a hearing under section 15K that has been fixed under section 15E(4) of the Act of 1987⁽¹⁶⁾.

Incidental applications in relation to interim diligence, etc

6.A5. An application under Part 1A of the 1987 Act⁽¹⁷⁾ or Part 1A of the 2002 Act⁽¹⁸⁾ other than mentioned above shall be made by incidental application.

Form of schedule of inhibition on the dependence

6.A6.—(1) An inhibition on the dependence shall be served by serving the schedule of inhibition on the defender in Form 15b.

(2) A certificate of execution shall be lodged with the Sheriff Clerk in Form 15c.

Service of inhibition on the dependence where address of defender not known

6.A7.—(1) Where the address of a defender is not known to the pursuer, an inhibition shall be deemed to have been served on the defender if the schedule of inhibition is left with or deposited at the office of the sheriff clerk of the sheriff court district where the defender's last known address is located.

(2) Where service of an inhibition on the dependence is executed under paragraph (1), a copy of the schedule of inhibition shall be sent by the sheriff officer by first class post to the defender's last known address.”.

⁽¹⁵⁾ Section 9C was inserted by section 173 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

⁽¹⁶⁾ Sections 15K and 15E were inserted by section 169 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

⁽¹⁷⁾ Part 1A was inserted by section 169 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

⁽¹⁸⁾ Part 1A was inserted by section 173 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

(5) In rule 6.2 (arrestment on dependence before service), the words “or an arrestment on the dependence of an action” are omitted.

(6) In Form 1 in Appendix 1 to Schedule 1 (form of summons) in box 6, the words “; *arrestment on the dependence” are omitted.

(7) In Form 1a in Appendix 1 to Schedule 1 (defender’s copy summons where time to pay direction or time order may be applied for), the application for recall or restriction of an arrestment is omitted.

(8) In Form 1a, Form 1b (defender’s copy summons where time to pay direction or time order may not be applied for) and Form 1c (defender’s copy summons – non monetary claim) in Appendix 1 to Schedule 1, in each form–

(a) in the notes to “Application for service of a third party notice” the words “or to arrest on the dependence of the action” are omitted;

(b) in the form of application for service of a third party notice, the words “to arrest on the dependence” are omitted.

(9) After Form 15 in Appendix 1 to Schedule 1, insert Forms 15a, 15b and 15c set out in Schedule 2 to this Act of Sederunt.

7.—(1) The Small Claim Rules are amended in accordance with subparagraphs (2) to (8).

(2) In rule 6.6 (service where address of person is not known) at the beginning insert–

“(A1) Subject to rule 7.A7 this rule applies to service where the address of a person is not known.”.

(3) Chapter 7 is renamed “INTERIM DILIGENCE”.

(4) At the beginning of that Chapter, insert–

“Interpretation

7.A1. In this Chapter–

“the 1987 Act” means the Debtors (Scotland) Act 1987; and

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002.

Application for interim diligence

7.A2.—(1) The following shall be made by incidental application–

(a) an application under section 15D(1) of the 1987 Act(**19**) for warrant for diligence by arrestment or inhibition on the dependence of an action or warrant for arrestment on the dependence of an admiralty action;

(b) an application under section 9C of the 2002 Act(**20**) for interim attachment.

(2) Such an application must be accompanied by a statement in Form 9a.

(3) A certified copy of an interlocutor granting an application under paragraph (1) shall be sufficient authority for execution of the diligence concerned.

(19) Section 15D was inserted by section 169 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

(20) Section 9C was inserted by section 173 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

Effect of authority for inhibition on the dependence

7.A3.—(1) Where a person has been granted authority for inhibition on the dependence of an action, a certified copy of the interlocutor granting the application may be registered with a certificate of execution in the Register of Inhibitions and Adjudications.

(2) A notice of a certified copy of an interlocutor granting authority for inhibition under rule 7.A2 may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868; and such registration shall have the same effect as registration of a notice under that section.

Recall etc of arrestment or inhibition

7.A4.—(1) An application by any person having an interest—

- (a) to loose, restrict, vary or recall an arrestment or an interim attachment; or
- (b) to recall, in whole or in part, or vary, an inhibition,

shall be made by incidental application.

(2) Paragraph (1) does not apply to an application made orally at a hearing under section 15K that has been fixed under section 15E(4) of the Act of 1987(21).

Incidental applications in relation to interim diligence, etc

7.A5. An application under Part 1A of the 1987 Act(22) or Part 1A of the 2002 Act(23) other than mentioned above shall be made by incidental application.

Form of schedule of inhibition on the dependence

7.A6.—(1) An inhibition on the dependence shall be served by serving the schedule of inhibition on the defender in Form 9b.

(2) A certificate of execution shall be lodged with the Sheriff Clerk in Form 9c.

Service of inhibition on the dependence where address of defender not known

7.A7.—(1) Where the address of a defender is not known to the pursuer, an inhibition shall be deemed to have been served on the defender if the schedule of inhibition is left with or deposited at the office of the sheriff clerk of the sheriff court district where the defender's last known address is located.

(2) Where service of an inhibition on the dependence is executed under paragraph (1), a copy of the schedule of inhibition shall be sent by the sheriff officer by first class post to the defender's last known address.”.

(5) In rule 7.2 (arrestment on dependence before service) in Appendix 1 to Schedule 1, the words “or an arrestment on the dependence of an action” are omitted.

(6) In Form 1 (form of summons) in Appendix 1 to Schedule 1, in box 6, the words “, *arrestment on the dependence” are omitted.

(7) In Form 1a (defender's copy summons where time to pay direction or time order may be applied for) in Appendix 1 to Schedule 1, the application for recall or restriction of an arrestment is omitted.

(21) Sections 15K and 15E were inserted by section 169 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

(22) Part 1A was inserted by section 169 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

(23) Part 1A was inserted by section 173 of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#).

(8) After Form 9 in Appendix 1 to Schedule 1, insert Forms 9a, 9b and 9c set out in Schedule 3 to this Act of Sederunt.

8.—(1) The Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002(**24**) are amended in accordance with subparagraphs and .

(2) After Chapter 1, insert—

“CHAPTER 1A
INTERIM ATTACHMENT

Application for extension of hours of attachment

6B.—(1) An application by an officer of court under section 12(2) to extend the hours of an interim attachment shall be made by minute, which shall be lodged in the process of the action in which the warrant for interim attachment was granted.

(2) The minute shall specify—

- (a) the extension sought; and
- (b) the reason for the extension.

(3) The minute does not need to be intimated to any party and the sheriff may grant or refuse it without a hearing.

Procedure for executing attachment

6C.—(1) When executing an interim attachment the officer of court shall be accompanied by another person who shall witness the whole proceedings.

(2) Before attaching any article the officer of court shall—

- (a) show to every person present a certified copy of the interlocutor authorising the interim attachment; and
- (b) make enquiries as to the ownership in common of that article (and in particular ownership in common of that article by the debtor and any other person).

(3) The officer of court shall prepare a schedule (the “schedule of interim attachment”) in Form 2a.

(4) The officer of court and the witness shall sign the schedule of interim attachment.

(5) The officer of court shall—

- (a) deliver a copy of the signed schedule of interim attachment to any person then in possession of the articles or leave it at the premises occupied by that person; and
- (b) if the person in possession of the articles is not the debtor and it is reasonably practicable to do so, serve a copy of the signed schedule of interim attachment by first class post on the debtor.

Application of rules 10, 11 and 12 in relation to interim attachment

6D.—(1) Rules 10, 11 and 12 apply in relation to interim attachment as they apply in relation to attachment.

(2) The application of rule 11 is subject to the following modifications—

- (a) for Part C of Form 6 there is substituted—

“An action has been raised by the Creditor against the Debtor in the Court of Session/Sheriff Court at _____ on _____. On _____ the court granted warrant for interim attachment.”; and

(b) in Part D of that form, for “attachment” there is substituted “interim attachment”.

Report of attachment

6E.—(1) A report under section 17(1) by an officer of court of the execution of an interim attachment shall be in Form 2b.

(2) The sheriff clerk shall retain the report of the attachment.

(3) An application by an officer of court under section 17(1) to extend the time for lodging the report shall be made by minute stating the reasons for the extension, which shall be lodged in the process of the action in which the warrant for interim attachment was granted.”.

(3) In Appendix 1 to Schedule 1, after Form 2 insert Forms 2a and 2b set out in Schedule 4 to this Act of Sederunt.

9. But the Ordinary Cause Rules, Summary Cause Rules and Small Claim Rules as they applied immediately before 1st April 2008 continue to have effect for the purpose of any application for arrestment on the dependence made before that date.

Earnings arrestment

10.—(1) The Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988(**25**) is amended in accordance with subparagraphs (2) to (7).

(2) In rule 38 (earnings arrestment schedules), in paragraph (3) after “section 49(1) to (6)” insert “and section 49A”(**26**).

(3) After rule 65 insert—

“Application where employer fails to give notice under section 70A(5) of the Act

65A.—(1) An application by a creditor under section 70B of the Act(**27**) shall be in Form 59a.

(2) An application to which paragraph (1) of this rule applies shall specify—

(a) the name and address of the applicant, the debtor, the employer and the officer of court who served the arrestment schedule in respect of the debt due to the applicant; and

(b) the date of service of the applicant’s earnings arrestment schedule, current maintenance arrestment schedule or conjoined arrestment order.

(3) On the lodging of such an application the sheriff clerk shall—

(a) fix a date for a hearing;

(b) obtain from the sheriff a warrant for intimation;

(c) intimate the application and warrant to the applicant and the employer; and

(d) complete a certificate of intimation.

(4) The sheriff clerk shall intimate the sheriff’s decision on such an application to the employer if the employer was not present when the application was determined.”.

(25) S.I. 1988/2013, amended by S.I. 1991/1920, 1993/920, 1994/3086, 1995/1876, 1996/2709, 1999/1820 and S.S.I. 2002/560.

(26) Section 49A was inserted into the 1987 Act by section 200 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(27) Section 70B was inserted into the 1987 Act by section 203 of the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3).

(4) In Form 30 (earnings arrestment schedule)(**28**)–

- (a) after “section 49(1) to (6)” in each place where it occurs insert “, section 49A”;
- (b) in paragraph (2) of the notes, the words “as amended by the Child Support Act 1991” are omitted; and
- (c) in paragraph (3) of the notes, after the paragraph that refers to section 69(5)(a) insert–

“70(4A)	Employer’s duty to intimate a copy of an earnings arrestment schedule to the debtor and to give certain information to the debtor.
70A	Employer’s duty to give certain information to the creditor or, as the case may be, the sheriff clerk and to send a copy of certain information to the debtor.”.

(5) In Form 34 (current maintenance arrestment schedule)(**29**), in paragraph (2) of notes for employer, after the paragraph that refers to section 69(5)(6) insert–

“70(4A)	Employer’s duty to intimate a copy of a current maintenance arrestment schedule to the debtor and to give certain information to the debtor.
70A	Employer’s duty to give certain information to the creditor or, as the case may be, the sheriff clerk and to send a copy of certain information to the debtor.”.

(6) In Form 45 (conjoined arrestment order)(**30**), in paragraph (2) of the notes, after the paragraph that refers to section 69(3) insert–

“70(4A)	Employer’s duty to intimate a copy of a conjoined arrestment order to the debtor and to give certain information to the debtor.
70A	Employer’s duty to give certain information to the creditor or, as the case may be, the sheriff clerk and to send a copy of certain information to the debtor.”.

(7) In the Schedule, after Form 59 insert Form 59a set out in Schedule 5 to this Act of Sederunt.

Edinburgh
13th March 2008

A. C. Hamilton
Lord President I.P.D.

(28) Form 30 was amended by [S.I. 1993/920](#).

(29) Form 34 was amended by [S.I. 1993/920](#).

(30) Form 45 was amended by [S.I. 1993/920](#).