
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 365

**Act of Sederunt (Sheriff Court Rules)
(Miscellaneous Amendments) (No. 2) 2008**

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2008 and, subject to subparagraphs (2) and (3), shall come into force on 13th November 2008.

(2) Paragraph 6 shall come into force on 25th November 2008.

(3) Paragraphs 2 to 5 shall come into force on 1st December 2008.

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

(5) In this Act of Sederunt—

“the Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(1);

“the Summary Application Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(2);

“the Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(3);

“the Small Claim Rules” means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(4).

Commercial actions

2. In Forms O4 and O5 in Appendix 1 of the Ordinary Cause Rules, after the paragraph commencing “**IF YOU WISH TO DEFEND THIS ACTION**” insert the following paragraph:—

“**IF THE WORDS “COMMERCIAL ACTION” APPEAR AT THE HEAD OF THIS INITIAL WRIT** then you should note that this action is a commercial action governed by Chapter 40 of the Ordinary Cause Rules 1993. You should also note in particular that if you lodge a notice of intention to defend you must then lodge defences within 7 days of the expiry of the period of notice. You will receive no further notification of this requirement from the court.”.

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- (1) 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 560, 2003/25 and 26, 2004/197 and 350, 2005/20, 189, 638 and 648 and 2006/198, 207, 293, 410 and 509, 2007/6, 339, 440 and 463 and 2008/121 and 223.
- (2) S.I. 1999/929, amended by S.S.I. 2000/18 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455, 2005/61, 473, 504 and 648, 2006/198 and 410, 437 and 509, 2007/6, 233, 339, 440 and 463 and 2008/9, 41, 111, 223 and 335.
- (3) S.S.I. 2002/132, amended by S.S.I. 2002/516, 2003/26 and 601, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463 and 2008/121 and 223.
- (4) S.S.I. 2002/133, amended by S.S.I. 2003/26, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463 and 2008/121 and 223.

Interim Diligence

3. After rule 31.2 of the Ordinary Cause Rules insert–

“Appeals in connection with interim diligence

31.2A. An interlocutor–

- (a) loosing, restricting, varying or recalling an arrestment or an interim attachment;
- (b) recalling in whole or in part, or varying an inhibition used on the dependence of an action; or
- (c) refusing to loose, restrict or recall such arrestment, attachment or inhibition,

may be appealed to the sheriff principal, without leave of the sheriff, within 14 days after the date of the interlocutor.”.

Notice to admit

4. In rule 29.14 of the Ordinary Cause Rules (notices to admit and notices of non-admission), subparagraph (4) is omitted.

Specification of Documents

5.—(1) The Summary Cause Rules are amended in accordance with the following subparagraphs.

(2) For paragraph (6) of rule 34.2 (form of summons) substitute–

“(6) Where a summons includes a specification of documents in accordance with paragraph (5)(b) it shall be intimated to–

- (a) in respect of an application under section 1(1) of the Administration of Justice (Scotland) Act 1972⁽⁵⁾, any third party haver; and
- (b) where necessary–
 - (i) the Advocate General for Scotland (in a case where the document or other property sought is in the possession of either a public authority exercising functions in relation to reserved matters within the meaning of Schedule 5 to the Scotland Act 1998, or a cross-border public authority within the meaning of section 88(5) of that Act); or
 - (ii) the Lord Advocate (in any other case)

and, if there is any doubt, both.”.

(3) For Form 10e in Appendix 1, substitute Form 10e set out in the Schedule to this Act of Sederunt.

UK Borders Act 2007

6. After Part XXXV of the Summary Application Rules⁽⁶⁾ insert–

⁽⁵⁾ 1972 c. 59.

⁽⁶⁾ Part XXXV was inserted by S.S.I. 2008/335.

“Part XXXVI UK BORDERS ACT 2007

Interpretation

3.36.1. In this Part—

“the Act” means the UK Borders Act 2007(7); and

“an appeal” means an appeal to the sheriff under section 11(1) of the Act.

Appeals

3.36.2.—(1) Subject to paragraph (2), an appeal must be lodged with the sheriff clerk not later than 21 days after the date the penalty notice was received by the appellant.

(2) Where the appellant has given notice of objection under section 10(1) of the Act, an appeal must be lodged with the sheriff clerk not later than 21 days after the date that notice of the Secretary of State’s decision under section 10(4) of the Act was received by the appellant.”.

Service under the EC Service Regulation

7. In rule 5.5 of the Ordinary Cause Rules (service on persons furth of Scotland)—

(a) in paragraphs (1A) and (6)(b)(8) for “the Council Regulation” substitute “the EC Service Regulation”; and

(b) for paragraph (8)(9) substitute—

“(8) In this rule “the EC Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time(10).”.

8. In rule 2.12 of the Summary Application Rules (service on persons furth of Scotland)—

(a) in paragraphs (1A) and (6)(b)(11) for “the Council Regulation” substitute “the EC Service Regulation”; and

(b) for paragraph (8)(12) substitute—

“(8) In this rule “the EC Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time(13).”.

9. In rule 5.7 of the Summary Cause Rules (service on persons outwith Scotland)—

(a) in paragraphs (4) and (12)(b)(14) for “the Council Regulation” substitute “the EC Service Regulation”; and

(7) 2007 c. 30.

(8) Rule 5.5(1A) and (6)(b) were inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.

(9) Rule 5.5(8) was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.

(10) O.J. No. L 324, 10.12.2007, p. 79.

(11) Rule 2.12(1A) and (6)(b) were inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.

(12) Rule 12.2(8) was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.

(13) O.J. No. L 324, 10.12.2007, p. 79.

(14) Rule 5.7(4) and (12)(b) were inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.

(b) for paragraph (14)(**15**) substitute–

“(14) In this rule “the EC Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time.”.

10. In rule 6.5 of the Small Claim Rules (service on persons outwith Scotland)–

(a) in paragraphs (4) and (12)(b)(**16**) for “the Council Regulation” substitute “the EC Service Regulation”; and

(b) for paragraph (15)(**17**) substitute–

“(15) In this rule “the EC Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13th November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time.”.

Edinburgh
7th November 2008

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

(15) Rule 5.7(14) was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.

(16) Rule 6.5 was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.

(17) Rule 6.5(15) was inserted by S.S.I. 2004/197 and substituted by S.S.I. 2007/440.