

2009 No. 294

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Miscellaneous
Amendments) 2009**

Made - - - - *18th August 2009*

Coming into force in accordance with paragraph 1(1) and (2)

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 the said Act of 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2009 and, subject to subparagraph (2), comes into force on 1st October 2009.

(2) Paragraphs 2 to 7 come into force on 1st December 2009.

(3) This Act of Sederunt is to be inserted in the Books of Sederunt.

(4) In this Act of Sederunt—

“the 1988 Rules” means the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988(b);

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

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

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

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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 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49, the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2) and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 33.
- (b) 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 and 2008/121.
- (c) 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 and 207, 293, 410 and 509, 2007/6, 339, 440 and 463, 2008/121, 223 and 365 and 2009/107, 164, 284 and 285.
- (d) S.S.I. 1999/929, amended by S.S.I. 2000/18 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455, 2005/61, 473, 504 and 648, 2006/198, 410, 437 and 509, 2007/6, 233, 339, 440 and 463, 2008/9, 41, 111, 223, 335 and 365 and 2009/107.
- (e) S.S.I. 2002/132, amended by S.S.I. 2002/516, 2003/26, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463, 2008/121, 223 and 365 and 2009/107.

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

Time to pay directions and time orders

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

(2) After rule 3.2 (actions relating to heritable property) insert—

“Actions relating to regulated agreements

3.2A. In an action which relates to a regulated agreement within the meaning given by section 189(1) of the Consumer Credit Act 1974(b)—

- (a) the initial writ shall include an averment that such an agreement exists and details of that agreement; and
- (b) a copy of the regulated agreement shall be attached to the initial writ.”.

(3) In rule 7.3 (applications for time to pay directions or time orders in undefended causes)—

(a) after paragraph (2) insert—

“(2A) As soon as possible after the application of the defender is lodged, the sheriff clerk shall send a copy of it to the pursuer by first class ordinary post.”; and

(b) for paragraph (4) substitute—

“(4) Where the pursuer objects to the application of the defender made in accordance with paragraph (2) he shall on the same date—

- (a) complete and lodge with the sheriff clerk Form O3A;
- (b) minute for decree in accordance with rule 7.2; and
- (c) send a copy of Form O3A to the defender.

(4A) The sheriff clerk shall then fix a hearing on the application of the defender and intimate the hearing to the pursuer and the defender.

(4B) The hearing must be fixed for a date within 28 days of the date on which the Form O3A and the minute for decree are lodged.”.

(4) In the Schedule, for Form O3 (form of citation where application for time to pay direction and time order may be made) substitute the forms set out in Schedule 1 to this Act of Sederunt.

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

(2) In rule 2.4 (the initial writ)(c), after paragraph (4) insert—

“(4A) In an action which relates to a regulated agreement within the meaning given by section 189(1) of the Consumer Credit Act 1974—

- (a) the initial writ shall include an averment that such an agreement exists and details of the agreement; and
- (b) a copy of the regulated agreement shall be lodged with the initial writ.”.

(3) In rule 2.22 (applications for time to pay directions or time orders)—

- (a) in paragraph (2)(b) for “seven” substitute “14”;
- (b) for paragraph (3) substitute—

(a) S.S.I. 2002/133, amended by S.S.I. 2003/26 and 601, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463, 2008/121, 223 and 365 and 2009/107.
(b) 1974 c.39.
(c) Rule 2.4 was amended by S.S.I. 2004/197.

“(3) On lodging an application under paragraph (2)(b), the defender shall send a copy of it to the pursuer by first class ordinary post.

(4) Where the pursuer objects to the application of the defender lodged under paragraph (2)(b) he shall—

- (a) complete and lodge with the sheriff clerk Form 5A prior to the date fixed for the hearing of the summary application; and
- (b) send a copy of that form to the defender.

(5) The sheriff clerk shall then fix a hearing in relation to the application under paragraph (2)(b) and intimate the hearing to the pursuer and the defender.

(6) The sheriff may determine an application under paragraph (2)(c) without the defender having to appear.”.

(4) In Form 4 in the Schedule (form of warrant of citation etc.), in paragraph (b), for “seven” substitute “fourteen”.

(5) For Form 5 in the Schedule (form of notice etc.), substitute the forms set out in Schedule 2 to this Act of Sederunt.

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

(2) After rule 4.2 (statement of claim) insert—

“Actions relating to regulated agreements

4.2A. In an action which relates to a regulated agreement within the meaning given by section 189(1) of the Consumer Credit Act 1974—

- (a) the statement of claim shall include an averment that such an agreement exists and details of the agreement; and
- (b) a copy of the regulated agreement shall be attached to the summons.”.

(3) In rule 7.2 (application for time to pay direction or time order)—

(a) after paragraph (1) insert—

“(1A) The sheriff clerk must on receipt forthwith intimate to the pursuer a copy of any response lodged under paragraph (1).”;

(b) in paragraph (2), for “two days” substitute “9 days”; and

(c) for paragraph (4) substitute—

“(4) If the pursuer wishes to oppose the application for a time to pay direction or time order made in accordance with paragraph (1)(a) he must before the time the sheriff clerk’s office closes for business on the day occurring 9 days before the calling date—

- (a) lodge a minute in Form 19; and
- (b) send a copy of that minute to the defender.”.

(4) For Form 1a (summons) in Appendix 1 substitute the form set out in Schedule 3 to this Act of Sederunt.

(5) For Form 19 (form of minute) in Appendix 1 substitute the form set out in Schedule 4 to this Act of Sederunt.

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

(2) After rule 4.2 (statement of claim) insert—

“Actions relating to regulated agreements

4.2A. In an action which relates to a regulated agreement within the meaning given by section 189(1) of the Consumer Credit Act 1974—

- (a) the statement of claim shall include an averment that such an agreement exists and details of the agreement; and
 - (b) a copy of the regulated agreement shall be attached to the summons.”.
- (3) In rule 8.2 (application for time to pay direction or time order)—
- (a) after paragraph (1) insert—
 - “(1A) The sheriff clerk must on receipt forthwith intimate to the pursuer a copy of any response lodged under paragraph (1).”;
 - (b) in paragraph (2) for “two days” substitute “9 days”; and
 - (c) for paragraph (4) substitute—
 - “(4) If the pursuer wishes to oppose the application for a time to pay direction or time order made in accordance with paragraph (1)(a) he must before the time the sheriff clerk’s office closes for business on the day occurring 9 days before the hearing date—
 - (a) lodge a minute in Form 13; and
 - (b) send a copy of that minute to the defender.”.
- (4) For Form 1a in Appendix 1 (summons) substitute the form set out in Schedule 5 to this Act of Sederunt.
- (5) For Form 13 in Appendix 1 (form of minute) substitute the form set out in Schedule 6 to this Act of Sederunt.

6. But the Ordinary Cause Rules, Summary Application Rules, Summary Cause Rules and Small Claim Rules as they applied immediately before 1st December 2009 continue to have effect for the purpose of any application for a time to pay direction or a time order made in connection with an initial writ or summons, as the case may be, lodged before that date.

Return, calling and hearing dates

- 7.—**(1) In rule 4.5(7) of the Summary Cause Rules (period of notice), for “seven days” substitute “14 days”.
- (2) In rule 9.1(3) of the Small Claim Rules (the hearing), for “seven days” substitute “14 days”.
- (3) But rule 4.5(7) of the Summary Cause Rules and rule 9.1(3) of the Small Claim Rules as they applied immediately before 1st December 2009 continue to have effect for the purpose of any summons lodged before that date.

Applications for time to pay orders

- 8.—**(1) The 1988 Rules are amended in accordance with subparagraph (2).
- (2) In Form 2 in the Schedule(a), for the section beginning “The applicant’s financial position is:-” substitute the following section—

Applicant’s financial position				
I am employed / self-employed / unemployed				
	My net income is:	weekly, fortnightly or monthly	My outgoings are:	weekly, fortnightly or monthly
	Wages	£	Mortgage/rent	£
	State Benefits	£	Council tax	£

(a) Form 2 was amended by S.S.I. 2002/560 and 2008/121.

	Tax credits	£	Gas/electricity etc	£
	Other	£	Food	£
			Credit and loans	£
			Phone	£
			Other	£
	Total	£	Total	£
	People who rely on your income (e.g. spouse/ civil partner/partner/children) – how many			

(3) But the 1988 Rules as they applied immediately before 1st October 2009 continue to have effect for the purpose of any application for a time to pay order made before that date.

Conjoined arrestment orders

9.—(1) The 1988 Rules are amended in accordance with the following subparagraphs.

(2) In Form 43 in the Schedule (application for a conjoined arrestment order)(a)—

(a) in paragraph 1, after the entry for “The employer” insert—

“Debtor’s place of employment : (*address*)”;

(b) before the paragraph beginning “The applicant asks the court” insert—

“8. A debt advice and information package was provided to the debtor on (*insert date*).”.

(3) In Form 45 in the Schedule (conjoined arrestment order)(b)—

(a) in the section beginning “SPECIFIES”—

(i) for “Current maintenance” substitute “Current maintenance debt”; and

(ii) for “Daily rate” substitute “Daily rate recoverable”;

(b) for the last sentence of paragraph 5 of the “instructions to employer” substitute—

“If the debtor ceases to be employed by the employer, the employer must, as soon as is reasonably practicable, notify the sheriff clerk of that fact and, so far as is known to him, of the name and address of any new employer of the debtor.”.

(4) In Form 46 in the Schedule (notice of service of conjoined arrestment order), for the last sentence of the first paragraph substitute—

“If the debtor ceases to be employed by the employer, the employer must, as soon as is reasonably practicable, notify the sheriff clerk of that fact and, so far as is known to him, of the name and address of any new employer of the debtor.”.

(5) In Form 51 in the Schedule (notice of service of an order varying a conjoined arrestment order), for the last sentence substitute—

“If the debtor ceases to be employed by the employer, the employer must, as soon as is reasonably practicable, notify the sheriff clerk of that fact and, so far as is known to him, of the name and address of any new employer of the debtor.”.

Other minor amendments – diligence

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

(2) In rule 19.2 (warrants for diligence on counterclaims)(c)—

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

(a) Form 43 was amended by S.S.I. 2002/560.

(b) Form 45 was amended by S.I. 1993/920 and S.S.I. 2008/121.

(c) Rule 19.2 was amended by S.I. 1996/2445 and S.S.I. 2004/197.

- (b) omit paragraphs (2) to (4).
- (3) In rule 20.3 (warrants for diligence on third party notice)—
 - (a) for paragraph (1) substitute—
 - “(1) A defender who applies for an order for service of a third party notice may apply for—
 - (a) a warrant for arrestment to found jurisdiction;
 - (b) a warrant for interim diligence,
 which would have been permitted had the warrant been sought in an initial writ in a separate action.”;
 - (b) in paragraph (2), for “such a warrant” substitute “a warrant under paragraph (1)(a)”; and
 - (c) in paragraph (3), for “paragraph (1)” substitute “paragraph (1)(a)”.

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

- (2) In rule 4.4(4) (authentication and effect of summons)(a), omit the words “on the dependence, or”.
- (3) In rule 5.5 (service on persons whose address is unknown), 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) In rule 5.6 (service by post)(b), omit paragraph (A1).
- (5) In rule 10.1 (counterclaim)(c)—
 - (a) in paragraph (3), for the words from “warrant” to “counterclaim” substitute “warrant for interim diligence in respect of a counterclaim”; and
 - (b) omit paragraph (4), (4A), (4B) and (5).
- (6) In rule 11.3 (warrants for diligence on third party notice)(d)—
 - (a) for paragraph (1) substitute—
 - “(1) A defender who applies for an order for service of a third party notice may apply for—
 - (a) a warrant for arrestment to found jurisdiction;
 - (b) a warrant for interim diligence,
 which would have been permitted had the warrant been sought in an initial writ in a separate action.”; and
 - (b) in paragraph (1A), for “paragraph (1)” substitute “paragraph (1)(a)”.

12.—(1) The Small Claim Rules are amended in accordance with the following subparagraphs.

- (2) In rule 4.4(4) (authentication and effect of summons)(e), omit the words “on the dependence, or”.
- (3) In rule 11.3 (counterclaim)(f), omit paragraph (3).

13. In rule 69E of the 1988 Rules (application for release of property where arrestment unduly harsh)(g), in paragraph (2)(a), omit the words “of the Act”.

(a) Rule 4.4(4) was inserted by S.S.I. 2004/197.
 (b) Rule 5.6(A1) was inserted by S.S.I. 2008/121.
 (c) Rule 10.1 was amended by S.S.I. 2004/197.
 (d) Rule 11.3 was amended by S.S.I. 2004/197.
 (e) Rule 4.4(4) was inserted by S.S.I. 2004/197.
 (f) Rule 11.1 was amended by S.S.I. 2004/197.
 (g) Rule 69E was inserted by S.S.I. 2009.107.

Dismissal of actions due to delay

14. After rule 15.6 of the Ordinary Cause Rules (motions to sist)(a) insert—

“Dismissal of action due to delay

15.7.—(1) Any party to an action may, while that action is depending before the court, apply by written motion for the court to dismiss the action due to inordinate and inexcusable delay by another party or another party’s agent in progressing the action, resulting in unfairness.

(2) A motion under paragraph (1) shall—

- (a) include a statement of the grounds on which it is proposed that the motion should be allowed or as the case may be; and
- (b) be lodged in accordance with rule 15.1.

(3) A notice of opposition to the motion in Form G9 shall include a statement of the grounds of opposition to the motion.

(4) In determining an application made under this rule, the court may dismiss the action if it appears to the court that—

- (a) there has been an inordinate and inexcusable delay on the part of any party or any party’s agent in progressing the action; and
- (b) such delay results in unfairness specific to the factual circumstances, including the procedural circumstances, of that action.

(5) In determining whether or not to dismiss an action under paragraph (4), the court shall take account of the procedural consequences, both for the parties and for the work of the court, of allowing the action to proceed.”.

15. After Chapter 22 of the Summary Cause Rules (decree by default) insert—

“CHAPTER 22A

DISMISSAL OF ACTION DUE TO DELAY

Dismissal of action due to delay

22A.1.—(1) Any party to an action may, while that action is depending before the court, apply by written incidental application to the court to dismiss the action due to inordinate and inexcusable delay by another party or another party’s agent in progressing the action, resulting in unfairness.

(2) An application under paragraph (1) shall include a statement of the grounds on which it is proposed that the application should be allowed or as the case may be.

(3) In determining an application made under this rule, the court may dismiss the action if it appears to the court that—

- (a) there has been an inordinate and inexcusable delay on the part of any party or any party’s agent in progressing the action; and
- (b) such delay results in unfairness specific to the factual circumstances, including the procedural circumstances, of that action.

(4) In determining whether or not to dismiss an action under paragraph (3), the court shall take account of the procedural consequences, both for the parties and for the work of the court, of allowing the action to proceed.

(a) Rule 15.6 was inserted by S.S.I. 2000/239.

(5) Rule 9.1 shall, with the necessary modifications, apply to an application under paragraph (1).”.

Insolvency or death of cautioner or guarantor

16. In rule 27.8 (insolvency or death of cautioner or guarantor) of the Ordinary Cause Rules, in paragraph (d)(i), for “administration or winding up order” substitute “administration, bank administration or building society special administration order or a winding up, bank insolvency or building society insolvency order”.

Definition of “Her Majesty’s Forces”

17. In rule 2.1 (interpretation) of the Act of Sederunt (Child Care and Maintenance Rules) 1997(a), for the definition of “Her Majesty’s Forces” substitute—

““Her Majesty’s Forces” means the regular forces as defined in section 374 of the Armed Forces Act 2006(b); and”.

Counter-Terrorism Act 2008: foreign travel restriction orders

18. After Part XXXVII (Employment Tribunals Act 1996) of the Summary Application Rules(c), insert—

“PART XXXVIII

Counter-Terrorism Act 2008

Variation, renewal or discharge of foreign travel restriction order

3.38.—(1) Where an application under paragraph 9 of Schedule 5 to the Counter-Terrorism Act 2008(d) for an order varying, renewing or discharging a foreign travel restriction order is made in a sheriff court other than the sheriff court in which the process relating to the foreign travel restriction order is held—

- (a) the initial writ containing the application shall contain averments as to the sheriff court in which the process relating to the foreign travel restriction order is held;
- (b) the sheriff clerk with whom the application is lodged shall notify the sheriff clerk of the sheriff court in which the process relating to the foreign travel restriction order is held; and
- (c) the sheriff clerk of the sheriff court in which the process relating to the foreign travel restriction order is held shall, not later than 4 days after receipt of such notification, transfer the process relating to the foreign travel restriction order to the sheriff clerk of the sheriff court in which the application is made.

(2) For the purposes of paragraph (1), the sheriff court in which the process relating to the order is held is the sheriff court in which the foreign travel restriction order was granted or, where the process has been transferred under that paragraph, the last sheriff court to which the process has been transferred.

(a) S.S.I. 1997/291. Rule 2.1 was amended by S.S.I. 2006/411.
(b) 2006 c.52.
(c) Part XXXVII was inserted by S.S.I. 2009/109.
(d) 2008 c.28.

(3) A failure of the sheriff clerk to comply with paragraph (1) shall not invalidate the application.”.

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

Edinburgh
18th August 2009

SCHEDULE 1

Paragraph 2(4)

Form O3	Form of notice to be served on defender in ordinary action where time to pay direction or time order may be applied for	
Rule 3.3(3), 7.3(2) and 18.5(1)(a)	ACTION RAISED BY	
	PURSUER	DEFENDER
	AT	SHERIFF COURT
	(Including address)	
	COURT REF. NO.	
	DATE OF EXPIRY OF PERIOD OF NOTICE THIS SECTION MUST BE COMPLETED BY THE PURSUER BEFORE SERVICE	
	<p>(1) Time to pay directions</p> <p>The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a “time to pay direction” which is an order permitting you to pay any sum of money you are ordered to pay to the pursuer (which may include interest and court expenses) either by way of instalments or deferred lump sum. A deferred lump sum means that you must pay all the amount at one time within a period specified by the court.</p> <p>When making a time to pay direction the court may recall or restrict an arrestment made on your property by the pursuer in connection with the action or debt (for example, your bank account may have been frozen).</p>	

	<p>(2) Time Orders</p> <p>The Consumer Credit Act 1974 allows you to apply to the court for a “time order” during a court action, to ask the court to give you more time to pay a loan agreement. A time order is similar to a time to pay direction, but can only be applied for where the court action is about a credit agreement regulated by the Consumer Credit Act. The court has power to grant a time order in respect of a regulated agreement to reschedule payment of the sum owed. This means that a time order can change:</p> <ul style="list-style-type: none"> • the amount you have to pay each month • how long the loan will last • in some cases, the interest rate payable <p>A time order can also stop the creditor taking away any item bought by you on hire purchase or conditional sale under the regulated agreement, so long as you continue to pay the instalments agreed.</p>
	<p>HOW TO APPLY FOR A TIME TO PAY DIRECTION OR TIME ORDER WHERE YOU ADMIT THE CLAIM AND YOU DO NOT WANT TO DEFEND THE ACTION</p> <ol style="list-style-type: none"> 1. The appropriate application forms are attached to this notice. If you want to make an application you should lodge the completed application with the sheriff clerk at the above address before the expiry of the period of notice, the date of which is given above. No court fee is payable when lodging the application. 2. Before completing the application please read carefully the notes on how to complete the application. In the event of difficulty you may contact the court’s civil department at the address above or any sheriff clerk’s office, solicitor, Citizens Advice Bureau or other advice agency. Written guidance can also be obtained from the Scottish Court Service website (www.scotcourts.gov.uk).
	<p>NOTE</p> <p>Where this form is being served on a defender along with Form O9 (notice to additional defender) the reference to “date of expiry of period of notice” should be amended to “date for lodging of defences or an application for a time to pay direction or time order” and the reference to “before the expiry of the period of notice” should be amended to “on or before the date for lodging of defences or an application for a time to pay direction or time order”.</p>

	WHAT WILL HAPPEN NEXT
	<p>If the pursuer objects to your application, a hearing will be fixed and the court will advise you in writing of the date and time.</p> <p>If the pursuer does not object to your application, a copy of the court order for payment (called an extract decree) will be served on you by the pursuer's solicitor advising when instalment payments should commence or deferred payment be made.</p>

	Court ref. no.
	APPLICATION FOR A TIME TO PAY DIRECTION UNDER THE DEBTORS (SCOTLAND) ACT 1987
*PART A	By
*(This section must be completed by pursuer before service)	DEFENDER
	In an action raised by
	PURSUER
	HOW TO COMPLETE THE APPLICATION PLEASE WRITE IN INK USING BLOCK CAPITALS
	<p>PART A of the application will have been completed in advance by the pursuer and gives details of the pursuer and you as the defender.</p> <p>PART B If you wish to apply to pay by instalments enter the amount and tick the appropriate box at B3(1). If you wish to apply to pay the full sum due in one deferred payment enter the period of deferment you propose at B3(2).</p> <p>PART C Give full details of your financial position in the space provided.</p> <p>PART D If you wish the court, when making the time to pay direction, to recall or restrict an arrestment made in connection with the action, enter the appropriate details about what has been arrested and the place and date of the arrestment at D5, and attach the schedule of arrestment or copy.</p> <p>Sign the application where indicated. Retain the copy initial writ and the form of notice which accompanied this application form as you may need them at a later stage. You should ensure that your application arrives at the court before the expiry of the period of notice.</p>

PART B	1.	The applicant is a defender in the action brought by the above named pursuer.				
	2.	The defender admits the claim and applies to the court for a time to pay direction.				
	3.	The defender applies				
	(1)	To pay by instalments of £				
	(Tick one box only)					
	EACH WEEK		FORTNIGHT		MONTH	
	OR					
	(2)	To pay the sum ordered in one payment within				
		WEEKS/MONTHS				
	Please state in this box why you say a time to pay direction should be made. In doing so, please consider the Note below.					
	<p>NOTE</p> <p>Under the 1987 Act, the court is required to make a time to pay direction if satisfied that it is reasonable in the circumstances to do so, and having regard in particular to the following matters –</p>					

	<p>The nature of and reasons for the debt in relation to which decree is granted or the order is sought</p> <p>Any action taken by the creditor to assist the debtor in paying the debt</p> <p>The debtor's financial position</p> <p>The reasonableness of any proposal by the debtor to pay that debt</p> <p>The reasonableness of any refusal or objection by the creditor to any proposal or offer by the debtor to pay the debt.</p>			
PART C	<p>4. Defender's financial position</p> <p>I am employed /self employed / unemployed</p>			
	My net income is:	weekly, fortnightly or monthly	My outgoings are:	weekly, fortnightly or monthly
	Wages	£	Mortgage/rent	£
	State benefits	£	Council tax	£
	Tax credits	£	Gas/electricity etc	£
	Other	£	Food	£
			Credit and loans	£
			Phone	£
			Other	£
	Total	£	Total	£
	People who rely on your income (e.g. spouse/civil partner/partner/children) – how many			
	Here list all assets (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:			
	Here list any outstanding debts:			

PART D	5. The defender seeks to recall or restrict an arrestment of which the details are as follows (<i>please state, and attach the schedule of arrestment or copy</i>).
	6. This application is made under sections 1(1) and 2(3) of the Debtors (Scotland) Act 1987.
	Therefore the defender asks the court *to make a time to pay direction *to recall the above arrestment *to restrict the above arrestment (<i>in which case state restriction wanted</i>)
	Date (<i>insert date</i>)
	Signed
Defender	

Court ref. no.	APPLICATION FOR A TIME ORDER UNDER THE CONSUMER CREDIT ACT 1974	
*PART A	By	
*(This section must be completed by pursuer before service)	DEFENDER	
	In an action raised by	
	PURSUER	
	HOW TO COMPLETE THE APPLICATION PLEASE WRITE IN INK USING BLOCK CAPITALS	
	<p>PART A of the application will have been completed in advance by the pursuer and gives details of the pursuer and you as the defender.</p> <p>PART B If you wish to apply to pay by instalments enter the amount and tick the appropriate box at B3. If you wish the court to make any additional orders, please give details at B4. Please give details of the regulated agreement at B5.</p> <p>PART C Give full details of your financial position in the space provided.</p> <p>Sign the application where indicated. Retain the copy initial writ and the form of notice which accompanied this application form as you may need them at a later stage. You should ensure that your application arrives at the court before the expiry of the period of notice.</p>	

PART B	<p>1. The Applicant is a defender in the action brought by the above named pursuer.</p> <p>I/WE WISH TO APPLY FOR A TIME ORDER under the Consumer Credit Act 1974</p>
	<p>2. Details of order(s) sought</p> <p>The defender wishes to apply for a time order under section 129 of the Consumer Credit Act 1974</p> <p>The defender wishes to apply for an order in terms of section of the Consumer Credit Act 1974</p>
	<p>3. Proposals for payment</p> <p>I admit the claim and apply to pay the arrears and future instalments as follows:</p> <p>By instalments of £ per *week/fortnight/month</p> <p>No time to pay direction or time to pay order has been made in relation to this debt.</p>
	<p>4. Additional orders sought</p> <p>The following additional order(s) is (are) sought: (<i>specify</i>)</p> <p>The order(s) sought in addition to the time order is (are) sought for the following reasons:</p>
	<p>5. Details of regulated agreement</p> <p>(a) Date of agreement</p> <p>(b) Reference number of agreement</p> <p>(<i>Please attach a copy of the agreement</i>)</p>

	<p>(c) Names and addresses of other parties to agreement</p> <p>(d) Name and address of person (if any) who acted as surety (guarantor) to the agreement</p> <p>(e) Place where agreement signed (e.g. the shop where agreement signed, including name and address)</p> <p>(f) Details of payment arrangements</p> <p>i. The agreement is to pay instalments of £ per week/month</p> <p>ii. The unpaid balance is £ / I do not know the amount of arrears</p> <p>iii. I am £ in arrears / I do not know the amount of arrears</p>			
PART C	<p>4. Defender's financial position</p> <p>I am employed /self employed / unemployed</p>			
	My net income is:	weekly, fortnightly or monthly	My outgoings are:	weekly, fortnightly or monthly
	Wages	£	Mortgage/rent	£
	State benefits	£	Council tax	£
	Tax credits	£	Gas/electricity etc	£
	Other	£	Food	£
			Credit and loans	£
			Phone	£
			Other	£
	Total	£	Total	£
	People who rely on your income (e.g. spouse/civil partner/partner/children) – how many			

	Here list all assets (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:
	Here list any outstanding debts:
	Therefore the defender asks the court to make a time order
	<p>Date</p> <p>Signed</p> <p>Defender</p>

Form O3A

Rule 7.3(4)

Form of pursuer's response objecting to application for time to pay direction or time order

Court ref no:

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

PURSUER'S RESPONSE OBJECTING TO APPLICATION FOR TIME TO PAY DIRECTION OR TIME ORDER

in the cause

[A.B.], *(insert designation and address)*, Pursuer

against

[C.D.], *(insert designation and address)*, Defender

1. The pursuer received a copy application for a time to pay direction or time order lodged by the defender on *(date)*.
2. The pursuer does not accept the offer.
3. The debt is *(please specify the nature of the debt)*.
4. The debt was incurred on *(specify date)* and the pursuer has contacted the defender in relation to the debt on *(specify date(s))*.
- *5. The contractual payments were *(specify amount)*.
- *6. *(Specify any action taken by the pursuer to assist the defender to pay the debt)*.
- *7. The defender has made payment(s) towards the debt of *(specify amount(s))* on *(specify date(s))*.
- *8. The debtor has made offers to pay *(specify amount(s))* on *(specify date(s))* which offer(s) was [were] accepted [or rejected] and *(specify amount)* was paid on *(specify date(s))*.
- 9.. *(Here set out any information you consider relevant to the court's determination of the application)*.

*delete as appropriate

Minute for decree

(Signed)
Pursuer or Solicitor for pursuer

(Date)

SCHEDULE 2

Paragraph 3(5)

Form 5	Form of notice to be served on defender where time to pay direction or time order may be applied for	
Rule 2.7(6) and 2.22(2)(b)	ACTION RAISED BY	
	PURSUER	DEFENDER
	AT	SHERIFF COURT
	(Including address)	
	COURT REF. NO.	
	THIS SECTION MUST BE COMPLETED BY THE PURSUER BEFORE SERVICE	
	<p>(1) Time to pay directions</p> <p>The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a “time to pay direction” which is an order permitting you to pay any sum of money you are ordered to pay to the pursuer (which may include interest and court expenses) either by way of instalments or deferred lump sum. A deferred lump sum means that you must pay all the amount at one time within a period specified by the court.</p> <p>When making a time to pay direction the court may recall or restrict an arrestment made on your property by the pursuer in connection with the action or debt (for example, your bank account may have been frozen).</p>	

	<p>(2) Time Orders</p> <p>The Consumer Credit Act 1974 allows you to apply to the court for a “time order” during a court action, to ask the court to give you more time to pay a loan agreement. A time order is similar to a time to pay direction, but can only be applied for where the court action is about a credit agreement regulated by the Consumer Credit Act. The court has power to grant a time order in respect of a regulated agreement to reschedule payment of the sum owed. This means that a time order can change:</p> <ul style="list-style-type: none"> • the amount you have to pay each month • how long the loan will last • in some cases, the interest rate payable <p>A time order can also stop the creditor taking away any item bought by you on hire purchase or conditional sale under the regulated agreement, so long as you continue to pay the instalments agreed.</p>
	<p>HOW TO APPLY FOR A TIME TO PAY DIRECTION OR TIME ORDER WHERE YOU ADMIT THE CLAIM AND YOU DO NOT WANT TO DEFEND THE ACTION</p> <ol style="list-style-type: none"> 1. The appropriate application forms are attached to this notice. After completing the appropriate form it should be returned to the Sheriff Court at least fourteen days before the date of the first hearing or expiry of the period of notice or otherwise, as the case may be, in the warrant of citation. The address of the court is shown on page 1 of the application. No court fee is payable when lodging the application. 2. Before completing the application please read carefully the notes on how to complete the application. In the event of difficulty you may contact the court’s civil department at the address above or any sheriff clerk’s office, solicitor, Citizens Advice Bureau or other advice agency. Written guidance can also be obtained from the Scottish Court Service website (www.scotcourts.gov.uk).
	<p style="text-align: center;">WHAT WILL HAPPEN NEXT</p>
	<p>If the pursuer objects to your application, a hearing will be fixed and the court will advise you in writing of the date and time.</p> <p>If the pursuer does not object to your application, a copy of the court order for payment (called an extract decree) will be served on you by the pursuer’s solicitor advising when instalment payments should commence or deferred payment be made.</p>

	Court ref. no.
	APPLICATION FOR A TIME TO PAY DIRECTION UNDER THE DEBTORS (SCOTLAND) ACT 1987
*PART A	By
*(This section must be completed by pursuer before service)	DEFENDER
	In an action raised by
	PURSUER
	HOW TO COMPLETE THE APPLICATION PLEASE WRITE IN INK USING BLOCK CAPITALS
	<p>PART A of the application will have been completed in advance by the pursuer and gives details of the pursuer and you as the defender.</p> <p>PART B If you wish to apply to pay by instalments enter the amount and tick the appropriate box at B3(1). If you wish to apply to pay the full sum due in one deferred payment enter the period of deferment you propose at B3(2).</p> <p>PART C Give full details of your financial position in the space provided.</p> <p>PART D If you wish the court, when making the time to pay direction to recall or restrict an arrestment made in connection with the action, enter the appropriate details about what has been arrested and the place and date of the arrestment at D5, and attach the schedule of arrestment or copy.</p>

	<p>Sign the application where indicated. Retain the copy initial writ and the form of notice which accompanied this application form as you may need them at a later stage. The application should be returned to the Sheriff Court at least fourteen days before the date of the first hearing or expiry of the period of notice or otherwise, as the case may be, in the warrant of citation. The address of the court is shown on page 1 of the application.</p>					
PART B	<p>1. The applicant is a defender in the action brought by the above named pursuer.</p> <p>2. The defender admits the claim and applies to the court for a time to pay direction.</p> <p>3. The defender applies</p> <p>(1) To pay by instalments of £</p>					
	(Tick one box only)					
	EACH WEEK		FORTNIGHT		MONTH	
	OR					
	<p>(2) To pay the sum ordered in one payment within</p> <p>WEEKS/MONTHS</p>					
	<p>Please state in this box why you say a time to pay direction should be made. In doing so, please consider the Note below.</p>					

	NOTE			
	Under the 1987 Act, the court is required to make a time to pay direction if satisfied that it is reasonable in the circumstances to do so, and having regard in particular to the following matters –			
	<p>The nature of and reasons for the debt in relation to which decree is granted or the order is sought</p> <p>Any action taken by the creditor to assist the debtor in paying the debt</p> <p>The debtor’s financial position</p> <p>The reasonableness of any proposal by the debtor to pay that debt</p> <p>The reasonableness of any refusal or objection by the creditor to any proposal or offer by the debtor to pay the debt.</p>			
PART C	4. Defender’s financial position			
	I am employed /self employed / unemployed			
	My net income is:	weekly, fortnightly or monthly	My outgoings are:	weekly, fortnightly or monthly
	Wages	£	Mortgage/rent	£
	State benefits	£	Council tax	£
	Tax credits	£	Gas/electricity etc	£
	Other	£	Food	£
			Credit and loans	£
			Phone	£
			Other	£
	Total	£	Total	£
	People who rely on your income (e.g. spouse/civil partner/partner/children) – how many			

	Here list all assets (if any) e.g. value of house, amounts in bank or building society accounts; shares or other investments:
	Here list any outstanding debts:
PART D	<p>5. The defender seeks to recall or restrict an arrestment of which the details are as follows (<i>please state, and attach the schedule of arrestment or copy</i>).</p> <p>6. This application is made under sections 1(1) and 2(3) of the Debtors (Scotland) Act 1987.</p>
	<p>Therefore the defender asks the court</p> <p>*to make a time to pay direction</p> <p>*to recall the above arrestment</p> <p>*to restrict the above arrestment (<i>in which case state restriction wanted</i>)</p>
	Date (<i>insert date</i>)
	Signed
	Defender

Court ref. no.	APPLICATION FOR A TIME ORDER UNDER THE CONSUMER CREDIT ACT 1974	
*PART A	By	
*(This section must be completed by pursuer before service)	DEFENDER	
	In an action raised by	
	PURSUER	
	HOW TO COMPLETE THE APPLICATION PLEASE WRITE IN INK USING BLOCK CAPITALS	
	<p>PART A of the application will have been completed in advance by the pursuer and gives details of the pursuer and you as the defender.</p> <p>PART B If you wish to apply to pay by instalments enter the amount and tick the appropriate box at B3. If you wish the court to make any additional orders, please give details at B4. Please give details of the regulated agreement at B5.</p> <p>PART C Give full details of your financial position in the space provided.</p> <p>Sign the application where indicated. Retain the copy initial writ and the form of notice which accompanied this application form as you may need them at a later stage. The application should be returned to the Sheriff Court at least fourteen days before the date of the first hearing or expiry of the period of notice or otherwise, as the case may be, in the warrant of citation. The address of the court is shown on page 1 of the application.</p>	

PART B	<p>1. The Applicant is a defender in the action brought by the above named pursuer.</p> <p>I/WE WISH TO APPLY FOR A TIME ORDER under the Consumer Credit Act 1974</p>
	<p>2. Details of order(s) sought</p> <p>The defender wishes to apply for a time order under section 129 of the Consumer Credit Act 1974</p> <p>The defender wishes to apply for an order in terms of section of the Consumer Credit Act 1974</p>
	<p>3. Proposals for payment</p> <p>I admit the claim and apply to pay the arrears and future instalments as follows:</p> <p>By instalments of £ per *week/fortnight/month</p> <p>No time to pay direction or time to pay order has been made in relation to this debt.</p>
	<p>4. Additional orders sought</p> <p>The following additional order(s) is (are) sought: (<i>specify</i>)</p> <p>The order(s) sought in addition to the time order is (are) sought for the following reasons:</p>
	<p>5. Details of regulated agreement</p> <p>(a) Date of agreement</p> <p>(b) Reference number of agreement</p> <p>(<i>Please attach a copy of the agreement</i>)</p>

	<p>(c) Names and addresses of other parties to agreement</p> <p>(d) Name and address of person (if any) who acted as surety (guarantor) to the agreement</p> <p>(e) Place where agreement signed (e.g. the shop where agreement signed, including name and address)</p> <p>(f) Details of payment arrangements</p> <p>i. The agreement is to pay instalments of £ per week/month</p> <p>ii. The unpaid balance is £ / I do not know the amount of arrears</p> <p>iii. I am £ in arrears / I do not know the amount of arrears</p>			
PART C	Defender's financial position			
	I am employed /self employed / unemployed			
	My net income is:	weekly, fortnightly or monthly	My outgoings are:	weekly, fortnightly or monthly
	Wages	£	Mortgage/rent	£
	State benefits	£	Council tax	£
	Tax credits	£	Gas/electricity etc	£
	Other	£	Food	£
			Credit and loans	£
			Phone	£
			Other	£
	Total	£	Total	£
	People who rely on your income (e.g. spouse/civil partner/partner/children) – how many			

	<p>Here list all assets (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:</p>
	<p>Here list any outstanding debts:</p>
	<p>Therefore the defender asks the court to make a time order</p>
	<p>Date Signed Defender</p>

Form 5A

Rule 2.22(4)

Form of pursuer's response objecting to application for time to pay direction or time order

Court ref no:

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

PURSUER'S RESPONSE OBJECTING TO APPLICATION FOR TIME TO PAY DIRECTION OR TIME ORDER

in the cause

[A.B.], *(insert designation and address)*, Pursuer

against

[C.D.], *(insert designation and address)*, Defender

1. The pursuer received a copy application for a time to pay direction or time order lodged by the defender on *(date)*.
2. The pursuer does not accept the offer.
3. The debt is *(please specify the nature of the debt)*.
4. The debt was incurred on *(specify date)* and the pursuer has contacted the defender in relation to the debt on *(specify date(s))*.
- *5. The contractual payments were *(specify amount)*.
- *6. *(Specify any action taken by the pursuer to assist the defender to pay the debt)*.
- *7. The defender has made payment(s) towards the debt of *(specify amount(s))* on *(specify date(s))*.
- *8. The debtor has made offers to pay *(specify amount(s))* on *(specify date(s))* which offer(s) was [were] accepted [or rejected] and *(specify amount)* was paid on *(specify date(s))*.
9. *(Here set out any information you consider relevant to the court's determination of the application)*.

*delete as appropriate

(Signed)
Pursuer or Solicitor for pursuer

(Date)

SCHEDULE 3

Paragraph 4(4)

Rule 4.3(a)
Form 1a

OFFICIAL USE ONLY SUMMONS No.

Summary Cause Summons

Action for/of

(state type, e.g. payment of money)

DEFENDER’S COPY: Claim for or including payment of money (where time to pay direction or time order may be applied for)

Sheriff Court (name, address, e-mail and telephone no.)	1	
---------------------------------------------------------------	----------	--

Name and address of person raising the action (pursuer)	2	
----------------------------------------------------------------------	----------	--

Name and address of person against whom action raised (defender, arrestee, etc.)	3	
------------------------------------------------------------------------------------------------------------	----------	--

Name(s) and address(es) of any interested party (e.g. connected person)	3a	
-------------------------------------------------------------------------------	-----------	--

Claim (form of decree of other order sought)	4	
-------------------------------------------------	----------	--

Name, full address, telephone no., and e-mail address of pursuer’s solicitor or representative (if any) acting in the case	5	
----------------------------------------------------------------------------------------------------------------------------------------	----------	--

6	RETURN DAY	20	
	CALLING DATE	20	at am.

NOTE: You will find details of claim on page 2.

7. STATEMENT OF CLAIM
PARICULARS OF ARRESTMENT (forthcoming actions only)
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)

The details of the claim are:

8. SERVICE ON DEFENDER

(Place)	(Date)
To:	(Defender)

You are hereby served with a copy of the above summons.

Solicitor / sheriff officer
delete as appropriate

NOTE: The pursuer should complete boxes 1 to 6 on page 1, the statement of claim in box 7 on page 2 and section A on page 6 before service on the defender. The person serving the Summons will complete box 8, above.

WHAT MUST I DO ABOUT THIS SUMMONS?

The RETURN DAY (on page 1 of this summons) is the deadline by which you need to reply to the court. You must send the correct forms back (see below for details) by this date if you want the court to hear your case. If you do not do this, in most cases there will not be a hearing about your case and the court will make a decision in your absence.

The CALLING DAY (on page 1 of this summons) is the date for the court hearing.

Note: If your case is about **recovery of possession of heritable property** (eviction) there will be a hearing even if you do not send back the forms, so you should attend court on the calling date. If you make an application for time to pay in such a case and the court accepts your application, it may still make an order for eviction, so you should attend court if you wish to defend the action for eviction.

You should decide whether you wish to dispute the claim and/or whether you owe any money or not, and how you wish to proceed. Then, look at the 5 options listed below. Find the one that covers your decision and follow the instructions given there.

If you are not sure what you need to do, contact the sheriff clerk's office before the return day. Written guidance can also be obtained from the Scottish Court Service website (www.scotcourts.gov.uk).

OPTIONS

1. ADMIT LIABILITY FOR THE CLAIM and settle it with the pursuer now.

If you wish to avoid the possibility of a court order passing against you, you should settle the claim (including any question of expenses) with the pursuer or his representative **in good time before the return day**. Please do not send any payment direct to the court. Any payment should be made to the pursuer or his representative.

2. ADMIT LIABILITY FOR THE CLAIM and make written application to pay by instalments or by deferred lump sum.

Complete Box 1 of section B on page 6 of this form and return pages 6, 8 and 9 to the court **to arrive on or before the return day**. You should then contact the court to find out whether or not the pursuer has accepted your offer. If he has not accepted it, the case will then call in court on the calling date, when the court will decide how the amount claimed is to be paid.

NOTE: If you fail to return pages 6, 8 and 9 as directed, or if, having returned them, you fail to attend or are not represented at the calling date if the case is to call, the court may decide the claim in your absence.

3. ADMIT LIABILITY FOR THE CLAIM and attend at court to make application to pay by instalments or deferred lump sum.

Complete Box 2 on page 6. Return page 6 to the court so that it arrives **on or before the return day**.

You must attend personally, or be represented, at court on the calling date. Your representative may be a Solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

NOTE: If you fail to return page 6 as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court may decide the claim in your absence.

4. DISPUTE THE CLAIM and attend at court to do any of the following:

- Challenge the jurisdiction of the court or the competency of the action
- Defend the action (whether as regards the sum claimed or otherwise)
- State a counterclaim

Complete Box 3 on page 6. Return page 6 to the court so that it arrives **on or before the return day. You must attend personally, or be represented, at court on the calling date.**

Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

NOTE: If you fail to return page 6 as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court may decide the claim in your absence.

WRITTEN NOTE OF PROPOSED DEFENCE

You must send to the court by the return day a written note of any proposed defence, or intimate that you intend to dispute the sum claimed or wish to dispute the court's jurisdiction. You must also attend or be represented at court on the calling date.

5. ADMIT LIABILITY FOR THE CLAIM and make written application for a time order under the Consumer Credit Act 1974.

Complete Box 4 on page 6 and return pages 6 and 10 to 12 to the court to arrive on or before the return day. You should then contact the court to find out whether or not the pursuer has accepted your offer. Where you have been advised that the pursuer has not accepted your offer then the case will call in court on the calling date. You should appear in court on the calling date as the court will decide how the amount claimed is to be paid.

NOTE: If you fail to return pages 6 and 10 to 12 as directed, or if, having returned them, you fail to attend or are not represented at the calling date if the case is to call, the court may decide the claim in your absence.

PLEASE NOTE

If you do nothing about this summons, the court will almost certainly, where appropriate, grant decree against you and order you to pay the pursuer the sum claimed, including any interest and expenses found due.

YOU ARE ADVISED TO KEEP PAGES 1 AND 2, AS THEY MAY BE USEFUL AT A LATER STAGE OF THE CASE.

Notes:

(1) Time to pay directions

The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a “time to pay direction”. This is an order which allows you to pay any sum which the court orders you to pay either in instalments or by deferred lump sum. A “deferred lump sum” means that you will be ordered by the court to pay the whole amount at one time within a period which the court will specify.

If the court makes a time to pay direction it may also recall or restrict any arrestment made on your property by the pursuer in connection with the action or debt (for example, your bank account may have been frozen).

No court fee is payable when making an application for a time to pay direction.

If a time to pay direction is made, a copy of the court order (called an extract decree) will be sent to you by the pursuer telling you when payment should start or when it is you have to pay the lump sum.

If a time to pay direction is not made, and an order for immediate payment is made against you, an order to pay (called a charge) may be served on you if you do not pay.

(2) Determination of application

Under the 1987 Act, the court is required to make a time to pay direction if satisfied that it is reasonable in the circumstances to do so, and having regard in particular to the following matters—

- The nature of and reasons for the debt in relation to which decree is granted
- Any action taken by the creditor to assist the debtor in paying the debt
- The debtor’s financial position
- The reasonableness of any proposal by the debtor to pay that debt
- The reasonableness of any refusal or objection by the creditor to any proposal or offer by the debtor to pay the debt.

(3) Time Orders

The Consumer Credit Act 1974 allows you to apply to the court for a “time order” during a court action, to ask the court to give you more time to pay a loan agreement. **A time order is similar to a time to pay direction, but can only be applied for where the court action is about a credit agreement regulated by the Consumer Credit Act.** The court has power to grant a time order in respect of a regulated agreement to reschedule payment of the sum owed. This means that a time order can change:

- the amount you have to pay each month
- how long the loan will last
- in some cases, the interest rate payable

A time order can also stop the creditor taking away any item bought by you on hire purchase or conditional sale under the regulated agreement, so long as you continue to pay the instalments agreed.

No court fee is payable when making an application for a time order.

SECTION A
This section must
be completed
before service

	Summons No
	Return Day
	Calling Date

SHERIFF COURT (Including address)

PURSUER'S FULL NAME
AND ADDRESS

DEFENDER'S FULL NAME AND
ADDRESS

SECTION B DEFENDER'S RESPONSE TO THE SUMMONS

**** Delete those boxes which do not apply**

****Box 1**

ADMIT LIABILITY FOR THE CLAIM and make written application to pay by instalments or by deferred lump sum.

I do not intend to defend the case but admit liability for the claim.

I wish to make a written application about payment.

I have completed the application form on pages 8 and 9.

****Box 2**

ADMIT LIABILITY FOR THE CLAIM and attend at court to make application to pay by instalments or deferred lump sum.

I admit liability for the claim.

I intend to appear or be represented at court on the calling date.

****Box 3**

DISPUTE THE CLAIM (or the amount due) and attend at court

*I intend to challenge the jurisdiction of the court.

*I intend to challenge the competency of the action.

*I intend to defend the action.

*I wish to dispute the amount due only.

*I apply for warrant to serve a third party notice (see page 14).

I intend to appear or be represented in court on the calling date.

*I attach a note of my proposed defence/counterclaim.

OR

*I return form 10b (personal injury cases only).

**delete as necessary*

****Box 4**

ADMIT LIABILITY FOR THE CLAIM and apply for a time order under the Consumer Credit Act 1974.

I do not intend to defend the case but admit liability for the claim.

I wish to apply for a time order under the Consumer Credit Act 1974.

I have completed the application form on pages 10 to 12.

PAGE 6

WRITTEN NOTE OF PROPOSE DEFENCE / COUNTERCLAIM

State which facts in the statement of claim are admitted:

State briefly any facts regarding the circumstances of the claim on which you intent to rely:

State details of counterclaim, if any:

PLEASE REMEMBER: You must send your response to the court to **arrive on or before the return day** if you have completed a response in Section B. If you have admitted the claim, please do not send any payment direct to the court. **Any payments you wish to make should be made to the pursuer or his solicitor.**

PAGE 7

APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION UNDER THE DEBTORS
(SCOTLAND) ACT 1987

I WISH TO APPLY FOR A TIME TO PAY DIRECTION

I admit the claim and make application to pay as follows:

(1) By instalments of £ _____ per *week / fortnight / month

OR

(2) In one payment within _____ *weeks / months from the date of the court order.

The debt is for (*specify the nature of the debt*) and has arisen (*here set out the reasons the debt has arisen*)

Please also state why you say a time to pay direction should be made. In doing so, please consider the Notes (1) and (2) on page 5.

To help the court please provide details of your financial position in the boxes below.

I am employed / self-employed / unemployed

***Please also indicate whether payment/receipts are weekly, fortnightly or monthly**

My outgoings are:	*Weekly / fortnightly / monthly
Rent/mortgage	£
Council tax	£
Gas/electricity etc	£
Food	£
Loans and credit agreements	£
Phone	£
Other	£
Total	£

My net income is	*Weekly / fortnightly / monthly
Wages/pensions	£
State benefits	£
Tax credits	£
Other	£
Total	£

People who rely on your income (e.g. spouse/civil partner/partner/children) – how many

Please list details of all capital held, e.g. value of house; amount in savings account, shares or other investments:

I am of the opinion that the payment offer is reasonable for the following reason(s):

Here set out any information you consider relevant to the court's determination of the application. In doing so, please consider Note (2) on page 5.

***APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT**

I seek the recall or restriction of the arrestment of which the details are as follows:

Date:

**Delete if inapplicable*

	APPLICATION FOR A TIME ORDER UNDER THE CONSUMER CREDIT ACT 1974	
	By	
	DEFENDER	
	In an action raised by	
	PURSUER	
	PLEASE WRITE IN INK USING BLOCK CAPITALS	
	<p>If you wish to apply to pay by instalments enter the amount at box 3. If you wish the court to make any additional orders, please give details at box 4. Please give details of the regulated agreement at box 5 and details of your financial position in the spaces provided below box 5.</p> <p>Sign and date the application where indicated. You should ensure that your application arrives at the court along with the completed page 6 on or before the return day.</p>	
	<p>1. The Applicant is a defender in the action brought by the above named pursuer.</p> <p>I/WE WISH TO APPLY FOR A TIME ORDER under the Consumer Credit Act 1974</p>	
	<p>2. Details of order(s) sought</p> <p>The defender wishes to apply for a time order under section 129 of the Consumer Credit Act 1974.</p> <p>The defender wishes to apply for an order in terms of section of the Consumer Credit Act 1974.</p>	
	PAGE 10	

	<p>3. Proposals for payment</p> <p>I admit the claim and apply to pay the arrears and future instalments as follows:</p> <p>By instalments of £ per *week/fortnight/month</p> <p>No time to pay direction or time to pay order has been made in relation to this debt.</p>
	<p>4. Additional orders sought</p> <p>The following additional order(s) is (are) sought: (<i>specify</i>)</p> <p>The order(s) sought in addition to the time order is (are) sought for the following reasons:</p>
	<p>5. Details of regulated agreement</p> <p>(a) Date of agreement</p> <p>(b) Reference number of agreement</p> <p>(<i>Please attach a copy of the agreement</i>)</p>
	<p>(c) Names and addresses of other parties to agreement</p> <p>(d) Name and address of person (if any) who acted as surety (guarantor) to the agreement</p> <p>(e) Place where agreement signed (e.g. the shop where agreement signed, including name and address)</p> <p>(f) Details of payment arrangements</p> <p>i. The agreement is to pay instalments of £ per week/month</p> <p>ii. The unpaid balance is £ / I do not know the amount of arrears</p> <p>iii. I am £ in arrears / I do not know the amount of arrears</p>
	<p style="text-align: right;">PAGE 11</p>

Defender's financial position			
I am employed /self employed / unemployed			
My net income is:	weekly, fortnightly monthly	or	My outgoings are: weekly, fortnightly monthly
Wages	£		Mortgage/rent £
State benefits	£		Council tax £
Tax credits	£		Gas/electricity etc £
Other	£		Food £
			Credit and loans £
			Phone £
			Other £
Total	£		Total £
People who rely on your income (e.g. spouse/civil partner/partner/children) – how many			
Here list all assets (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:			
Here list any outstanding debts:			
Therefore the defender asks the court to make a time order			
Date:		Signed:	
		Defender:	
PAGE 12			

APPLICATION FOR SERVICE OF A THIRD PARTY NOTICE

NOTE:

You can apply to have another party added to the action if:

(A) You think that, as regards the matter which the action is about, that other party has a duty to:

1. Indemnify you; or
2. Make a contribution in respect of the matter; or
3. Relieve you from any responsibility as regards it.

or

(B) You think that other party is:

1. Solely liable to the pursuer; or
2. Liable to the pursuer along with you; or
3. Has a liability to you as a result of the pursuer's claim against you.

You may apply for warrant to found jurisdiction if you wish to do so.

FORM OF APPLICATION

(TO BE RETURNED TO THE COURT ALONG WITH YOUR RESPONSE)

I request the court to grant warrant for service of a third party notice on the following party:

Name:

Address:

The reason I wish a third party notice to be served on the party mentioned above is as follows:
(Give details below of the reasons why you wish the party to be made a defender in the action.)

*I apply for warrant to found jurisdiction

***delete as appropriate**

Date:

SCHEDULE 4

Paragraph 4(5)

Form 19

Rule 7.2(4)

Form of minute – pursuer opposing an application for a time to pay direction or time order

Sheriff court (*place*):

Court ref no:

Name(s) of defender(s):

Calling date:

I oppose the defender’s application for

*a time to pay direction

*recall or restriction of arrestment

*a time order

**delete as appropriate*

1. The debt is (*please specify the nature of the debt*).
2. The debt was incurred on (*specify date*) and the pursuer has contacted the defender in relation to the debt on (*specify date(s)*).
- *3. The contractual payments were (*specify amount*).
- *4. (*Specify any action taken by the pursuer to assist the defender to pay the debt*).
- *5. The defender has made payment(s) towards the debt of (*specify amount(s)*) on (*specify date(s)*).
- *6. The debtor has made offers to pay (*specify amount(s)*) on (*specify date(s)*) which offer(s) was [were] accepted] [*or rejected*] and (*specify amount*) was paid on (*specify date(s)*).
7. (*Here set out any information you consider relevant to the court’s determination of the application*).
8. The pursuer requests the court to grant decree.

**delete as appropriate*

(Signed)
Pursuer [*or Solicitor for Pursuer*]

(Date)

SCHEDULE 5

Paragraph 5(4)

Rule 4.3(a)
Form 1a

OFFICIAL USE ONLY SUMMONS No.

Small Claim Summons

Action for/of

(state type, e.g. payment of money)

DEFENDER’S COPY: Claim for or including payment of money (where time to pay direction or time order may be applied for)

Sheriff Court (name, address, e-mail and telephone no.)	1	
---------------------------------------------------------------	----------	--

Name and address of person making the claim (pursuer)	2	
--------------------------------------------------------------------	----------	--

Name and address of person against whom claim made (defender)	3	
----------------------------------------------------------------------------	----------	--

Claim (form of decree or other order sought – <i>complete as in section 4 of Form 1</i>)	4	
--------------------------------------------------------------------------------------------------------------	----------	--

Name, full address, telephone no., and e-mail address of pursuer’s solicitor or authorised lay representative (if any) acting in the claim	5	
-----------------------------------------------------------------------------------------------------------------------------------------------------------	----------	--

6	RETURN DAY	20	
	HEARING DATE	20	at am.

NOTE: You will find details of claim on page 2.

**7. STATE DETAILS OF CLAIM HERE OR ATTACH A STATEMENT OF CLAIM
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)**

The details of the claim are:

8. SERVICE ON DEFENDER

(Place)

(Date)

To:

(Defender)

You are hereby served with a copy of the above summons.

Solicitor / sheriff officer
delete as appropriate

NOTE: The pursuer should complete boxes 1 to 6 on page 1, the statement of claim in box 7 on page 2 and section A on page 7 before service on the defender. The person serving the Summons will complete box 8, above.

PAGE 2

WHAT MUST I DO ABOUT THIS SUMMONS?

The RETURN DAY (on page 1 of this summons) is the deadline by which you need to reply to the court. You must send the correct forms back (see below for details) by this date if you want the court to hear your case. If you do not do this, in most cases there will not be a hearing about your case and the court will make a decision in your absence.

The HEARING DATE (on page 1 of this summons) is the date for the court hearing.

You should decide whether you wish to dispute the claim, admit liability for the claim and whether you owe any money or not, and how you wish to proceed. Then, look at the 5 options listed below. Find the one that covers your decision and follow the instructions given there.

If you are not sure what you need to do, contact the sheriff clerk's office before the return day. Written guidance can also be obtained from the Scottish Court Service website (www.scotcourts.gov.uk).

OPTIONS

1. ADMIT LIABILITY FOR THE CLAIM and settle it with the pursuer now.

If you wish to avoid the possibility of a court order passing against you, you should settle the claim (including any question of expenses) with the pursuer or his representative **in good time before the return day**. Please do not send any payment direct to the court. Any payment should be made to the pursuer or his representative.

2. ADMIT LIABILITY FOR THE CLAIM and make written application to pay by instalments or by deferred lump sum.

Complete Box 1 of section B on page 7 of this form and return pages 7, 9 and 10 to the court **to arrive on or before the return day**. You should then contact the court to find out whether or not the pursuer has accepted your offer. If he has not accepted it, the case will then call in court on the calling date, when the court will decide how the amount claimed is to be paid.

If your claim is for delivery, or implement of an obligation, and you wish to pay the alternative amount claimed, you may also wish to make an application about the method of payment. If so, follow the instructions in the previous paragraph.

NOTE: If you fail to return pages 7, 9 and 10 as directed, or if, having returned them, you fail to attend or are not represented at the calling date if the case is to call, the court may decide the claim in your absence.

3. ADMIT LIABILITY FOR THE CLAIM and attend at court to make application to pay by instalments or deferred lump sum.

Complete Box 2 on page 7. Return page 7 to the court so that it arrives **on or before the return day**.

If the claim for delivery, or implement of an obligation, you may wish to pay the alternative amount claimed and attend at court to make an application about the method of payment.

You must attend personally, or be represented, at court on the hearing date. Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

NOTE: If you fail to return page 7 as directed, or if, having returned it, you fail to attend or are not represented at the hearing date, the court may decide the claim in your absence.

4. DISPUTE THE CLAIM and attend at court to do any of the following:

- Challenge the jurisdiction of the court
- State a defence
- State a counterclaim
- Dispute the amount of the claim

Complete Box 3 on page 7. Return page 7 to the court so that it arrives **on or before the return day. You must attend personally, or be represented, at court on the hearing date.**

Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

NOTE: If you fail to return page 7 as directed, or if, having returned it, you fail to attend or are not represented at the hearing date, the court may decide the claim in your absence.

WRITTEN NOTE OF PROPOSED COUNTERCLAIM

You must send to the court a written note of any counterclaim. If you do, you should also send a copy to the pursuer. You must also attend or be represented at court on the hearing date.

5. ADMIT LIABILITY FOR THE CLAIM and make written application for a time order under the Consumer Credit Act 1974.

Complete Box 4 on page 8 and return pages 7 and 8 and 11 to 13 to the court to arrive on or before the return day. You should then contact the court to find out whether or not the pursuer has accepted your offer. Where you have been advised that the pursuer has not accepted your offer then the case will call in court on the hearing date. You should appear in court on the hearing date as the court will decide how the amount claimed is to be paid.

NOTE: If you fail to return pages 8 and 9 and 11 to 13 as directed, or if, having returned them, you fail to attend or are not represented at the hearing date, if the case is to call, the court may decide the claim in your absence.

PLEASE NOTE

If you do nothing about this summons, the court will almost certainly, where appropriate, grant decree against you and order you to pay the pursuer the sum claimed, including any interest and expenses found due.

If the summons is for delivery, or implement of an obligation, the court may order you to deliver the article or perform the duty in question within a specified period. If you fail to do so, the court may order you to pay to the pursuer the alternative amount claimed, including interest and expenses.

YOU ARE ADVISED TO KEEP PAGES 1 AND 2, AS THEY MAY BE USEFUL AT A LATER STAGE OF THE CASE.

Notes

(1) Time to pay directions

The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a “time to pay direction”. This is an order which allows you to pay any sum which the court orders you to pay either in instalments or by deferred lump sum. A “deferred lump sum” means that you will be ordered by the court to pay the whole amount at one time within a period which the court will specify.

If the court makes a time to pay direction it may also recall or restrict any arrestment made on your property by the pursuer in connection with the action or debt (for example, your bank account may have been frozen).

No court fee is payable when making an application for a time to pay direction.

If a time to pay direction is made, a copy of the court order (called an extract decree) will be sent to you by the pursuer telling you when payment should start or when it is you have to pay the lump sum.

If a time to pay direction is not made, and an order for immediate payment is made against you, an order to pay (called a charge) may be served on you if you do not pay.

(2) Determination of application

Under the 1987 Act, the court is required to make a time to pay direction if satisfied that it is reasonable in the circumstances to do so, and having regard in particular to the following matters—

- The nature of and reasons for the debt in relation to which decree is granted
- Any action taken by the creditor to assist the debtor in paying the debt
- The debtor’s financial position
- The reasonableness of any proposal by the debtor to pay that debt
- The reasonableness of any refusal or objection by the creditor to any proposal or offer by the debtor to pay the debt.

(3) Time Orders

The Consumer Credit Act 1974 allows you to apply to the court for a “time order” during a court action, to ask the court to give you more time to pay a loan agreement. **A time order is similar to a time to pay direction, but can only be applied for where the court action is about a credit agreement regulated by the Consumer Credit Act.** The court has power to grant a time order in respect of a regulated agreement to reschedule payment of the sum owed. This means that a time order can change:

- the amount you have to pay each month
- how long the loan will last
- in some cases, the interest rate payable

A time order can also stop the creditor taking away any item bought by you on hire purchase or conditional sale under the regulated agreement, so long as you continue to pay the instalments agreed.

No court fee is payable when making an application for a time order.

SECTION A
This section must
be completed
before service

	Summons No
	Return Day
	Hearing Date
SHERIFF COURT (Including address)	
PURSUER'S FULL NAME AND ADDRESS	DEFENDER'S FULL NAME AND ADDRESS

SECTION B **DEFENDER'S RESPONSE TO THE SUMMONS**
**** Delete those boxes which do not apply**

****Box 1**

<p>ADMIT LIABILITY FOR THE CLAIM and make <u>written</u> application to pay by instalments or by <u>deferred</u> lump sum.</p> <p>I do not intend to defend the case but admit liability for the claim and wish to pay the sum of money claimed.</p> <p>I wish to make a written application about payment.</p> <p>I have completed the application form on pages 9 and 10.</p>

****Box 2**

<p>ADMIT LIABILITY FOR THE CLAIM and <u>attend at court.</u></p> <p>I admit liability for the claim.</p> <p>I wish to make an application to pay the sum claimed by instalments or by deferred lump sum.</p> <p>I intend to appear or be represented at court.</p>

****Box 3**

<p>DISPUTE THE CLAIM (or the amount due) and attend at court</p> <p>*I wish to dispute the amount due only.</p> <p>*I intend to challenge the jurisdiction of the court.</p> <p>*I intend to state a defence.</p> <p>*I intend to state a counterclaim.</p> <p>*I intend to appear or be represented in court.</p> <p>_____</p> <p>*I attach a note of my proposed counterclaim which has been copied to the pursuer.</p> <p><i>*delete as necessary</i></p>

****Box 4**

ADMIT LIABILITY FOR THE CLAIM and apply for a time order under the Consumer Credit Act 1974.

I do not intend to defend the case but admit liability for the claim.

I wish to apply for a time order under the Consumer Credit Act 1974.

I have completed the application form on pages 11 to 13.

NOTE: Please remember to send your response to the court to arrive on or before the return day if you have completed any of the responses above.

PAGE 8

APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION

I WISH TO APPLY FOR A *TIME TO PAY DIRECTION

I admit the claim and make application to pay as follows:

(1) by instalments of £ _____ per *week / fortnight / month

OR

(2) in one payment within _____ *weeks / months from the date of the court order.

The debt is for (*specify the nature of the debt*) and has arisen (*here set out the reasons the debt has arisen*)

Please also state why you say a time to pay direction should be made. In doing so, please consider Notes (1) and (2) on page 5.

To help the court please provide details of your financial position in the boxes below.

I am employed / self-employed / unemployed

***Please also indicate whether payment/receipts are weekly, fortnightly or monthly**

My outgoings are:	*Weekly / fortnightly / monthly
Rent/mortgage	£
Council tax	£
Gas/electricity etc	£
Food	£
Loans and credit agreements	£
Phone	£
Other	£
Total	£

My net income is	*Weekly / fortnightly / monthly
Wages/pensions	£
State benefits	£
Tax credits	£
Other	£
Total	£

People who rely on your income (e.g. spouse/civil partner/partner/children) – how many

Please list details of all capital held, e.g. value of house; amount in savings account, shares or other investments:

I am of the opinion that the payment offer is reasonable for the following reason(s):

Here set out any information you consider relevant to the court's determination of the application. In doing so, please consider Note (2) on page 5.

***APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT**

I seek the recall or restriction of the arrestment of which the details are as follows:

Date:

**Delete if inapplicable*

	APPLICATION FOR A TIME ORDER UNDER THE CONSUMER CREDIT ACT 1974	
	By	
	DEFENDER	
	In an action raised by	
	PURSUER	
	PLEASE WRITE IN INK USING BLOCK CAPITALS	
	<p>If you wish to apply to pay by instalments enter the amount at box 3. If you wish the court to make any additional orders, please give details at box 4. Please give details of the regulated agreement at box 5 and details of your financial position in the space provided below at box 5.</p> <p>Sign and date the application where indicated.</p> <p>You should ensure that your application arrives at the court along with completed pages 7 and 8 on or before the return day.</p>	
	<p>1. The Applicant is a defender in the action brought by the above named pursuer.</p> <p>I/WE WISH TO APPLY FOR A TIME ORDER under the Consumer Credit Act 1974</p>	
	<p>2. Details of order(s) sought</p> <p>The defender wishes to apply for a time order under section 129 of the Consumer Credit Act 1974.</p> <p>The defender wishes to apply for an order in terms of section of the Consumer Credit Act 1974.</p>	
	PAGE 11	

	<p>3. Proposals for payment</p> <p>I admit the claim and apply to pay the arrears and future instalments as follows:</p> <p>By instalments of £ per *week/fortnight/month</p> <p>No time to pay direction or time to pay order has been made in relation to this debt.</p>
	<p>4. Additional orders sought</p> <p>The following additional order(s) is (are) sought: (<i>specify</i>)</p> <p>The order(s) sought in addition to the time order is (are) sought for the following reasons:</p>
	<p>5. Details of regulated agreement</p> <p>(a) Date of agreement</p> <p>(b) Reference number of agreement</p> <p>(<i>Please attach a copy of the agreement</i>)</p>
	<p>(c) Names and addresses of other parties to agreement</p> <p>(d) Name and address of person (if any) who acted as surety (guarantor) to the agreement</p> <p>(e) Place where agreement signed (e.g. the shop where agreement signed, including name and address)</p> <p>(f) Details of payment arrangements</p>
	<p>i. The agreement is to pay instalments of £ per week/month</p> <p>ii. The unpaid balance is £ / I do not know the amount of arrears</p>

	iii. I am £ in arrears / I do not know the amount of arrears		
	Defender's financial position I am employed /self employed / unemployed		
	My net income is:	weekly, fortnightly or monthly	My outgoings are: weekly, fortnightly or monthly
	Wages	£	Mortgage/rent
	State benefits	£	Council tax
	Tax credits	£	Gas/electricity etc
	Other	£	Food
			Credit and loans
			Phone
			Other
	Total	£	Total
	People who rely on your income (e.g. spouse/civil partner/partner/children) – how many		
	Here list all assets (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:		
	Here list any outstanding debts:		
	Therefore the defender asks the court to make a time order		
	Date:		Signed: Defender:
PAGE 13			

SCHEDULE 6

Paragraph 5(5)

Rule 8.2(4)

Form 13

Form of minute – pursuer opposing an application for a time to pay direction or time order

Sheriff court (*place*):

Court ref no:

Name(s) of defender(s):

Hearing date:

I oppose the defender’s application for

*a time to pay direction

*recall or restriction of arrestment

*a time order

**delete as appropriate*

1. The debt is (*please specify the nature of the debt and any reason known to the pursuer for the debt*).
2. The debt was incurred on (*specify date*) and the pursuer has contacted the defender in relation to the debt on (*specify date(s)*).
- *3. The contractual payments were (*specify amount*).
- *4. (*Specify any action taken by the pursuer to assist the defender to pay the debt*).
- *5. The defender has made payment(s) towards the debt of (*specify amount(s)*) on (*specify date(s)*).
- *6. The debtor has made offers to pay (*specify amount(s)*) on (*specify date(s)*) which offer(s) was [were] accepted] [*or rejected*] and (*specify amount*) was paid on (*specify date(s)*).
7. (*Here set out any information you consider relevant to the court’s determination of the application*).
8. The pursuer requests the court to grant decree.

**delete as appropriate*

(Signed)
Pursuer [*or Solicitor for Pursuer*]

(Date)

EXPLANATORY NOTE

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

This Act of Sederunt makes various amendments to the Ordinary Cause Rules, the Summary Application Rules, the Summary Cause Rules, the Small Claim Rules and the 1988 Rules.

Paragraphs 2 to 6 amend the rules in relation to applications for time to pay directions and time orders by:

- (a) inserting a new rule 3.2A into the Ordinary Cause Rules which requires, in actions relating to regulated agreements under the Consumer Credit Act 1974, that the initial writ includes a specific averment that such an agreement exists and details of the agreement (paragraph 2(2));
- (b) providing in the Ordinary Cause Rules and Summary Application Rules for intimation of a copy of an application for a time to pay direction or time order to the pursuer and for a form of response where the pursuer applies for a time to pay direction or a time order (paragraphs 2(3) and 3(3));
- (c) providing in each set of Rules for separate forms of application for time to pay directions and time orders (paragraphs 2(4), 3(3), 4(4) and 5(4));
- (d) amending rule 2.22(2) of the Summary Application Rules to increase the period for lodging an application for a time to pay direction or time order from 7 to 14 days before the diet fixed for the hearing of the summary application or the expiry of the period of notice (paragraph 3(3));
- (e) inserting new provision into the Summary Cause Rules and Small Claim Rules to require the sheriff clerk to intimate a copy of an application for a time to pay direction or time order to the pursuer and to increase the period for the pursuer lodging his response to such an application from 2 to 9 days before the calling date (paragraphs 4(3) and 5(3));
- (f) substituting in the Summary Cause Rules and Small Claim Rules new forms 1a (summons) providing more detailed guidance in the defender's copy summons in relation to applying for time to pay directions and time orders (paragraphs 4(4) and 5(4));
- (g) substituting in the Summary Cause and Small Claim Rules a new form of minute for a pursuer opposing an application for a time to pay direction or a time order (paragraphs 4(5) and 5(5)).

Paragraph 7 amends the period between the return day and calling date in summary cause actions and between the return day and hearing date in small claim actions from 7 to 14 days.

Paragraph 8 updates Form 2 in the 1988 Rules (form of application for a time to pay order).

Paragraph 9(2) amends Form 43 in those Rules (application for a conjoined arrestment order) to provide for details of the debtor's place of employment to be given and for an averment that the debtor was given a debt advice and information package. Paragraph 9(3) to (5) amends Forms 45 (conjoined arrestment order), 46 (notice of service of conjoined arrestment order) and 51 (notice of service of an order varying a conjoined arrestment order) to provide instructions to the employer to notify the sheriff clerk if the debtor ceases to be employed by him and to provide details of the new employer, if known.

Paragraphs 10 to 13 make other minor amendments to the Ordinary Cause, Summary Cause, Small Claim Rules and the 1988 Rules.

Paragraphs 14 and 15 insert rules into the Ordinary Cause Rules and the Summary Cause Rules setting out procedure for the dismissal of actions due to delay on the part of another party in progressing the action. Such applications are made by motion in actions proceeding under the Ordinary Cause Rules and by incidental application in actions proceeding under the Summary Cause Rules. Provision is made for the other party to lodge a notice of opposition to the motion or application. The court may dismiss the action if it considers that the delay has been inordinate or inexcusable and has resulted in unfairness.

Paragraph 16 amends a rule in the Ordinary Cause Rules regarding the insolvency or death of a cautioner or guarantor, to reflect the introduction of powers under the Banking Act 2009 to obtain orders in respect of failing banks or building societies.

Paragraph 17 amends the definition of “Her Majesty’s Forces” in Chapter 2 of the Child Care and Maintenance Rules 1997 in consequence of the Armed Forces Act 2006.

Paragraph 18 inserts a new Part XXXVIII into Chapter 3 of the Summary Application Rules. This new Part provides a new rule 3.38 relating to applications to the sheriff for variation, renewal or recall of foreign travel restriction orders under Schedule 5 of the Counter-Terrorism Act 2008.

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