

**2010 No. 279**

**SHERIFF COURT**

**Act of Sederunt (Sheriff Court Rules) (Miscellaneous  
Amendments) 2010**

*Made* - - - - *1st July 2010*

*Coming into force* - - *29th July 2010*

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 sections 108 and 114 of the Adoption and Children (Scotland) Act 2007(b) as modified and applied in relation to parental orders under section 54 of the Human Fertilisation and Embryology Act 2008(c) and applications for such orders by regulation 4 of, and Schedule 3 to, the Human Fertilisation and Embryology (Parental Orders) Regulations 2010(d) 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) 2010.

(2) This Act of Sederunt comes into force on 29th July 2010.

(3) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(4) In this Act of Sederunt—

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

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

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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) (the “2000 asp”), schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33. Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10. Section 32 was extended by the Debtors (Scotland) Act 1987 (c.18), section 97; the Child Support Act 1991 (c.48), sections 39(2) and 49; and by section 2(4) of the 2000 asp.
- (b) 2007 asp 4.
- (c) 2008 c.22.
- (d) S.I. 2010/985.
- (e) 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; 2006/198, 207, 293, 410 and 509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 284, 285, 294 and 402; and 2010/120.
- (f) 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; 2008/121, 223 and 365; and 2009/107, 164, 294 and 402.

### **Service of simplified divorce applications**

2. In rule 33.76(4)(b) (citation and intimation of simplified divorce applications)(a) of the Ordinary Cause Rules, for the words “and (2)” substitute “to (4)”.

### **Service of simplified dissolution of civil partnership applications**

3. In rule 33A.69(4)(b) (citation and intimation of simplified dissolution of civil partnership applications)(b) of the Ordinary Cause Rules, for the words “and (2)” substitute “to (4)”.

### **Ordinary cause personal injuries procedure**

4.—(1) Part AI of Chapter 36 (special procedure for actions for, or arising from, personal injuries)(c) of the Ordinary Cause Rules is amended in accordance with the following subparagraphs.

(2) In Rule 36.E1(14)(c) (application of other rules), for the reference to “rule 36.G1(1)(b)(iii)” substitute “rule 36.G1(1A)(c)”.

(3) In Rule 36.G1 (allocation of diets and timetables)—

(a) for paragraph (1), substitute—

“(1) The sheriff clerk shall, on the lodging of defences in the action or, where there is more than one defender, the first lodging of defences—

(a) allocate a diet of proof of the action, which shall be no earlier than 4 months (unless the sheriff on cause shown directs an earlier diet to be fixed) and no later than 9 months from the date of the first lodging of defences; and

(b) issue a timetable stating—

(i) the date of the diet mentioned in subparagraph (a); and

(ii) the dates no later than which the procedural steps mentioned in paragraph (1A) are to take place.

(1A) Those procedural steps are—

(a) application for a third party notice under rule 20.1;

(b) the pursuer executing a commission for recovery of documents under rule 36.D1;

(c) the parties adjusting their pleadings;

(d) the pursuer lodging a statement of valuation of claim in process;

(e) the pursuer lodging a record;

(f) the defender (and any third party to the action) lodging a statement of valuation of claim in process;

(g) the parties each lodging in process a list of witnesses together with any productions upon which they wish to rely; and

(h) the pursuer lodging in process the minute of the pre-proof conference.

(1B) The dates mentioned in paragraph (1)(b)(ii) are to be calculated by reference to periods specified in Appendix 3, which, with the exception of the period specified in rule 36.K1(2), the sheriff principal may vary for his sheriffdom or for any court within his sheriffdom.”;

(b) after paragraph (8), insert—

“(8A) A party who seeks to rely on the evidence of a person not on his or her list lodged in accordance with paragraph (1A)(g) must, if any other party objects to such evidence being admitted, seek leave of the sheriff to admit that evidence whether it is to be given

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(a) Rule 33.76 was last amended by S.S.I. 2006/207.

(b) Rule 33A.69 was inserted by S.S.I. 2005/638.

(c) Part AI of Chapter 36 was inserted by S.S.I. 2009/285.

orally or not; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(8B) The list of witnesses intimated in accordance with paragraph (1A)(g) must include the name, occupation (where known) and address of each intended witness and indicate whether the witness is considered to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004(a) and whether any child witness notice or vulnerable witness application has been lodged in respect of that witness.”;

(c) in paragraph (9), for “paragraph (1)(b)(vii)” substitute “paragraph (1A)(g)”.

(4) In rule 36.H1(1) (applications for sist or for variation of timetable), omit “or following the amendment of pleadings carried out under Chapter 18”.

(5) For rule 36.K1(4) (pre-proof conferences), substitute—

“(4) If a party is not present during the pre-proof conference, the representative of such party shall have access to the party or another person who has authority to commit the party in settlement of the action.”

(6) In Appendix 1 (forms)—

(a) in Forms PI1 (form of initial writ in a personal injuries action), PI3 (form of docquet for deemed grant of recovery of documents in a personal injuries action), PI6 (form of statement of valuation of claim) and PI7 (minute of pre-proof conference), below the title of each form insert—

“Court ref. no ( )”;

(b) in Form PI1, in paragraph 1 of the section entitled “STATEMENT OF CLAIM” after “address” insert “, National Insurance Number (where applicable)”;

(c) in Form PI6, at the end insert—

“

Total		£x ( <i>insert total valuation of claim</i> )
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List of Supporting Documents:—
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”

(d) in Form PI7, at the end for the words “Signed by agent for each party” substitute “Signed by each party/his or her solicitor”.

(7) For Appendix 3 (schedule of timetable under personal injuries procedure), substitute Appendix 3 set out in the Schedule to this Act of Sederunt.

(8) Subject to subparagraph (9), Part AI of Chapter 36 as it applied immediately before the date on which this paragraph comes into force continues to apply for the purpose of a personal injuries action raised but not determined prior to that date.

(9) Subparagraph (3)(b) also applies in respect of proceedings where a list of witnesses has not already been lodged by the date on which this paragraph comes into force.

### Companies Act 2006: derivative proceedings

5. After Chapter 45 (Vulnerable Witnesses (Scotland) Act 2004)(b) of the Ordinary Cause Rules, insert—

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(a) The Vulnerable Witnesses (Scotland) Act 2004 (asp 3).

(b) Chapter 45 was inserted by S.S.I. 2007/463.

“CHAPTER 46  
COMPANIES ACT 2006

**Leave to raise derivative proceedings**

**46.1.**—(1) Where leave of the court is required under section 266(1) (derivative proceedings: requirement for leave and notice) of the Companies Act 2006(a) (the “2006 Act”), the applicant must lodge, along with the initial writ, a written application in the form of a letter addressed to the sheriff clerk stating the grounds on which leave is sought.

(2) Subject to paragraph (4), an application under paragraph (1) is not to be served on, or intimated to, any party.

(3) The application is to be placed before the sheriff, who shall consider it for the purposes of section 266(3) of the 2006 Act without hearing the applicant.

(4) Service under section 266(4)(a) of the 2006 Act may be given by any of the methods provided for in Chapter 5 (citation, service and intimation) and a certificate of service must be lodged.

(5) If the company wishes to be heard it must, within 21 days after the date of service of the application, lodge written submissions setting out its position in relation to the application.

(6) Subject to section 266(4)(b) of the 2006 Act, the next stage in the proceedings is a hearing at which the applicant and the company may be heard.

(7) The sheriff clerk is to fix the hearing and intimate its date to the applicant and the company.

(8) Where an application under paragraph (1) is granted, a copy of the sheriff’s interlocutor must be served on the defender along with the warrant of citation.

**Application to continue proceedings as derivative proceedings**

**46.2.** An application under section 267(2) (application to continue proceedings as derivative proceedings) of the 2006 Act is to be in the form of a minute and Chapter 14 (applications by minute) applies with the necessary modifications.”.

**Notices to admit**

6. After rule 8.8 (evidence generally) of the Summary Cause Rules, insert—

**“Notices to admit and notices of non-admission**

**8.8A.**—(1) At any time after a form of response has been lodged, a party may intimate to any other party a notice or notices calling on him or her to admit for the purposes of that cause only—

- (a) such facts relating to an issue averred in the statement of claim or form of response as may be specified in the notice;
- (b) that a particular document lodged with the sheriff clerk and specified in the notice is—
  - (i) an original and properly authenticated document; or
  - (ii) a true copy of an original and properly authenticated document.

(2) Where a party on whom a notice is intimated under paragraph (1)—

- (a) does not admit a fact specified in the notice, or

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(a) 2006 c.46.

- (b) does not admit, or seeks to challenge, the authenticity of a document specified in the notice,

he or she must, within 21 days after the date of intimation of the notice under paragraph (1), intimate a notice of non-admission to the party intimating the notice to him or her under paragraph (1) stating that he or she does not admit the fact or document specified.

(3) A party who fails to intimate a notice of non-admission under paragraph (2) will be deemed to have admitted the fact or document specified in the notice intimated to him or her under paragraph (1); and such fact or document may be used in evidence at a proof if otherwise admissible in evidence, unless the sheriff, on special cause shown, otherwise directs.

(4) The party serving a notice under paragraph (1) or (2) must lodge a copy of it with the sheriff clerk.

(5) A deemed admission under paragraph (3) must not be used—

- (a) against the party by whom it was deemed to be made other than in the cause for the purpose for which it was deemed to be made; or
- (b) in favour of any person other than the party by whom the notice was given under paragraph (1).

(6) The sheriff may, at any time, allow a party to amend or withdraw an admission made by him or her on such conditions, if any, as the sheriff thinks fit.

(7) A party may, at any time, withdraw in whole or in part a notice of non-admission by intimating a notice of withdrawal.”.

#### **Other minor amendments**

7.—(1) In rule 15.7(2)(a) (dismissal of action due to delay)(a) of the Ordinary Cause Rules, omit “or as the case may be”.

(2) In rule 22A.1(2) (dismissal of action due to delay)(b) of the Summary Cause Rules, omit “or as the case may be”.

(3) For the avoidance of doubt, it is confirmed that rule 11.1(3) (counterclaim) of the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(c) is omitted.

(4) In rules 2.51(1) (duties of reporting officer and curator *ad litem*), 2.52(2)(a) (agreement) and 2.54(3)(b) (hearing) of the Act of Sederunt (Child Care and Maintenance Rules) 1997(d) for each reference to “rule 2.50(1)” substitute “rule 2.50”.

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

Edinburgh  
1st July 2010

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(a) Rule 15.7 was inserted by S.S.I. 2009/294.

(b) Rule 22A.1 was inserted by S.S.I. 2009/294.

(c) 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, 164, 294 and 402. Rule 11.1(3) was substituted by S.S.I. 2004/197. Paragraph 12(3) of the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2009 (S.S.I. 2009/294) purported to repeal rule 11.3(3), but that provision does not exist and the amendment therefore applied to rule 11.1(3).

(d) S.I. 1997/291. Amended by S.S.I. 1998/2130; 2000/388; 2002/560; 2005/190; 2006/75; 2007/468; 2009/29, 284 and 449; and 2010/137.

**SCHEDULE  
APPENDIX 3**

Paragraph 4(7)

Rule 36.G1(1B)

SCHEDULE OF TIMETABLE UNDER PERSONAL INJURIES PROCEDURE

<b>Steps referred to under rule 36.G1(1A)</b>	<b>Period of time within which action must be carried out*</b>
Application for a third party notice under rule 20.1(rule 36.G1(1A)(a))	Not later than 28 days after defences have been lodged
Pursuer executing a commission for recovery of documents under rule 36.D1 (rule 36.G1(1A)(b))	Not later than 28 days after defences have been lodged
Parties adjusting their pleadings (rule 36.G1(1A)(c))	Not later than 8 weeks after defences have been lodged
Pursuer lodging a statement of valuation of claim in process (rule 36.G1(1A)(d))	Not later than 8 weeks after defences have been lodged
Pursuer lodging a record (rule 36.G1(1A)(e))	Not later than 10 weeks after defences have been lodged
Defender (and any third party to the action) lodging a statement of valuation of claim in process (rule 36.G1(1A)(f))	Not later than 12 weeks after defences have been lodged
Parties lodging in process a list of witnesses together with any productions upon which they wish to rely (rule 36.G1(1A)(g))	Not later than 8 weeks before the date assigned for the proof
Pursuer lodging in process the minute of the pre-proof conference (rule 36.G1(1A)(h))	Not later than 21 days before the date assigned for the proof
*NOTE: Where there is more than one defender in an action, references in the above table to defences having been lodged should be read as references to the first lodging of defences.	

## EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the Ordinary Cause Rules, the Child Care and Maintenance Rules, the Summary Cause Rules and the Small Claim Rules.

Paragraph 2 amends the rules of service in respect of simplified divorce applications so that where a sheriff officer has been unable to execute service personally, service may be affected by depositing the document in, or by fixing it to the door of, the person's dwelling place or place of business. Paragraph 3 makes a similar amendment in respect of the rules of service for simplified dissolution of civil partnership applications.

Paragraph 4 amends the personal injuries procedure and related forms in the Ordinary Cause Rules. In particular, subparagraph (3)(a) substitutes new rules 36.G1(1), (1A) and (1B) to provide that a diet of proof must be arranged no earlier than 4 months (unless the sheriff on cause shown directs an earlier diet to be fixed) and no later than 9 months from the date of first lodging of defences; and to clarify the existing provisions. Subparagraph (3)(b) provides a sanction for failure to lodge a list of witnesses timeously. It also provides further detail of what should be included in a witness list. Subparagraph (6)(c) amends Form PI6 to require that the total valuation of claim is specified and that the supporting documents included in the statement of valuation of claim should be listed. Subparagraph (7) substitutes a new Appendix 3 to reflect the changes made by subparagraph (3)(a).

Paragraph 5 inserts a new Chapter 46 into the Ordinary Cause Rules to provide a procedure in respect of derivative proceedings under Part 11 of the Companies Act 2006.

Paragraph 6 inserts a new rule 8.8A into the Summary Cause Rules to provide for notices to admit and notices of non-admission in advance of the proof.

Paragraph 7 amends the Ordinary Cause Rules, the Summary Cause Rules and the Small Claim Rules to correct minor errors made in the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2009 (S.S.I. 2009/294). Paragraph 7 also makes minor amendments to Part VI of Chapter 2 of the Child Care and Maintenance Rules, in relation to applications for parental orders under the Human Fertilisation and Embryology Act 2008.

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