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## EXPLANATORY NOTE

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

This Act of Sederunt amends the rules in relation to proceedings to enforce securities over heritable property.

Paragraph 2 amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (the “1999 Rules”) and the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (the “Ordinary Cause Rules”), in consequence of the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6) (the “2010 Act”).

Paragraphs 2(2) and (3) omit rules 2.7(7A) and 2.22A of the 1999 Rules in consequence of the 2010 Act repealing the relevant provisions of the Mortgage Rights (Scotland) Act 2001 (the “2001 Act”).

Paragraph 2(4) substitutes a new Part IV into Chapter 3 of the 1999 Rules, relating to enforcement of securities over heritable property.

Rule 3.4.2 restricts the right of appeal in respect of applications and counter-applications for non-residential purposes only. This is a restatement of existing rule 3.4.2 of the 1999 Rules, save for restricting its application in line with the provisions of the 2010 Act.

Rule 3.4.3 and Form 11C prescribe the requirements for an application for enforcement of a security over residential property.

Rule 3.4.4 prescribes the process that the sheriff must follow once an application is submitted.

Rule 3.4.5 prescribes that a defender who opposes an application may be required to lodge answers and specify the details of entitled residents to the extent that they are not already specified in the initial writ.

Rule 3.4.6 and Forms 11D and 11E provide for intimation to entitled residents who are specified either in the initial writ or answers.

Rule 3.4.7 prescribes the process for entitled residents to apply to court for a continuation or other order.

Rule 3.4.8 and Forms 11F and 11G prescribe the process in terms of which a party or entitled resident may apply for recall of decree.

Paragraphs 2(6) to (11) amend the Ordinary Cause Rules in consequence of the 2010 Act repealing the relevant provisions of the 2001 Act.

Paragraph 3(1) provides the procedure in terms of which applications or counter-applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970 for non-residential purposes are dealt with. If a remedy is craved other than one provided under Part II, then the application must be brought as an ordinary cause. In other cases the application or counter-application must be brought by summary application. Paragraph 3(3) makes corresponding amendments to rule 34.10 of the Ordinary Cause Rules.