

2017 No. 154

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules Amendment)
(Miscellaneous) 2017**

<i>Made</i> - - - -	<i>12th May 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>16th May 2017</i>
<i>Coming into force</i> - -	<i>15th June 2017</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014(b), section 36(1) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016(c) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2017.

(2) It comes into force on 15th June 2017.

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

Amendment of the Act of Sederunt (Simple Procedure) 2016

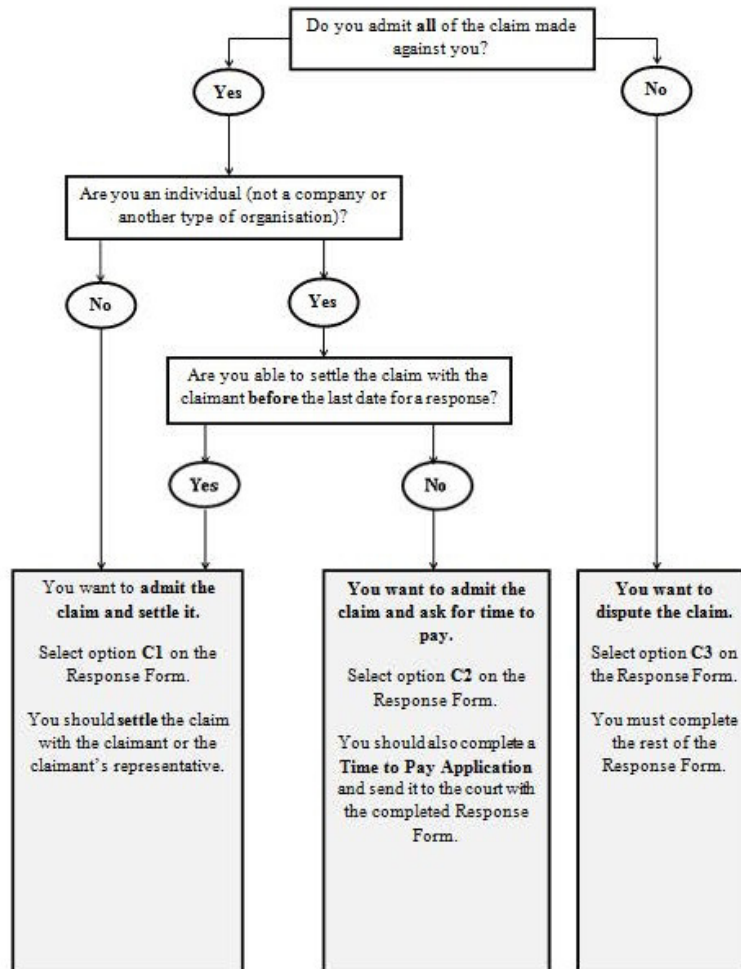
2.—(1) The Act of Sederunt (Simple Procedure) 2016(d) is amended in accordance with this paragraph.

(2) In schedule 1 (the simple procedure rules)—

(a) for rule 4.3(3) substitute—

“(3) This flow-chart sets out how the respondent may respond to a claim:

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(b) 2014 asp 18.
(c) 2016 asp 2.
(d) S.S.I. 2016/200, last amended by S.S.I. 2016/367.



.”;

(b) after rule 6.7(1) insert—

“(2) If none of those ways has worked, a party may send it to another party by sheriff officer using one of the methods of formal service mentioned in rule 18.3.”;

(c) for rule 10.5(3) substitute—

“(3) Each party must collect the documents or other evidence which that party lodged with the court within 2 weeks of:

- (a) the end of the 4 week period, or
- (b) if the decision is appealed, the date of the appeal decision.”;

(d) after rule 13.5(3) insert—

“(4) A party may only apply to have a decision of the sheriff recalled in a case once.”; and

(e) in rule 15.3—

(i) for paragraph (2) substitute—

“(2) Before enforcing a decision for the payment of a sum of money in the following ways:

- (a) an earnings arrestment (which is where a deduction is made from the earnings of the other party as a way of paying that sum of money),
- (b) an attachment (which is where certain goods owned by the other party are seized and sold as a way of paying that sum of money),

- (c) a money attachment (which is where money in the possession of the other party is seized as a way of paying that sum of money), the successful party must formally serve a Charge on the other party by sheriff officer using a method of formal service mentioned in rule 18.3.”; and
 - (ii) after paragraph (6) insert—
 - “(7) The Charge must be in the form set out in the schedule of the Act of Sederunt (Form of charge for payment) 1988(a).”.
- (3) In schedule 2 (forms)—
 - (a) in Form 3B (further claimant form)—
 - (i) part C becomes part B;
 - (ii) in the renumbered section B1—
 - (aa) for “C2” substitute “B2”;
 - (bb) for “C3” substitute “B3”;
 - (iii) the renumbered section B5 becomes section B4.
 - (b) for Form 4A (response form), Form 6A (notice of claim), Form 6C (confirmation of formal service) and Form 11B (witness citation notice) substitute the corresponding Form 4A, 6A, 6C and 11B set out in the schedule of this Act of Sederunt;
 - (c) in Form 5A (time to pay application), in the introduction, after “the claim made against you by the claimant.” insert “Only an individual (not a company or another type of organisation) may ask for time to pay.”;
 - (d) in Form 13A (decision form), in section A, at the end insert an entry for “Date of decision”;
 - (e) omit Form 15A (charge to pay); and
 - (f) in Form 20D (arrestment notice), in section D, at the end insert an entry for “Signature of sheriff officer”.

Amendment of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017

3.—(1) The Act of Sederunt (Fatal Accident Inquiry Rules) 2017(b) is amended in accordance with this paragraph.

(2) In rule 1.2 (interpretation), in paragraph (1), after “In these Rules” insert “, unless the context otherwise requires”.

(3) In rule 3.5 (other participation), after paragraph (2) insert—

“(3) Schedule 1 does not apply to applications made under this rule.”.

(4) In rule 4.8 (recording of the inquiry), in paragraph (4), for “(2)” substitute “(3)”.

(5) In schedule 3 (forms)—

- (a) in Form 3.1 (notice of an inquiry), in the second alternative paragraph 2, after “section 4(1)(a)(i) or (ii)” insert “and set out which condition in section 6(3) is met”;
- (b) in Form S4.7 (reporting restrictions: application for variation or revocation), at the end insert—

“SIGNED

(signature)

(place and date)”; and

(a) S.I. 1988/2059, which was partially revoked by S.I. 1994/1443.

(b) S.S.I. 2017/103.

(c) In Form S5.5C (form of receipt from participant other than participant who originally recovered documents), for the heading substitute “Form of receipt for recovered documents”.

(6) In schedule 4 (miscellaneous and general matters), in paragraph 19(1) (interpretation), in the definition of “legal representative”, omit “; or” and head (c).

(7) In schedule 5 (gathering information), in paragraph 5 (optional procedure before executing commission and diligence), in subparagraph (10), for “4” substitute “6”.

Savings

4. The amendments made by the following paragraphs of this Act of Sederunt do not apply to a decision in a simple procedure case made before 15th June 2017—

- (a) paragraph 2(2)(d) and (e)(ii);
- (b) paragraph 2(3)(e).

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
12th May 2017



FORM 4A

The Simple Procedure Response Form

The Simple Procedure is a speedy, inexpensive and informal court procedure for settling or determining disputes with a value of **£5,000 or less**.

A claim has been raised against you under the Simple Procedure. You have been provided with a copy of the Claim Form which sets out the claim made against you.

The Simple Procedure Rules should be read alongside this form. They can be found on the Scottish Courts and Tribunals Service website. Please **read the whole Response Form** before beginning to complete it. There are guidance notes for each part of the form.

Please note that if you **do nothing**, the court will almost certainly, if appropriate, award the claim to the claimant and order you to make a payment, including interest and expenses.

Case reference number

A. ABOUT YOU

 Set out information about you, so that the court knows who you are and how to contact you.

A1. Are you an individual, a company or an organisation?

- An individual (including a sole trader) (please fill out A2)
- A company or organisation (please fill out A3)

A2. What is your full name?

Name	<input type="text"/>
Middle name	<input type="text"/>
Surname	<input type="text"/>
Trading name or representative capacity (if any)	<input type="text"/>

A3. What is the name of the company or organisation?

Name	<input type="text"/>
Company type	<input type="text"/>

Company registration number (if limited company or LLP)

Trading name (if any)

A4. What are your contact details?

Address

City

Postcode

Email address

A5. How would you prefer the court and the claimant to contact you?

By post

Email

B. ABOUT YOUR REPRESENTATION

① Set out information about how you will be represented.

B1. How will you be represented during this case?

I will represent myself

I will be represented by a solicitor

I will be represented by a non-solicitor (e.g. a family member, friend, or someone from an advice or advocacy organisation)

B2. Who is your representative?

① If a family member or friend, give their full name. If someone from an advice or advocacy organisation, also give the name of that organisation.

Name

Surname

Organisation / firm name

B3. What are the contact details of your representative?

① If your representative works for a solicitors' firm or an advice or advocacy organisation, give the address of that firm or organisation.


Address

City

Postcode

Email address

B4. Would you like us to contact you through your representative?


 If you select 'yes', then the court will send orders and information in this case to your representative.

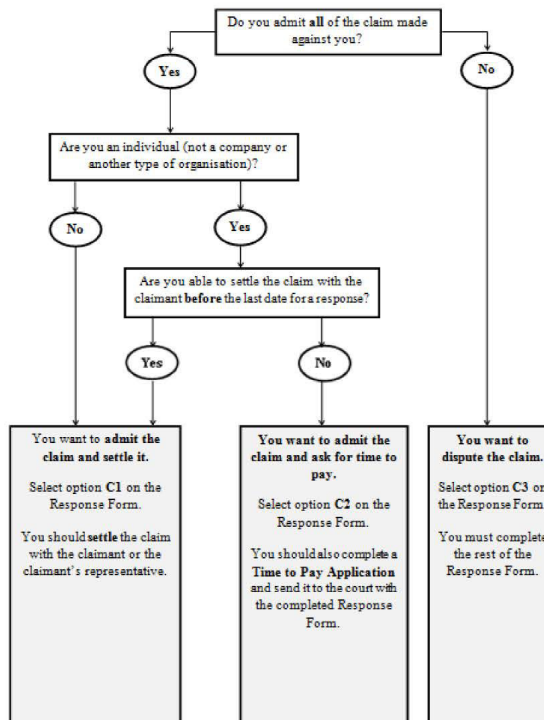
- Yes
- No

B5. How would your representative prefer the court to contact them?

- By post
- Online

C. YOUR RESPONSE TO THE CLAIM

 You should decide now how you intend to respond to this claim. There are three options. Please mark the box next to the option you choose and follow those instructions.



C1. I want to admit the claim and settle it before the last date for a response.

- ① You should select this option if you accept that the claim against you is correct and you are able to settle it with the claimant now.
- ① You do not need to complete Parts D and E.
- ① You should send this Response Form to the court and to the claimant. You should settle the claim with the claimant or the claimant's representative by the last date for a response.

C2. I want to admit the claim and apply for time to pay.

- ① You should select this option if you accept that the claim against you is correct but you want to be given time to make a payment, or time to make payments in instalments.
- ① You do not need to complete Parts D and E.
- ① You should also complete a Time to Pay Application and send it with this completed Response Form to the court and to the claimant by the last date for a response.
- ① Only an individual may ask for time to pay. If you are a company or another type of organisation and accept that the claim against you is correct, you should select option C1 and try to settle the claim before the last date for a response.

C3. I want to dispute the claim.

- ① You should select this option if you do not accept that the claim against you is correct, and you want to:
 - argue that the court does not have jurisdiction,
 - dispute the entire claim, or
 - dispute the amount that is being claimed.
- ① You should complete this Response Form and send it to the court and to the claimant by the last date for a response. You will be sent written orders by the court telling you how to proceed.

D. ABOUT YOUR RESPONSE

D1. What is the background to this claim?

- ① In this part, you should set out the essential factual background to the claim. The claimant has set out their understanding in section D1 of the Claim Form. In particular, you should set out anything in section D1 of the Claim Form which you disagree with.
- ① For example, you should include:
 - key dates
 - if there was an agreement, what was agreed

- when you became aware of the problem or dispute
 - whether any payments have been made so far, and if so what
 - whether any services have been provided so far, and if so what.
- ① If this is insufficient space to describe the essential factual background, you may use another sheet of paper, which must be headed 'D1' and must be attached to the Response Form.

D2. Why should the claim not be successful?

- ① You should set out briefly the reasons why the claim made against you should not be successful, and the court should not make the orders which the claimant has asked for in the Claim Form.
- ① For example, reasons might include:
- that you did not breach a contract with the claimant (e.g. work was completed satisfactorily)
 - that you did not cause the claimant damage or financial loss
 - that you have the right to keep something belonging to the claimant (e.g. because a repair has not been paid for).
- ① If this is insufficient space to set out these reasons, you may use another sheet of paper, which must be headed 'D2' and must be attached to the Response Form.

D3. Are there any additional respondents you think should be responding to this claim?

- ① You should complete this section if you think that:
 - you have a right of contribution, relief or indemnity against someone who is already a respondent
 - someone else should be made a respondent in this claim, as they are solely, jointly, or jointly and severally liable with you for the claim made against you
 - someone else should be made a respondent in this claim as they are liable to you for the claim made against you.
- ① If you complete this section then the court may order you to formally serve the Claim Form and the Response Form on any additional respondents.
- Yes (please complete D4)
- No

D4. Which additional respondents do you think should be responding to this claim?

- ① Set out below the full names and addresses of any additional respondents you think should be responding to the claim made against you.
- ① Set out the reasons why each person should be an additional respondent to the claim made against you.

1. [Name] [Address] [Reasons why this person should be an additional respondent]
2. [Name] [Address] [Reasons why this person should be an additional respondent]
[...]

D5. What steps have you taken, if any, to try to settle the dispute with the claimant?

- ① It is an important principle of simple procedure that parties should be encouraged to settle their disputes by negotiation, where possible.
- ① The court will use this information to assess whether more negotiation would help you and the claimant settle your dispute.

E. WITNESSES, DOCUMENTS AND EVIDENCE

E1. Set out in a numbered list any witnesses you might bring to a hearing to support your response, their name and address, and what their relationship to the claim or response is.

- ① You should list any witnesses you think you might bring to a hearing. You do not need to list yourself or the claimant.
- ① You should provide the full name and address of any witnesses.
- ① Your claim may require no witnesses other than you and the claimant. You do not need to bring a witness if the evidence which they might give can be shown in some other way, e.g. by photographs.
- ① You should describe the relationship of each witness to the claim or response. For example, you might indicate that a witness:
 - was the person with whom you made an agreement,
 - was present when the alleged damage took place,
 - inspected some work which you consider to have been completed satisfactorily.
- ① If the court orders a hearing, Part 11 of the Simple Procedure Rules tells you what you need to do to arrange the attendance of your witnesses.

1. [Name]
[Address]
[Relationship to the claim or response]

2. [Name]
[Address]
[Relationship to the claim or response]

3. [Name]
[Address]
[Relationship to the claim or response]

[...]

E2. Set out in a numbered list any documents you might bring to court to support your response.

- ① You should list any documents you think you might bring to a hearing. This includes photographs and other printed material which may be kept in a file.
- ① When preparing these documents for a hearing, it is useful if they are indexed with numbers.
- ① If the court orders a hearing, Part 10 of the Simple Procedure Rules tells you what you need to do to lodge documents before that hearing.

1. 2. 3. 4. 5. [...]

E3. Set out any other pieces of evidence you intend to bring to a hearing to support your response.

- ① You should list any other evidence you think you might bring to a hearing.
- ① This includes objects, but not printed material. For example, if the claim was about damage caused to an item of clothing, you might list the item of clothing. You do not need to bring a piece of evidence if the important point can be shown in some other way, e.g. by photographs.
- ① If the court orders a hearing, Part 10 of the Simple Procedure Rules tells you what you need to do to lodge other evidence before that hearing.

1. 2. 3. 4. 5. [...]

PLEASE CHECK THIS FORM BEFORE SENDING IT.



FORM 6A

The Simple Procedure Notice of Claim

The Simple Procedure is a speedy, inexpensive and informal court procedure for settling or determining disputes with a value of **£5,000 or less**.

You have been **formally served** with a simple procedure claim.

A. ABOUT THE CASE

Sheriff Court	<input type="text"/>
Claimant	<input type="text"/>
Respondent	<input type="text"/>
Case reference number	<input type="text"/>

B. ABOUT THIS NOTICE OF CLAIM

What is this envelope?

You have received this envelope because a claim is being made against you in court. The claim is being made under the Simple Procedure. The Simple Procedure is a speedy, inexpensive and informal court procedure for settling or determining disputes with a value of £5,000 or less. The Simple Procedure Rules are available on the Scottish Courts and Tribunals Service website.

In the Simple Procedure, the person who is making a claim against you is known as the claimant. You, the person the claim is being made against, are known as the respondent.

This envelope should contain:

- this Notice of Claim,
- a Timetable,
- a completed Claim Form,
- if you are able to apply to the court for time to pay, a Time to Pay Application,
- a blank Response Form.

What should you do next?

You should read the completed Claim Form carefully, because it sets out the claim being made against you, including the identity of the claimant, what the claimant says happened and what the claimant wants from you if their claim is successful in court.

You should read the Timetable carefully. This sets out what the last date for a response is. This is the date by which, if you want to dispute the claim, you must send a completed Response Form to the court and to the claimant. If you do not do this, the court will almost certainly, if appropriate, award the claim to the claimant and order you to make a payment, including interest and expenses.

What help is available?

If you are not sure what to do next, you can contact the office of the sheriff clerk at the sheriff court.

If you need help to decide how to respond to the claim, how to complete the Response Form or help by representing you in court at a hearing, you should contact a solicitor, the Citizens Advice Bureau or another advocacy or assistance organisation.

C. ABOUT FORMAL SERVICE

C1. Who formally served this Notice of Claim?

 This section will set out the details of the person who formally served this Notice.

Name	<input type="text"/>
Address	<input type="text"/>
Firm or organisation	<input type="text"/>
Signature	<input type="text"/>
Date of formal service	<input type="text"/>



FORM 6C

The Simple Procedure Confirmation of Formal Service

This is a Confirmation of Formal Service. It is used to inform the court when and how something has been formally served.

It must be completed and sent to the court whenever you are required to formally serve something on someone under the rules.

A. ABOUT THE CASE

Sheriff Court

Claimant

Respondent

Case reference number

B. ABOUT YOU

B1. What is your full name?

Name

Middle name

Surname

Firm or organisation

B2. What is your profession?

- Sheriff officer
- Sheriff clerk
- Solicitor

C. ABOUT FORMAL SERVICE

C1. Who did you formally serve something on?

① You must identify the person who you were required to serve something on.

C2. What did you formally serve?

① You must identify the form or document formally served.

C3. How did you formally serve it?

① You must describe the method of formal service used.

- By a next-day postal service which records delivery
- Delivering it personally
- Leaving it in the hands of a resident or employee
- Depositing it in a home or place of business by letter box or other lawful way
- Leaving it at a home or place of business in a way likely to come to the person's attention
- Other

① If you have selected 'Other' or need to give more details about the manner of formal service, please set this out below.

C4. When did you formally serve it?

① You must identify when service was performed.



FORM 11B

The Simple Procedure Witness Citation Notice

You have been cited as a witness in a case in the sheriff court. The details of the case and the date on which you should come to court are set out below.

It is very important that you attend court and you should note that failure to do so may result in a warrant being granted for your arrest.

You may claim back money which you have had to spend and any earnings you have lost within certain specified limits, because you have to come to court. These may be paid to you if you claim within specified time limits. Claims should be made to the person who has asked you to attend court. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid before you go to court, you should apply for payment to the person who has asked you to attend court (listed below at D1).

If you:

- would like to know more about being a witness,
- are a child under the age of 18,
- think you may be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004 (that is someone the court considers may be less able to give their evidence due to mental disorder or fear or distress connected to giving your evidence at the court hearing),

you should contact the person who cited you (listed below at D1) for further information.

If you are a vulnerable witness (including a child under the age of 18) then you should be able to use a special measure (such measures include use of a screen, a live TV link or a supporter, or a commissioner) to help you give evidence.

A. ABOUT THE CASE

Sheriff Court	<input type="text"/>
Claimant	<input type="text"/>
Respondent	<input type="text"/>

Case reference number

B. ABOUT THE WITNESS

B1. What is the full name of the witness?

Name

Middle name

Surname

C. WHEN AND WHERE YOU MUST COME TO COURT

 The witness must come to the court listed below on the date and time listed below.

The Sheriff Court you must come to is:

Address


Postcode

You must come to the Sheriff Court on:

D. ABOUT THIS CITATION

 This part contains information about the party who has cited you as a witness.

D1. Who is citing you as a witness?

 If the person who cited you is represented by a solicitor, they should list the solicitor's details here. If they do not, they should list their own details.

Name

Address

Firm or organisation

Email address

D2. Which party is citing you as a witness?

Claimant

Respondent

D3. Who formally served this Witness Citation Notice?

Name

Address

Firm or organisation	<input type="text"/>
Solicitor or sheriff officer	<input type="text"/>
Signature	<input type="text"/>
Date of formal service	<input type="text"/>

EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to various sheriff court rules.

Paragraph 2 amends the Act of Sederunt (Simple Procedure) 2016. These amendments clarify the Simple Procedure Rules in a number of ways. In particular, the amendments clarify who is able to make a Time to Pay Application in a simple procedure case, how a party may send something to another party if no method of sending has been effective, and how a charge must be formally served before a decision can be enforced by certain means. The amendments also provide a party may only apply to have a decision of the sheriff recalled once in a given case.

Paragraph 3 makes various minor corrections to the Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

Paragraph 4 provides that certain amendments made by this Act of Sederunt only apply to a decision made in a simple procedure case on or after 15th June 2017.

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£6.00

S201705121000 05/2017 19585

<http://www.legislation.gov.uk/id/ssi/2017/154>

ISBN 978-0-11-103570-2



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