

1984 No. 667 (S. 69)

SHERIFF COURT, SCOTLAND

**Act of Sederunt (Variation and Recall of Orders
in Consistorial Causes) 1984**

Made - - - - 9th May 1984

Coming into Operation 1st June 1984

The Lords of Council and Session, by virtue of the powers conferred upon them by section 32 of the Sheriff Courts (Scotland) Act 1971(a), section 8(4) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966(b) and of all other powers competent to them in that behalf, after consultation with the Sheriff Court Rules Council, do hereby enact and declare:—

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Variation and Recall of Orders in Consistorial Causes) 1984 and shall come into operation on 1st June 1984.

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

Procedure for variation and recall of orders under 1966 Act

2.—(1) This Act of Sederunt shall apply to applications to the sheriff for variation or recall of any order to which section 8 of the said Act of 1966 applies.

(2) All such applications shall be commenced by initial writ and, subject to the provisions of this Act of Sederunt, shall proceed as an ordinary cause and shall be subject to the same rights of appeal as any ordinary cause.

3.—(1) In all such applications there shall be lodged in the sheriff court along with the initial writ a copy of the interlocutor which it is sought to vary certified by the appropriate officer of the Court of Session.

(2) Before lodging the initial writ in terms of paragraph (1), a copy of the initial writ certified by the pursuer or his solicitor shall be lodged in or sent by first class recorded delivery post to the Court of Session to be lodged in the process of the Court of Session action in which the original order was made and the pursuer or his solicitor shall attach a certificate of execution of intimation to the principal initial writ lodged in the sheriff court.

(3) The sheriff may, on cause shown, prorogate the time for lodging such certified copy interlocutor.

(a) 1971 c. 58.

(b) 1966 c. 19.

4. Where no notice of intention to defend has been lodged, the cause shall be called on the next convenient court day when the sheriff shall hear the pursuer or his solicitor and thereafter may grant decree or make such other order as he thinks appropriate.

5. Where a notice of intention to defend has been lodged and no request is made under paragraph 8, the pursuer shall, within 14 days after tabling or within such period as the sheriff may order, lodge in process in the sheriff court the following documents (or copies) from the process in the Court of Session action in which the original order was made—

- (a) the pleadings;
- (b) the interlocutor sheets;
- (c) any opinions of the court; and
- (d) the inventory of productions together with any productions upon which he seeks to found.

6. Where a notice of intention to defend has been lodged and no request is made under paragraph 8, the sheriff may, on the joint motion of the parties made at any time after the lodging of the documents mentioned in paragraph 5, dispense with proof, and whether defences have been lodged or not hear the parties and thereafter may grant decree or otherwise dispose of the cause as he thinks appropriate.

7.—(1) Where decree has been granted or the cause otherwise disposed of and the days of appeal have elapsed, the sheriff clerk shall transmit to the Court of Session the sheriff court process together with those Court of Session documents which have been lodged in the sheriff court.

(2) A sheriff court process so transmitted shall form part of the process of the Court of Session action in which the original order was made.

8.—(1) A request for a remit to the Court of Session under section 8(3) of the said Act of 1966 shall be made by way of minute signed by the applicant or his solicitor and lodged at or before tabling.

(2) The sheriff shall in respect of any such minute at tabling order that the cause be remitted to the Court of Session and within 4 days after the date of such order the sheriff clerk shall transmit the whole sheriff court process to the Court of Session.

9.—(1) A cause remitted to the Court of Session in terms of paragraph 8 shall form part of the process of the Court of Session action in which the original order was made.

Revocation

10. The Act of Sederunt (Variation and recall of Orders in Consistorial Causes) 1970^(a) is revoked.

Edinburgh.
9th May 1984.

Emslie,
Lord President,
IPD

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt revokes the Act of Sederunt (Variation and Recall of Orders in Consistorial Causes) 1970 and prescribes new procedures in applications for variation or recall by the sheriff of those orders in consistorial causes to which section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 applies.

^(a) S.I. 1970/720.

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