
STATUTORY INSTRUMENTS

1988 No. 1978

Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, and Summary Cause, Rules) 1988

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, and Summary Cause, Rules) 1988 and shall come into force on 30th November 1988.

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

AMENDMENT OF ORDINARY CAUSE RULES

2. The Ordinary Cause Rules of the Sheriff Court(1) shall be amended in accordance with paragraphs 3 to 18 of this Act of Sederunt.

3. For rule 2 (application of rules to solicitors) substitute the following rule:—

“Representation

2.—(1) Subject to paragraph (2) of this rule, a party to any proceedings arising solely under the provisions of the Debtors (Scotland) Act 1987 shall be entitled to be represented by a person other than a solicitor or an advocate provided that the sheriff is satisfied that such person is a suitable representative and is duly authorised to represent the party.

(2) Paragraph (1) shall not apply to appeals to the sheriff principal.

(3) Where a party to any cause is represented by a solicitor, any reference in the rules to that party shall, where appropriate, be construed as a reference to the solicitor representing that party.”.

4.—(1) For paragraph (4) of rule 3 (initial writ), substitute the following paragraph:—

“(4) An article of condescence shall be included in the initial writ stating the ground of jurisdiction of the court.”.

(2) In paragraphs (6) and (7) of rule 3(2), for the words “paragraph (2)” wherever they occur substitute the words “paragraph (5)”.

5.—(1) In paragraph (1) of rule 5 (warrant of citation)(3), after the words “and of separation” insert the words “or an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender”.

(2) In paragraph (3) of rule 5, for the word “in” where it first occurs, substitute the words “subject to paragraph (4), in”.

(3) At the end of rule 5, insert the following paragraphs:—

(1) 1907 c. 51 First Schedule, substituted by S.I.1983/747; relevant amending instruments are S.I. 1984/255, 921, 1986/1230 and 1946.
(2) Paragraphs (6) and (7) of rule 3 were amended by S.I. 1986/1230 and 1946.
(3) Paragraph (1) of rule 5 was amended by S.I. 1984/255 and 1986/1230

“(4) In a summary application in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, the warrant of citation shall be framed as nearly as may be in accordance with form B3 as set out in the Appendix to this Schedule.

(5) In an ordinary cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, the warrant of citation shall be framed as nearly as may be in accordance with form B4 as set out in the Appendix to this Schedule.

(6) In any cause in which warrant for citation in accordance with forms B3 or B4, as the case may be, is appropriate, there shall be served on the defender (along with the initial writ and warrant) a notice in accordance with form B5 (ordinary action) or B6 (summary application), as the case may be, as set out in the Appendix to this Schedule.”.

6. In rule 7(1) (period of notice after citation), for sub-paragraphs (a) and (b) substitute the following sub-paragraph:—

“(a) 21 days where the defender is resident or has a place of business within Europe;” and sub-paragraph (c) shall be relettered as sub-paragraph (b).

7.—(1) In paragraph (1) of rule 9 (form of citation and certificate)(4), after the words “or of separation” insert the words “or an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender”.

(2) After paragraph (2) of rule 9 insert the following paragraph:—

“(2A) In any ordinary cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be given as nearly as may be in accordance with form C2 as set out in the Appendix to this Schedule which shall be prefixed to a copy of the initial writ and warrant of citation.”.

8. For rule 13 (days of charge), substitute the following rule:—

“13.—(1) The period for payment specified in any charge following on a decree for payment granted in an ordinary cause shall be 14 days if the person on whom it is served is within the United Kingdom and 28 days if he is outside the United Kingdom or his whereabouts are unknown.

(2) The period in respect of any other form of charge in respect of an ordinary cause decree shall be 14 days.”.

9. In rule 21(1)(a) (minute for granting of decree without attendance)(5), after the words “minute under rule 34” insert the words “or an application for a time to pay direction under the Debtors (Scotland) Act 1987 or if the defender has lodged such application and the pursuer does not object thereto or to any recall or restriction of an arrestment sought therein.”.

10. After rule 21A (decree in causes in which the Hague Convention applies)(6), insert the following rules:—

“Applications for time to pay directions in undefended causes

21B.—(1) This rule applies to ordinary causes in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.

(2) A defender in a cause which is otherwise undefended, who wishes to apply for a time to pay direction, and where appropriate, to have an arrestment recalled or restricted, may

(4) Rule 9 was amended by S.I. [1984/255](#) and [1986/1230](#)

(5) Rule 21(1) was amended by S.I. [1986/1946](#)

(6) Rule 21A was inserted by S.I. [1986/1946](#)

complete and lodge with the sheriff clerk the relevant part of form B5 before the expiry of the period of notice.

(3) Where the pursuer does not object to the defender's application, he shall minute accordingly and for decree in accordance with rule 21; and the sheriff may grant decree or other order in terms of the application and minute.

(4) Where the pursuer objects to the defender's application he shall minute accordingly and for decree in terms of rule 21; and the sheriff clerk shall thereafter enrol the cause for hearing of the defender's application and intimate the hearing to the defender and pursuer.

(5) The sheriff shall consider the application on the date fixed for hearing or at any continuation thereof and may then or after further consideration grant or refuse it as may seem to him appropriate whether or not any of the parties appear and grant decree accordingly.

Applications for time to pay directions in summary applications

21C.—(1) This rule applies in summary applications in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.

(2) A defender may apply for a time to pay direction and, where appropriate, for recall or restriction of an arrestment—

- (a) by appearing and making the appropriate motion at the diet fixed;
- (b) except where the period of notice has been shortened in accordance with rule 7(2), by completing and returning to the sheriff clerk at least 7 days before the diet fixed for hearing the appropriate portion of form B6; or
- (c) by application to the court at any stage in the proceedings prior to final decree being granted.”.

11. After rule 57 (motions), insert the following rule:—

“Applications for time to pay directions and for recall or restriction of arrestments in defended causes

57A. In any defended cause in which it is competent to do so, the sheriff may, on a motion by the defender at any time before decree is granted, grant a time to pay direction and, where appropriate, an order recalling or restricting an arrestment.”.

12. In rule 64(1)(c) (amendment of pleadings: powers of sheriff), after the words “defences or answers must be lodged” insert the words—

“; provided that in any case in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender a notice in terms of form HH as set out in the Appendix to this Schedule together with form B5 shall be served on such additional or substitute defender in place of form H”.

13. For paragraph (2) of rule 92 (application for leave to appeal and appeal therefrom), substitute the following paragraphs:—

- “(2) Where leave to appeal has been granted, an appeal shall be made—
 - (a) where the appeal relates to a time to pay direction or any order connected therewith, within 14 days; or
 - (b) in any other case, within 7 days,of the granting of leave.

(3) An application for leave to appeal relating to a time to pay direction or the recall or restriction of an arrestment shall specify the question of law upon which the appeal is to proceed.”.

14. In rule 99 (actions craving payment of rent)—

(a) after “99”, insert “(1)”; and

(b) after paragraph (1), insert the following paragraph:—

“(2) There shall be served on the defender in such actions, along with the initial writ, warrant and citation, a notice in accordance with form H8 as set out in the Appendix to the Schedule.”.

15. In paragraph (11)(a) of rule 130 (intimation)(7), for “14”, substitute “21”.

16.—(1) In paragraph (6) of rule 138 (citation, for sub-paragraphs (a) and (b), substitute the following sub-paragraph:—

“(a) 21 days when the defender is resident or has a place of business within Europe”; and sub-paragraph (c) shall be relettered as sub-paragraph (b).

(2) In paragraph (9)(a) of rule 138(8) for “14” substitute “21”.

17. In paragraph (2) of rule 147 (applications for interim payment of damages), for “14” substitute “21”.

18.—(1) The Appendix to the Ordinary Cause Rules shall be amended in accordance with the following sub-paragraphs.

(2) In forms CC, C1, H1 to H7, S, S1, V1, V2 and SDA7(9), for “14” wherever they occur substitute “21”.

(3) In form D(10) after the word “actions” insert the following words:—

“in which a time to pay direction may be applied for set forth any form sent in accordance with rule 5 and in actions”.

(4) There shall be inserted forms B3, B4, B5, B6, C2, HH and H8 as set out in Schedule 1 to this Act of Sederunt.

AMENDMENT OF SUMMARY CAUSE RULES

19. The Summary Cause Rules of the Sheriff Court(11) shall be amended in accordance with paragraphs 20 to 35 of this Act of Sederunt.

20. Paragraph (4) of rule 2 (statement of claim) shall be omitted.

21. In paragraph (1) of rule 4 (period of notice after citation)(12), for sub-paragraphs (a) and (b) substitute the following sub-paragraph:—

“(a) 21 days when the defender is resident or has a place of business within Europe;” and sub-paragraph (c) shall be relettered as paragraph (b).

22. In rule 15 (return of summons)(13), for the words “rules 51 to 55” substitute the words “rules 50 to 55”.

(7) Rule 130 was substituted by S.I. [1986/1230](#)

(8) Paragraph (9) of rule 138 was substituted by S.I. [1986/1230](#)

(9) Forms C1 and S1 were inserted by S.I. [1984/255](#); form CC was inserted by S.I. [1984/921](#); and forms H1 to H7, V1, V2 and SDA7 were inserted by S.I. [1986/1230](#)

(10) Form D was amended by S.I. [1986/1230](#)

(11) S.I. [1976/476](#); relevant amending instruments are S.I. [1978/1805](#), [1980/455](#) and [1986/1946](#)

(12) Rule 4 was substituted by S.I. [1980/455](#)

(13) Rule 15 was substituted by S.I. [1980/455](#)

23. After paragraph (2) of rule 17 (representation), insert the following paragraph:—

“(3) A party to any proceedings under the Debtors (Scotland) Act 1987, other than appeals to the sheriff principal, shall be entitled to be represented at any stage of such proceedings by a person other than a solicitor or an advocate provided that the sheriff is satisfied that such person is a suitable representative and is duly authorised to represent the party.”.

24. After rule 17, insert the following rule:—

“Applications for time to pay directions

17A.—(1) This rule applies to summary causes, other than causes regulated by rules 50 to 55, in which a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) under the Debtors (Scotland) Act 1987 may be applied for.

(2) Where a time to pay direction may be applied for by a defender, the pursuer shall serve on the defender a notice in accordance with form Bb together with the summons.

(3) A defender may apply for a time to pay direction, and, where appropriate, for an order recalling or restricting an arrestment, by—

- (a) appearing at the first calling of the cause and making the appropriate motion;
- (b) except when the period of notice has been reduced under rule 4(2), completing and returning to the sheriff clerk to arrive at least 7 days before the first calling the appropriate portion of form Bb; or
- (c) written or oral application to the court at any other stage prior to final decree being granted.”.

25.—(1) In paragraph (1) of rule 18 (first calling), after the word “action” insert the words “or, where competent, to apply for a time to pay direction”.

(2) In paragraph (2) of rule 18, after the word “party” insert the words “or where there has been an application for a time to pay direction which has been objected to”.

(3) In paragraph (3) of rule 18, reletter sub-paragraph (c) as sub-paragraph (d) and insert after sub-paragraph (b) the following sub-paragraph:—

“(c) where a time to pay direction has been applied for by the defender; or”.

26. For rules 50 (actions for payment of money-general) and 50A (service document), substitute the following rules:—

“General

50.—(1) All actions for payment of money (as defined by section 35(1)(a) of the Act of 1971) in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for shall, subject to rule 56, be proceeded with in accordance with rules 51 to 55.

(2) All actions for payment of money (as defined by section 35(1)(a) of the Act of 1971) in which a time to pay direction may not be applied for shall, subject to rule 56, be proceeded with in accordance with rules 51, 53 and 55.

(3) In an action to which paragraph (1) applies, in place of a summons or service copy summons a service document in Form Aa together with form Q shall be served on the defender.

(4) In an action to which paragraph (2) applies, in place of a summons or service copy summons a service document in Form Aa together with form R shall be served on the defender.

(5) Any reference in Part 1 of these rules and in the forms annexed to these rules to a summons or a copy summons being served shall, in relation to actions to which paragraph (1) or (2) applies, be construed as a reference to service of such service documents and forms as are mentioned in paragraph (3) or (4), as the case may be.”.

27. For rules 51 (notice of intention to appear) and 52 (notice of offer to pay) substitute the following rule:—

“Notice of intention to appear

51. Where a defender intends—

- (a) to challenge the jurisdiction of the court;
- (b) to defend the action;
- (c) to dispute the amount of the claim; or
- (d) where he admits the claim, to make an oral application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment),

he shall lodge a notice of intention to appear, in accordance with form Q or R, as the case may be, on or before the return day being the last day specified in such form for the return to the sheriff clerk of the notice of intention to appear.

Applications in writing for time to pay directions etc

52. Where a defender admits the claim and does not intend to appear, he may make an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) by completing the appropriate part of form Q and lodging it on or before the return day referred to in rule 51.”.

28. For paragraph (2) of rule 53 (first calling), substitute the following paragraphs:—

“(2) A first calling of a cause shall be held only where a notice of intention to appear has been lodged or an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) has been lodged and the pursuer has not minuted in terms of rule 54.

(3) The procedure at the first calling under paragraph (2) and any subsequent procedure shall be in accordance with Part I of these rules.

(4) At the first calling or at any continuation thereof the court shall consider any application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) whether or not the defender is present or represented.

(5) In any defended cause in which it is competent to do so, the sheriff may, on a written or oral application by the defender at any time before decree is granted, grant a time to pay direction and, where appropriate, an order recalling or restricting an arrestment.”.

29. For rule 54 (acceptance of written offer to pay by instalments), substitute the following rule:

“Consent to proposals for payment

54. Where an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) has been lodged in accordance with rule 52, the cause shall not be called in court if before the date specified in the summons for the first calling the pursuer enters a minute in the Book of Summary Causes intimating that he does not object to the application; and thereafter the court may grant decree accordingly.”.

30. In paragraph (1) of rule 55 (no notice by defender)(**14**) for the words “a notice of offer to pay by instalments” substitute the words “an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment)”.

31. In rule 73(2) (appraisal, inventory and execution of citation), after the word “appraisal” insert the words “and a notice in accordance with form W”.

32. After rule 85, insert the following rule:—

“Appeal in relation to a time to pay direction

85A.—(1) This rule applies to appeals to the sheriff principal or to the Court of Session which relate solely to any application in connection with a time to pay direction.

(2) Rules 81, 81A, 82, 83(2) and 84 shall not apply to appeals under this rule.

(3) An application for leave to appeal against a decision in an application for a time to pay direction or any order connected therewith shall be made in writing, within 7 days of that decision, to the sheriff who made the decision and shall specify the question of law upon which the appeal is to proceed.

(4) Where leave to appeal is granted, the appeal shall be lodged and intimated by the appellant to the other party within 14 days of the order granting leave and the sheriff shall state in writing his reasons for his original decision.

(5) An appeal to the sheriff principal shall proceed in accordance with paragraphs (1), (3) and (4) or rule 83.

(6) In an appeal to the Court of Session from the sheriff or the sheriff principal—

(a) there shall be specified in the appeal the name and address of the solicitor in Edinburgh who will be acting for the appellant; and

(b) the sheriff clerk shall transmit within 4 days to the Deputy Principal Clerk of Session—

(i) all documents and productions in the case;

(ii) a certified copy of the final decree;

(iii) the application for leave to appeal and the decision thereon;

(iv) the note of appeal;

(v) the sheriff’s statement of reasons and, where appropriate, the sheriff principal’s decision,

all of which shall be deemed to be the sheriff court process.

(7) Within the period of 4 days mentioned in paragraph (6)(b), the sheriff clerk shall send written notice of the appeal to the other party and a certificate of intimation of written notice of the appeal shall be appended by him to the note of appeal.”.

33. For rule 91 (charge), substitute the following rule:—

“Charge

91.—(1) The period for payment specified in any charge following on a decree for payment granted in summary cause shall be—

(a) 14 days if the person on whom it is served is within the United Kingdom; and

(b) 28 days if he is outside the United Kingdom or his whereabouts are unknown.

(2) The period in respect of any other form of charge on a summary cause decree shall be 14 days.”.

34. In rule 92 (applications in the same cause for variation, etc, of decree), at the end, insert the following paragraph:—

“(5) This rule shall not apply to any proceedings under the Debtors (Scotland) Act 1987 or to proceedings which may be subject to the provisions of that Act.”.

35.—(1) The Appendix to the Summary Cause Rules shall be amended in accordance with the following sub-paragraphs.

(2) In form A(**15**)—

- (a) for the words “14 days” substitute the words “21 days”; and
- (b) after the words “The pursuer is authorised to serve a service document”, insert the words “together with (insert as appropriate form Q or form R)”.

(3) In form Aa(**16**)—

- (a) for the words “Form Q” substitute the words “(insert as appropriate form Q or form R)”; and
- (b) after the words “The pursuer has been authorised by the court to serve this document”, insert the words “together with (insert as appropriate form Q or form R)”.

(4) In forms B, G, H and I, after the words “The pursuer is hereby authorised to serve a copy of this summons”, insert the words “(insert as appropriate—together with form Bb)”.

(5) The notes (1), (2) and (3) in form J shall be omitted.

(6) For form Q substitute the form Q as set out in Schedule 2 to this Act of Sederunt.

(7) For form U2 substitute the forms U2 and U2A as set out in Schedule 2 to this Act of Sederunt.

(8) There shall be inserted forms Bb, R and W as set out in Schedule 2 to this Act of Sederunt.

MISCELLANEOUS

Consequential amendment

36. In paragraph 5 of the Act of Sederunt (Ordinary Cause Rules, Sheriff Court) 1983(**17**) for the words

Edinburgh
10th November 1988

Emslie
Lord President, IPD

(15) Form A was substituted by S.I. [1978/1805](#)

(16) Form Aa was inserted by S.I. [1978/1805](#)

(17) S.I. [1983/747](#)