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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 386**

**Act of Sederunt (Sheriff Court Rules)  
(Miscellaneous Amendments) (No. 3) 2011**

**Actions of division and sale and orders for division and/or sale of property**

- 2.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.
- (2) In rule 33.51 (applications relating to orders for financial provision)(1)—
- (a) at the end of paragraph (1)(a)(iv) omit “or”; and
  - (b) after that paragraph insert—  
“*(v)* section 14(1) (incidental orders), or”.
- (3) In rule 33A.48 (applications relating to orders for financial provision)(2)—
- (a) at the end of paragraph (1)(a)(iv) omit “or”; and
  - (b) after that paragraph insert—  
“*(v)* section 14(1) (incidental orders), or”.
- (4) After Chapter 46 (Companies Act 2006)(3) insert—

**“CHAPTER 47**

**ACTIONS OF DIVISION AND SALE AND ORDERS  
FOR DIVISION AND/OR SALE OF PROPERTY**

**Remit to reporter to examine heritable property**

- 47.1.—(1) In an action of division and sale of heritable property, the sheriff may, in accordance with paragraph (2), remit to a reporter to examine the property and to report to the sheriff—
- (a) whether the property is capable of division in a manner equitable to the interests of the *pro indiviso* proprietors and, if so, how such division may be effected; and
  - (b) in the event that the property is to be sold—
    - (i) whether the property should be sold as a whole or in lots and, if in lots, what those lots should be;
    - (ii) whether the property should be exposed for sale by public roup or private bargain;
    - (iii) whether the sale should be subject to any upset or minimum price and, if so, the amount;

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(1) Rule 33.51 was last amended by [S.S.I. 2011/193](#).  
(2) Rule 33A.48 was last amended by [S.S.I. 2011/193](#).  
(3) Chapter 46 was inserted by [S.S.I. 2010/279](#).

- (iv) the manner and extent to which the property should be advertised for sale; and
  - (v) any other matter which the reporter considers pertinent to a sale of the property.
- (2) A remit under paragraph (1) shall be made—
- (a) where the action is undefended, on the motion of the pursuer at any time after the expiry of the period of notice;
  - (b) where the action is defended—
    - (i) at the options hearing, on the motion of any party to the action;
    - (ii) on the sheriff finding, after a debate or proof, that the pursuer is entitled to bring and insist in the action of division and sale; or
    - (iii) at such other time as the sheriff thinks fit.
- (3) On completion of a report made under paragraph (1), the reporter shall send the report, with a copy for each party, to the sheriff clerk.
- (4) On receipt of such report, the sheriff clerk must—
- (a) lodge the report in process; and
  - (b) give written intimation to each party that this has been done and that parties may uplift a copy of the report from the process.
- (5) After the lodging of such a report, any party may apply by motion for further procedure or for approval of the report.
- (6) At the hearing of a motion under paragraph (5), the sheriff may—
- (a) in the event of a challenge to any part of the report, order parties to state their objections to the report and answers to such objections and lodge them within such period as the sheriff thinks fit; or
  - (b) in the absence of such challenge, order that the property be divided or sold, as the case may be, in accordance with the recommendations of the reporter, subject to such modification, if any, as the sheriff thinks fit.
- (7) Where, in accordance with paragraph (6)(a), the lodging of objections and answers has been ordered, the sheriff clerk will fix a date and time for the parties to be heard by the sheriff; and the sheriff may make such order for further procedure as he or she thinks fit.

### **Division and/or sale of property**

**47.2.**—(1) Where the sheriff orders the division and/or sale of property, heritable or otherwise, the sheriff shall direct that the division and/or sale, as the case may be, shall be conducted under the oversight and direction of the sheriff clerk or any other fit person whom the sheriff may appoint for that purpose.

(2) The sheriff clerk or person appointed under paragraph (1), as the case may be, may report any matter of difficulty arising in the course of the division and/or sale to the sheriff.

(3) At a hearing on a report made under paragraph (2), the sheriff may give such directions as the sheriff thinks fit, including authority to the sheriff clerk to sign, on behalf of any proprietor, a disposition of his or her interest in the property.

(4) On the conclusion of a sale of property—

- (a) the proceeds of the sale, under deduction of the expenses of the sale, shall be consigned into court; and
- (b) the sheriff clerk or the person appointed under paragraph (1), as the case may be, shall lodge in process a report of the sale and a proposed scheme of division of the proceeds of sale.

- (5) At the hearing of a motion for approval of a report of the sale of property lodged under paragraph (4) and the proposed scheme of division, the sheriff may—
- (a) approve the report and scheme of division, and direct that payment of the proceeds of sale be made in terms of the report;
  - (b) deal with any question as to the expenses of process or of sale; and
  - (c) make such other order as the sheriff thinks fit.”.