

2013 No. 135

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Miscellaneous
Amendments) 2013**

<i>Made</i> - - - -	<i>25th April 2013</i>
<i>Laid before the Scottish Parliament</i>	<i>26th April 2013</i>
<i>Coming into force</i> - -	<i>27th May 2013</i>

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2013 and comes into force on 27th May 2013.

(2) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(3) In this Act of Sederunt—

“1997 Act of Sederunt” means the Act of Sederunt (Child Care and Maintenance Rules) 1997(b);

“Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(c);

“Small Claim Rules” means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(d);

-
- (a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12; the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2); the Adults with Incapacity (Scotland) Act 2000 (asp 4) (the “2000 asp”), schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33; and the Legal Services (Scotland) Act 2010 (asp 16) (the “2010 asp”), section 127(a). Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10; and the Children’s Hearings (Scotland) Act 2011 (asp 1), section 185. Section 32 was extended by the Debtors (Scotland) Act 1987 (c.18), section 97; the Child Support Act 1991 (c.48), sections 39(2) and 49; and section 2(4) of the 2000 asp.
- (b) S.I. 1997/291. Amended by S.I. 1998/2130; and by S.S.I. 2000/388; 2002/560; 2003/44, 2005/190; 2006/75 and 411; 2007/468; 2009/29, 284 and 449; 2010/137 and 279; 2011/386; and 2012/188 and 271.
- (c) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445; S.S.I. 2000/239 and 408; 2001/8 and 144; 2002/7, 128 and 560; 2003/25, 26 and 601; 2004/197 and 350; 2005/20, 189, 638 and 648; 2006/198, 207, 293, 410 and 509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 284, 285, 294 and 402; 2010/120, 279, 324, 340 and 416; 2011/193, 289 and 386; and 2012/188, 221 and 271.
- (d) S.S.I. 2002/133, amended by S.S.I. 2003/26; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; 2010/279, 340 and 416; 2011/193; and 2012/271.

“Summary Application Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(a);

“Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(b).

Enforcement of Securities over Heritable Property

2.—(1) The Summary Application Rules are amended in accordance with the following subparagraphs.

(2) In rule 2.7 (warrants, forms and certificate of citation)(c)—

(a) in paragraph (4)(a) for “(7A)(a)” substitute “(7ZA)(a)”;

(b) in paragraph (4)(b) for “(7A)(b)” substitute “(7ZA)(b)”;

(c) after paragraph (7), insert—

“(7ZA) In an application for enforcement of security over residential property within the meaning of Part IV of Chapter 3(d)—

(a) the warrant of citation will be in Form 6ZA;

(b) citation will be in Form 6ZB which is to be attached to a copy of the initial writ, Form 11C and warrant of citation.”.

(3) After rule 3.4.8(4) (Recall of decree)(e) insert—

“(4A) Where service or intimation under this rule is to be made to a party represented in the cause by a solicitor, a notice sent to such party’s solicitor shall be held to be notice to the party.”.

(4) In Schedule 1 (forms)—

(a) after Form 6 (Form of citation where time to pay direction or time order may be applied for etc.)(f) insert Forms 6ZA and 6ZB set out in Schedule 1 to this Act of Sederunt;

(b) in Form 7 (Form of certificate of citation)(g) before the signing provisions insert—

“(In applications for enforcement of security over residential property within the meaning of Part IV of Chapter 3, state whether Forms 6ZA, 6ZB and 11C were provided in accordance with rule 2.7(7ZA))”;

(c) in Form 11C (Form of certificate of completion of pre-action requirements)(h) in Schedule 1 (forms), at the first paragraph numbered “3”, which starts “The pursuer has made reasonable efforts”, for the number “3” substitute “2”.

Summary cause rules: Form of extract decree

3.—(1) Appendix 1 to the Summary Cause Rules is amended in accordance with the following subparagraph.

-
- (a) S.I. 1999/929, amended by S.S.I. 2000/148 and 387; 2001/142; 2002/7, 129, 130, 146 and 563; 2003/26, 27, 98, 261, 319, 346 and 556; 2004/197, 222, 334 and 455; 2005/61, 445, 473, 504 and 648; 2006/198, 410, 437 and 509; 2007/6, 233, 339, 440 and 463; 2008/9, 41, 111, 223, 335, 365 and 375; 2009/107, 109, 164, 294, 320 and 402; 2010/324, 340 and 416; 2011/193 and 386; and 2012/188 and 271.
- (b) S.S.I. 2002/132, amended by S.S.I. 2002/516; 2003/26 and 601; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; 2010/279, 340 and 416; 2011/193 and 289; and 2012/144, 188 and 271.
- (c) Rule 2.7 was last amended by S.S.I. 2010/324.
- (d) Part IV of Chapter 3 was substituted by S.S.I. 2010/324.
- (e) Rule 3.4.8(4) was inserted by S.S.I. 2010/324.
- (f) Form 6 was last amended by S.S.I. 2007/6.
- (g) Form 7 was last amended by S.S.I. 2010/324.
- (h) Form 11C was inserted by S.S.I. 2010/324.

(2) After Form 28BA (Form of extract decree – recovery of possession of heritable property in accordance with section 16(5A) of the Housing (Scotland) Act 2001 etc.)**(a)** insert Form 28BB set out in Schedule 2 to this Act of Sederunt.

Delivery of certain documents to chief constable

4.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) In rule 41A.2 (applications for a determination that an interdict is a domestic abuse interdict)**(b)**—

- (a) in paragraph (7) for “such chief constable as the sheriff thinks fit” substitute “the chief constable of the Police Service of Scotland”;
- (b) in paragraph (8) for “a chief constable” substitute “the chief constable”.

(3) In Appendix 1—

- (a) In Form PA1 (Form of certificate of delivery of documents to chief constable)**(c)** for “(insert name and address) chief constable of (*insert name of constabulary*)” substitute “the chief constable of the Police Service of Scotland”.
- (b) in each of the following forms for “(*insert name(s) and address(es) of chief constable(s)*)*****” substitute “the chief constable of the Police Service of Scotland”—
 - (i) Form DA1 (Form of interlocutor for a determination of a domestic abuse interdict)**(d)**;
 - (ii) Form DA3 (Form of interlocutor for recall of a determination of a domestic abuse interdict);
- (c) in Form DA4 (Form of certificate of sending documents to the chief constable(s))—
 - (i) for “(*insert name and address) of chief constable(s)*) chief constable(s) of (*insert name(s) of constabulary*)” substitute “the chief constable of the Police Service of Scotland”;
 - (ii) the title of the Form becomes “Form of certificate of sending documents to the chief constable”.

5.—(1) Schedule 1 to the 1997 Act of Sederunt is amended in accordance with the following subparagraph.

(2) In Form 56 (Certificate of delivery to the chief constable under section 78 of the Children (Scotland) Act 1995) for “(*insert name and address*) Chief Constable of (*insert name of constabulary*)” substitute “the chief constable of the Police Service of Scotland”.

Other minor amendments

6.—(1) Schedule 1 of the Summary Application Rules is amended in accordance with the following subparagraphs.

(2) In Form 59 (Form of application for judicial approval under section 23B(1) of the Regulation of Investigatory Powers Act 2000)**(e)** before each alternative subparagraph (a) and (b) of paragraph numbered 3 insert “*****”;

(3) In Form 60 (Form of order under section 23A(2) of the Regulation of Investigatory Powers Act 2000)**(f)** for “Rule 4.32.2(4)” substitute “Rule 3.42.2(4)”.

(a) Form 28BA was inserted by S.S.I. 2012/188.
(b) Rule 41A.2 was inserted by S.S.I. 2011/289.
(c) Form PA1 was inserted by S.S.I. 2002/128.
(d) Forms DA1, DA3 and DA4 were inserted by S.S.I. 2011/289.
(e) Form 59 was inserted by S.S.I. 2012/271.
(f) Form 60 was inserted by S.S.I. 2012/271.

7.—(1) The Act of Sederunt (Actions for removing from heritable property) (Amendment) 2012(a) is amended in accordance with the following subparagraph.

(2) In paragraph 2(2)—

(a) for “rule 3” substitute “paragraph 3”;

(b) for each reference to “paragraph” substitute “subparagraph”.

Transitional and saving

8. The amendments made to the Summary Application Rules by paragraph 2 shall have no effect in respect of any action raised but not determined prior to 27th May 2013.

BRIAN GILL
Lord President
I.P.D.

Edinburgh
25th April 2013

(a) S.S.I. 2012/273.

SCHEDULE 1

Paragraph 2(4)(a)

Form 6ZA

Rule 2.7(7ZA)(a)

Form of warrant of citation in an application to which rule 2.7(7ZA)(a) applies

(Insert place and date). Grants warrant to cite the defender *(insert name and address)* by serving a copy of the writ and warrant together with Form 6ZB and Form 11C [*on a period of notice of *(insert period of notice)* days] and ordains him [*or her*] if he [*or she*] intends to oppose the application—

To be present or represented at the diet on *(insert date and time)* within *(insert name and address of sheriff court)* [**or otherwise as the case may be*].

Signed

Sheriff [*or sheriff clerk*]

*(*delete as appropriate)*

Form 6ZB

Rule 2.7(7ZA)(b)

Form of citation in an application to which rule 2.7(7ZA)(b) applies

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)*, Pursuer

against

[C.D.], *(insert designation and address)*, Defender

Court ref. no:

To: *(insert name and address of defender)*

Attached to this notice is a copy of an application by *(insert name of pursuer)* under *[insert reference to provision or provisions under which application is made]*. **IF THE APPLICATION IS GRANTED, THE PROPERTY AT *(INSERT ADDRESS OF SECURITY SUBJECTS)* MAY BE REPOSSESSED AND YOU WOULD NO LONGER HAVE THE RIGHT TO RESIDE THERE.**

The hearing will be held at *(insert name and address of sheriff court)* on *(insert date)* at *(insert time)*.

IF YOU WISH TO OPPOSE THE APPLICATION you should be present or represented at the hearing.

IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from an approved lay representative, or any Citizens' Advice Bureau or other advice agency.

PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may consider the application in the absence of you or your representative.

Signed

[P.Q.], Sheriff Officer,

or [X.Y.], *(add designation and business address)*

Solicitor for the Pursuer

SCHEDULE 2

Paragraph 3(2)

Form 28BB

Rule 23.6(3)

Form of extract decree – recovery of possession of heritable property in other cases (non-payment of rent)

Sheriff Court

Court ref no.

Date of decree

*in absence

Pursuer(s)

Defender(s)

The sheriff—

(1) granted warrant for ejecting the defender (and others mentioned in the summons) from the premises at *(insert address of premises)*, such ejection being not sooner than *(insert date)* at 12 noon.

(2) granted decree against the defender for payment to the pursuer of the undernoted sums:

(a) Sum(s) decerned for: £*(insert sum)*.

(b) Interest at *(insert rate of interest)* per cent per year from *(insert date)* until payment.

(c) Expenses of £*(insert amount)* against the *(insert name of party)*.

*A time to pay direction was made under section 1(1) of the Debtors (Scotland) Act 1987.

The amount is payable by instalments of £(insert sum)* per *(insert period)* commencing within *(insert timescale)* *days/weeks/months of intimation of this extract decree.

The amount is payable by lump sum within *(insert timescale)* *days/weeks/months of intimation of this extract decree.

This extract is warrant for all lawful execution thereon.

Date

(Sheriff clerk depute)

**delete as appropriate*

EXPLANATORY NOTE

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

This Act of Sederunt amends rules applying to certain sheriff court actions.

Paragraph 2 amends the Summary Application Rules to provide a new form of warrant of citation and citation in respect of actions for enforcement of securities over residential property. Paragraph 2(3) provides that where a party has been represented by a solicitor, service or intimation may be made to such party's solicitor and will be held as being notice to the party.

Paragraph 3 amends the Summary Cause Rules to provide a new form of extract decree in actions for recover of possession of heritable property (non-payment of rent) other than those pursued under the Housing (Scotland) Act 2001.

Paragraphs 4 and 5 make minor amendments to terminology in the Ordinary Cause Rules and the Act of Sederunt (Child Care and Maintenance Rules) 1997 in consequence of the Police and Fire Reform (Scotland) Act 2012.

Paragraphs 6 and 7 make minor corrections to certain rules of the sheriff court.

Paragraph 8 contains a saving provision.

The Act of Sederunt comes into force on 27th May 2013.

© Crown copyright 2013

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£5.75

S201304251000 05/2013 19585

<http://www.legislation.gov.uk/id/ssi/2013/135>

ISBN 978-0-11-102034-0



9 780111 020340