

Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments 2009)

RULES NOTE

INTRODUCTION

This document relates to the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2009 (SSI 2009/ 294) which was made on 18 August 2009. It has been prepared by the Secretariat to the Sheriff Court Rules Council and outlines the reasons for changes to rules as a consequence of the various provisions contained within the miscellaneous instrument.

CONTENT OF THE INSTRUMENT

Paragraph 2 to 8 – Consumer Credit Act, Time to pay and diligence

The Sheriff Court Rules Council has been consulting with the Lord President's Advisory Group on Diligence in relation to time to pay and other diligence provisions of the Bankruptcy and Diligence (S) Act 2007. Some of the changes to rules and forms in this Act of Sederunt are a consequence of the 2007 Act whilst others intend to streamline procedures, ensure forms are more user friendly and that they provide the court with sufficient relevant information.

Paragraphs 2 to 8 amend the rules in relation to applications for time to pay directions and time orders :

(a) New Ordinary Cause Rule 3.2A requires, in actions relating to regulated agreements under the Consumer Credit Act 1974, that the initial writ includes a specific averment that such an agreement exists and details of the agreement. Similar provisions are made in the Summary Application, Summary Cause and Small Claims rules.

(b) Makes provision in Ordinary Cause, Summary Application, Summary Cause and Small Claims Rules for separate updated forms of application for time to pay directions and time orders. It also provides more detailed guidance in the defender's copy summons in both the Summary Cause and Small Claim Rules.

The reason for this change is to ensure the distinction between the 2 types of application which can be made under different criteria. This will assist defenders in assessing options available to them and will ensure that applications made to the court contain relevant and accurate information which will assist both the pursuer and the court when considering the application.

(c) The Ordinary Cause Rules now make provision requiring the sheriff clerk to intimate a copy of an application for a time to pay direction or time order to the pursuer. A form of response by the pursuer objecting to an application is provided. A hearing on any objection received must be fixed within 28 days of the date on which the form is lodged with the sheriff clerk.

In the Summary Application rules, the defender is required to intimate a time to pay direction or time order to the pursuer.

The Summary Cause and Small Claim rules require the sheriff clerk to intimate a copy of an application for a time to pay direction or time order to the pursuer and provide a new form of minute for a pursuer opposing an application for a time to pay direction or a time order.

(d) The Summary Application Rules extend the period for lodging an application for a time to pay direction or time order from 7 to 14 days before the diet fixed for hearing the application or the expiry of the period of notice.

(e) Return dates and hearing dates - The period between the return date and hearing date in summary cause and small claim actions is extended from 7 to 14 days and as a consequence the period for the pursuer lodging his response to an application is increased from 2 days to 9 days before the calling date.

These various changes allow an adequate period for intimation and for the pursuer to consider and respond to any application. The parties and the court are required under the legislation to consider certain factors when determining whether an application is reasonable. The updated forms, procedures and timescales will assist in this process and streamline procedures.

Paragraph 9 - Conjoined arrestment orders

The Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988 requires to be amended.

- Various amendments to Form 43, 45, 46, 51 in the 1988 rules are required to reflect changes made by the Bankruptcy and Diligence (S) Act 2007.

Paragraphs 10 to 13 – Other minor amendments - diligence

Various other minor amendments to the Ordinary Cause, Summary Cause and Small Claims Rules and Debtors (S) Act Rules are required as a result of changes made by the Bankruptcy and Diligence Act 2007, mainly regarding interim diligence.

Paragraph 14 & 15 - Dismissal of actions due to delay

New rules inserted into the Ordinary Cause Rules and the Summary Cause Rules set out the procedure for dismissal of actions due to inordinate and inexcusable delay on the part of another party in progressing the action:

- A new Rule 15.7 Dismissal Of Action Due To Delay is inserted into the Ordinary Cause Rules
- A new Chapter 22A Dismissal Of Action Due To Delay is inserted into the Summary Cause Rules

The changes arise from the Extra Division's opinion in the case of *Tonner & Another v Reich and Hall* [2007] CSIH 48, the Extra Division considered that this was a matter that the Rules Council would want to consider and, if appropriate, recommend new rules. The Council agreed.

The rules make provision that any party to an action may apply to the court to dismiss the action due to inordinate and inexcusable delay by another party or another party's agent in progressing the action, resulting in unfairness. The new rules set out the method of application, how opposition may be lodged and make provisions for the sheriff dealing with the application.

Paragraph 16 - Insolvency or death of cautioner or guarantor

The Banking Act 2009 came into force on 29 March 2009. Parts 2 and 3 of the Act introduce new procedures which allow a bank administration order or a bank insolvency order to be obtained in respect of a failing bank. These procedures have also been extended to include building societies.

- As a consequence, an amendment requires to be made to rule 27.8 of the Ordinary Cause Rules 1993 (Insolvency or death of cautioner or guarantor) to reflect the introduction of powers to obtain orders in respect of failing banks or building societies.

Paragraph 17 - Armed Forces Act 2006

Section 374 of the Armed Forces Act 2006 came into force on 1 January 2008 and introduced a new definition of "the regular forces".

- As a consequence, an amendment to Chapter 2.1 of the Act of Sederunt (Child Care and Maintenance Rules) 1997 requires to be made to incorporate this new definition.

Paragraph 18 - Counter-Terrorism Act 2008

Schedule 5 of the Counter-Terrorism Act 2008 comes into force on 1st October 2009 and makes provision for applications for foreign travel restriction orders. In Scotland an application for a foreign travel restriction order is by summary application to the appropriate sheriff.

The Sheriff Court Rules Council decided that special provision be made in the Summary Application rules for circumstances where an application for the variation, renewal or discharge of a foreign travel restriction order is made in a sheriff court other than the sheriff court in which the process relating to the order is held. The necessary changes to rules are reflected in this Act of Sederunt.

Secretariat to Sheriff Court Rules Council

It should be noted that this rules note is for information purposes only