

# Act of Sederunt (Simple Procedure) 2016

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### **Citation and commencement, etc**

1. (1) This Act of Sederunt may be cited as the Act of Sederunt (Simple Procedure) 2016.  
(2) It comes into force on 28th November 2016.  
(3) A certified copy is to be inserted in the Books of Sederunt.

### **The Simple Procedure Rules**

2. (1) Schedule 1 contains rules for simple procedure cases and may be cited as the Simple Procedure Rules.  
(2) A form referred to in the Simple Procedure Rules means—
  - (a) the form with that name in Schedule 2, or
  - (b) an electronic version of the form with that name in Schedule 2, adapted for use by the Scottish Courts and Tribunals Service with—
    - (i) the portal on its website, or
    - (ii) the internet interface to its case management system.  
(3) Where the Simple Procedure Rules require a form to be used, that form may be varied where the circumstances require it.

### **Interpretation of the Simple Procedure Rules**

3. (1) In the Simple Procedure Rules—

“a case where the expenses of a claim are capped” means a simple procedure case—

(a) to which an order made under section 81(1) of the Courts Reform (Scotland) Act 2014<sup>a</sup> applies; or

(b) in which the sheriff has made a direction under section 81(7) of that Act; [omitted in consequential]

“a decision which absolves the respondent” means a decree of absolvitor;

“a decision which orders the respondent to deliver something to the claimant” means a decree for delivery or for recovery of possession;

“a decision which orders the respondent to do something for the claimant” means a decree ad factum praestandum;

“advocate” means a practising member of the Faculty of Advocates;

“any time before the decision of the sheriff has been fully implemented” means, where a charge or arrestment has been executed, any time within 14 days of that execution (or, where there has been more than one, the first such execution);

“a person otherwise entitled to conduct proceedings in the sheriff court” means any person so entitled, including a member of a body which has made a successful application under section 25 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>b</sup>, but only to the extent that the member is exercising rights acquired by virtue of section 27 of that Act;

“a question of EU law” means a question which might lead to a reference to the Court of Justice of the European Union for—

(a) a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union;

(b) a ruling on the interpretation of the Conventions mentioned in Article 1 of Schedule 2 to the Civil Jurisdiction and Judgments Act 1982<sup>c</sup> under Article 3 of that Schedule; or

(c) a preliminary ruling on the interpretation of the instruments mentioned in Article 1 of Schedule 3 to the Contracts (Applicable Law) Act 1990<sup>d</sup> under Article 2 of that Schedule;

“child’s property administration order” means an order under section 11(1)(d) of the Children (Scotland) Act 1995<sup>e</sup>;

“Child Witness Notice” means a child witness notice under section 12(2) of the Vulnerable Witnesses (Scotland) Act 2004<sup>f</sup>;

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<sup>a</sup> 2014 asp 1

<sup>b</sup> 1990 c. 40 Section 25 was amended by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), schedule 5, paragraph 3(10) and by S.S.I. 2014/23

<sup>c</sup> Schedule 2 was substituted by Civil Jurisdiction and Judgments Act 1982 (Amendment) Order 2000 (S.I. 2000/1824).

<sup>d</sup> 1990 c. 36 Schedule 2 was amended by S.I. 2011/1043

<sup>e</sup> 1995 c. 36

<sup>f</sup> 2004 asp 3

“damages management order” means an order about how a sum of money awarded as damages is to be paid to and managed for a person under a legal disability;

“Equality Act 2010 claim” means a claim which, in Scotland, the sheriff has jurisdiction to determine as a result of section 114(1) of the Equality Act 2010<sup>g</sup>;

“EU member state” means a state which is a member of the European Union, within the meaning of Part II of Schedule 1 to the European Communities Act 1972<sup>h</sup>;

“Hague Convention country” means a country in respect of which the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters is in force, other than an EU member state<sup>i</sup>;

“independent person” means a commissioner before whom evidence is taken in accordance with section 19 of the Vulnerable Witnesses (Scotland) Act 2004<sup>j</sup>;

“next-day postal service which records delivery” means a postal service which—

(a) seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases; and

(b) provides for the delivery of documents or other things by post to be recorded;

“order for time to pay” means—

(a) a time to pay direction under section 1 of the Debtors (Scotland) Act 1987<sup>k</sup>;

(b) a time to pay order under section 5 of of the Debtors (Scotland) Act 1987<sup>l</sup>;

(c) a time order under section 129 of the Consumer Credit Act 1974<sup>m</sup>.

“ordinary cause” means an action under the Ordinary Cause Rules 1993<sup>n</sup>;

“pause a case” means sist a case;

“postal service which records delivery” means a postal service which provides for the delivery of documents or other things by post to be recorded;

“provisional order” means a warrant for—

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<sup>g</sup> 2010 c. 15

<sup>h</sup> 1972 c. 68. Schedule 1 was relevantly amended by the European Union (Amendment) Act 2008 (c. 7), Schedule 1, Part 1, paragraph 1

<sup>i</sup> See the status table at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>.

<sup>j</sup> 2004 asp 3

<sup>k</sup> 1987 c. 18. Last amended by the Revenue Scotland and Tax Powers Act 2014 (asp 16), schedule 4, paragraph 1(2)

<sup>l</sup> 1987 c. 18. Last amended by the Revenue Scotland and Tax Powers Act 2014 (asp 16), schedule 4, paragraph 1(3).

<sup>m</sup> 1974 c. 39. Section 129 has been amended by the Debtors (Scotland) Act 1987 (c. 19), section 108(1), 109(3), Schedule 6, paragraph 17(a) and Schedule 7 paragraph 5, and by the Consumer Credit Act 2006 (c. 14), section 16(1).

<sup>n</sup> The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2016/102.

(a) arrestment on the dependence or inhibition on the dependence under section 15A(1) of the Debtors (Scotland) Act 1987<sup>o</sup>; or

(b) interim attachment under section 9A(1) of the Debt Arrangement and Attachment (Scotland) Act 2002<sup>p</sup>;

“Provisional Orders Reconsideration Application” means an application under—

(a) section 15K(2) or 15L(1) of the Debtors (Scotland) Act 1987<sup>q</sup>; or

(b) section 9M(2) or 9N(1) of the Debt Arrangement and Attachment (Scotland) Act 2002<sup>r</sup>;

“provisional orders review hearing” means a hearing under—

(a) section 15K(4) or 15L(3) of the Debtors (Scotland) Act 1987<sup>s</sup>; or

(b) section 9M(4) or 9N(3) of the Debt Arrangement and Attachment (Scotland) Act 2002<sup>t</sup>;

“restart the case” means recall a sist;

“schedule of inhibition” means a schedule of inhibition in the form prescribed by regulation 3(1)(a) of and Schedule 1 to the Diligence (Scotland) Regulations 2009<sup>u</sup>;

“Service Regulation” means Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil and commercial matters;

“Sheriff Personal Injury Court” means the all-Scotland sheriff court sitting by virtue of the All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015<sup>v</sup>;

“Special Measures Review Application” means an application under section 13 of the Vulnerable Witness (Scotland) Act 2004<sup>w</sup>;

“solicitor” means a qualified solicitor under section 4 of the Solicitors (Scotland) Act 1980<sup>x</sup>;

“standard order” means one of the standard orders in Schedule 3;

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<sup>o</sup> 1987 c. 18. Section 15A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 169

<sup>p</sup> 2002 asp 17. Section 9A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 173.

<sup>q</sup> 1987 c. 18. Sections 15K and 15L were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 169.

<sup>r</sup> 2002 asp 17. Sections 9M and 9N were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 173

<sup>s</sup> 1987 c. 18. Sections 15K and 15L were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 169

<sup>t</sup> 2002 asp 17. Sections 9M and 9N were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 173

<sup>u</sup> S.S.I. 2009/68. Regulation 3 was amended by S.S.I. 2009/396

<sup>v</sup> S.S.I. 2015/213

<sup>w</sup> 2004 asp 3

<sup>x</sup> 1980 c. 46

“the principles of simple procedure” means the principles in rule 1.2;

“trading name” means the trading or descriptive name of a person, partnership, limited liability partnership or company;

“trainee solicitor” means a person who is training to be a solicitor and is supervised by a solicitor in accordance with regulations made by the Council of the Law Society of Scotland under section 5 of the Solicitors (Scotland) Act 1980;

“Vulnerable Witness Application” means a vulnerable witness application under section 12(6) of the Vulnerable Witnesses (Scotland) Act 2004<sup>y</sup>.

(2) In Part 2 of the Simple Procedure Rules, “other legislation” means any enactment which entitles a person to act as a lay representative in a simple procedure case.

(3) In Part 11 of the Simple Procedure Rules, “supporter” means a supporter within the meaning of section 22(1) of the Vulnerable Witnesses (Scotland) Act 2004<sup>z</sup>.

(4) In Part 17 of the Simple Procedure Rules, “initial writ”, “intimate”, “defences”, “options hearing” and “lodging” have the meaning they have in the Ordinary Cause Rules 1993<sup>aa</sup>

## Warrants

4. (1) In the Simple Procedure Rules—
- (a) a claim being registered—
    - (i) is warrant for the service of the Claim Form on the respondent;
    - (ii) is warrant for the citation of witnesses;
  - (b) a Response Form being registered is warrant for the citation of witnesses;
  - (c) a certified copy of a written order granting a provisional order is sufficient authority for execution of the diligence specified in the provisional order;
  - (d) in Part 11, a sheriff ordering a witness to be brought to court—
    - (i) is warrant for the apprehension of that witness and for having that witness brought to court,
    - (ii) that warrant is effective in all sheriffdoms without endorsement, and
    - (iii) the expenses of that warrant may be awarded against the witness.
- (2) In a claim for delivery in a simple procedure case, the court may—

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<sup>y</sup> 2004 asp 3

<sup>z</sup> 2004 asp 3

<sup>aa</sup> The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2016/102

- (a) grant warrant to search for and take possession of goods and to open shut and lockfast places, and
- (b) that warrant only applies to premises occupied by the respondent.

### **Arrestment to found jurisdiction**

- 5.** (1) This paragraph applies to a simple procedure case where the claimant has used an arrestment to found jurisdiction before the Claim Form is formally served on the respondent.
- (2) The service of the arrestment must be reported to the sheriff clerk as soon as possible.
- (3) The arrestment ceases to have effect unless the Claim Form is formally served on the respondent within 21 days from the date of formal service of the arrestment.