
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 324

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Enforcement
of Securities over Heritable Property) 2010**

Made - - - - - *9th September 2010*

Coming into force - - - - - *30th September 2010*

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) (Enforcement of Securities over Heritable Property) 2010 and comes into force on 30th September 2010.

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

(3) In this Act of Sederunt—

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

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

Amendments in consequence of the Home Owner and Debtor Protection (Scotland) Act 2010

2.—(1) The Summary Application Rules are amended in accordance with the subparagraphs (2) to (5).

(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); and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”), section 33. Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10. 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 by section 2(4) of the 2000 asp.

- (2) In rule 2.7 (warrants, forms and certificate of citation), omit paragraph (7A)(d).
- (3) Rule 22.2A (applications under the Mortgage Rights (Scotland) Act 2001)(e) is omitted.
- (4) For Part IV (Conveyancing and Feudal Reform (Scotland) Act 1970) of Chapter 3 substitute—

“PART IV

ENFORCEMENT OF SECURITIES OVER HERITABLE PROPERTY

SECTION 1 *Interpretation*

3.4.1. In this Part—

“the 1894 Act” means the Heritable Securities (Scotland) Act 1894(f);

“the 1970 Act” means the Conveyancing and Feudal Reform (Scotland) Act 1970(g);

“application for enforcement of security over residential property” means any of the following—

- (a) an application under section 24(1B) of the 1970 Act alone (“a 1970 Act only application”);
- (b) an application under section 5(1) of the 1894 Act, in a case falling within section 5(2) of that Act, alone (“an 1894 Act only application”);
- (c) an application under paragraphs (a) and (b) together (“a combined 1970 Act and 1894 Act application”);

“entitled resident” means—

- (a) in a 1970 Act only application, a person falling within the definition of that expression provided by section 24C of the 1970 Act;
- (b) in an 1894 Act only application, a person falling within the definition of that expression provided by section 5D of the 1894 Act;
- (c) in a combined 1970 Act and 1894 Act application, a person falling within either of those definitions;

“entitled resident application” means any of the following—

- (a) an application under section 24B of the 1970 Act alone;
- (b) an application under section 5C of the 1894 Act alone;
- (c) an application under paragraphs (a) and (b) together.

“pre-action requirements” means—

- (a) in a 1970 Act only application, the requirements specified in sections 24A(2) to (6) of the 1970 Act, together with any provision made under section 24A(8) of that Act;
- (b) in an 1894 Act only application, the requirements specified in sections 5B(2) to (6) of the 1894 Act, together with any provision made under section 5B(8) of that Act;
- (c) in a combined 1970 Act and 1894 Act application, both of those sets of requirements;

“a recall of decree application” means any of the following—

- (a) an application under section 24D of the 1970 Act alone;

(d) Rule 2.7(7A) was inserted by [S.S.I. 2002/7](#).

(e) Rule 2.22A was inserted by [S.S.I. 2002/7](#).

- (b) an application under section 5E of the 1894 Act alone;
- (c) an application under paragraphs (a) and (b) together.

SECTION 2 *Disposal of applications under Part II of the 1970 Act for non-residential purposes*

3.4.2.—(1) This rule applies to an application or counter-application made by virtue of paragraph (3)(2)(b) of the Act of Sederunt (Sheriff Court Rules) (Enforcement of Securities over Heritable Property) 2010(**h**).

(2) An interlocutor of the sheriff disposing of an application or counter-application is final and not subject to appeal except as to a question of title or as to any other remedy granted.

SECTION 3 *Initial writ*

3.4.3.—(1) An application for enforcement of security over residential property must include averments that the pre-action requirements have been complied with.

(2) The pursuer must lodge Form 11C with the initial writ.

(3) The initial writ must specify the name and particulars of all persons known by the pursuer to be entitled residents; and crave warrant for intimation to such persons.

SECTION 4 *Appointment of Hearing*

3.4.4. On an application being submitted under rule 3.4.3, the sheriff must—

- (a) fix a hearing;
- (b) appoint service and intimation of the initial writ and Form 11C.

SECTION 5 *Answers*

3.4.5.—(1) Where a defender opposes an application, the sheriff may order answers to be lodged within such period that the sheriff specifies.

(2) The answers must—

- (a) specify the name and particulars of all persons known by the defender to be entitled residents who have not already been named in the initial writ; and crave warrant for intimation to such persons; or
- (b) state that to the best of the defender's knowledge there are no other entitled residents.

SECTION 6 *Intimation to known entitled residents*

3.4.6. The sheriff must order that a copy of the initial writ together with a notice in Form 11D and Form 11E be intimated to all entitled residents referred to in rules 3.4.3(3) and 3.4.5(2) (a).

SECTION 7 *Application to court by entitled residents*

3.4.7.—(1) This rule applies to an entitled resident application.

(2) Such application is to be made by lodging a minute in Form 11E in the principal application to which the application relates.

(3) On a Form 11E being lodged, the sheriff must—

- (a) fix a hearing of the entitled resident application;
- (b) order parties to lodge answers (where the sheriff considers it appropriate to do so) within such period that the sheriff specifies;
- (c) order the applicant to serve upon every party and intimate to every entitled resident—
 - (i) a copy of the entitled resident application;

(ii) a note of the date, time and place of the hearing.

SECTION 8 *Recall of decree*

3.4.8.—(1) This rule applies to a recall of decree application.

(2) Such application is to be made by lodging a minute in Form 11F.

(3) On a Form 11F being lodged, the sheriff clerk must fix a hearing of the recall of decree application.

(4) Where a hearing has been fixed under paragraph (3) the person seeking recall must, not less than seven days before the date fixed for the hearing, serve upon every party and intimate to every entitled resident—

(a) a copy of the recall of decree application;

(b) a note of the date, time and place of the hearing.

(5) At a hearing fixed under paragraph (3), the sheriff must recall the decree so far as not implemented and the hearing will then proceed as a hearing held under rule 3.4.4(a).

(6) A minute for recall of a decree, when lodged and served or intimated in terms of this rule, will have the effect of preventing any further action being taken to enforce the decree.

(7) If it appears to the sheriff that there has been any failure or irregularity in service or intimation of the minute for recall of a decree, the sheriff may order re-service or re-intimation of the minute (as the case may be) on such conditions as he or she thinks fit.

(8) Where the person seeking recall does not appear or is not represented at the hearing for recall, the sheriff will pronounce an interlocutor ordaining that person to appear or be represented at a peremptory diet fixed by the sheriff to state whether or not that person intends to proceed with the person's defence or application, under certification that if that person fails to do so the sheriff may grant decree or make such other order or finding as the sheriff thinks fit.

(9) The diet fixed in the interlocutor under paragraph (8) must not be less than 14 days after the date of the interlocutor unless the sheriff otherwise orders.

(10) The sheriff must appoint a party to intimate to the person seeking recall a copy of the interlocutor and a notice in Form 11G.

(11) Where a person on whom a notice and interlocutor has been intimated under paragraph (10) fails to appear or be represented at a diet fixed under paragraph (8) and to state his or her intention as required by that paragraph, the sheriff may grant decree of new or make such other order or finding as the sheriff thinks fit."

(5) In Schedule 1 (forms)—

(a) omit Forms 6A and 6B(i);

(b) in Form 7(j), omit the words "(In actions to which an order under section 2 of the Mortgage Rights (Scotland) Act 2001 may be applied for, state whether Form 6B was sent in accordance with rule 2.7(7A)(b).)";

(c) after Form 11B(k) insert Forms 11C to 11G set out in the Schedule to this Act of Sederunt.

(6) The Ordinary Cause Rules are amended in accordance with subparagraphs (7) to (11).

(7) In rule[EnSpace]3.2 (actions relating to heritable property)(l), omit paragraph (3).

(8) In rule[EnSpace]3.3 (warrants of citation)(m), omit—

(a) paragraph (1)(d);

(b) paragraph (4).

(l) Rule 3.2(3) was inserted by [S.S.I. 2002/7](#).

(m) Rule 3.3(1)(d) and (4) were inserted by [S.S.I. 2002/7](#).

- (9) In rule[EnSpace]5.2 (form of citation and certificate)(n), omit—
- (a) paragraph (1)(d);
 - (b) paragraph (2A).
- (10) Rule[EnSpace]34.12 (applications under the Mortgage Rights (Scotland) Act 2001)(o) is omitted.
- (11) In Appendix 1 (forms)—
- (a) omit Forms O2A and O5A(p);
 - (b) in Form O6(q), omit the words “(In actions to which rule 3.2(3) applies, state whether Form O2A was sent in accordance with rule 3.3)”.
- (12) The Summary Application Rules and the Ordinary Cause Rules as they applied immediately before 30th September 2010 continue to have effect for the purpose of any matter under a provision referred to in those Rules which continues before the court, or may be brought before the court, in either case by virtue of the Home Owner and Debtor Protection (Scotland) Act 2010 (Transitional and Savings Provisions) Order 2010(r) (the “Transitional and Savings Order”).
- (13) Where article 6 of the Transitional and Savings Order applies, Form 11C applies subject to the modification that any required information which has not been provided at any time following the default and before 30th September 2010 must be provided as soon as is reasonably practicable on or after 30th September 2010.

Disposal of applications under Part II of the Conveyancing and Feudal Reforms (Scotland) Act 1970 for non-residential purposes

- 3.—(1) Subparagraph (2) applies to an application or counter-application under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970(s), except applications under sections 24(1B) or 24D(1) of that Act.
- (2) An application or counter-application to which this rule applies must be brought—
- (a) as an ordinary cause, where any other remedy is craved; or
 - (b) as a summary application, where no other remedy is craved.
- (3) For rule 34.10 (applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970) of the Ordinary Cause Rules, substitute—

“Disposal of applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970 for non-residential purposes

- 34.10.**—(1) This rule applies to an application or counter-application made by virtue of paragraph 3(2)(a) of the Act of Sederunt (Sheriff Court Rules) (Enforcement of Securities over Heritable Property) 2010(t).
- (2) An interlocutor of the sheriff disposing of an application or counter-application is final and not subject to appeal except as to a question of title or as to any other remedy granted.”
- (4) This paragraph does not affect an application or counter-application made before 30th September 2010.

(n) Rules 5.2(1)(d) and (2A) were inserted by [S.S.I. 2002/7](#).
(o) Rule 34.12 was inserted by [S.S.I. 2002/7](#).
(r) [S.S.I. 2010/316](#).
(s) [1970 c.35](#).
(t) [S.S.I. 2010/324](#).

*Status: This is the original version (as it was originally made). Scottish
Statutory Instruments are not carried in their revised form on this site.*

Edinburgh
9th September 2010

A.C. HAMILTON
Lord President
I.P.D.

SCHEDULE

EXPLANATORY NOTE

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

This Act of Sederunt amends the rules in relation to proceedings to enforce securities over heritable property.

Paragraph 2 amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (the “1999 Rules”) and the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (the “Ordinary Cause Rules”), in consequence of the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6) (the “2010 Act”).

Paragraphs 2(2) and (3) omit rules 2.7(7A) and 2.22A of the 1999 Rules in consequence of the 2010 Act repealing the relevant provisions of the Mortgage Rights (Scotland) Act 2001 (the “2001 Act”).

Paragraph 2(4) substitutes a new Part IV into Chapter 3 of the 1999 Rules, relating to enforcement of securities over heritable property.

Rule 3.4.2 restricts the right of appeal in respect of applications and counter-applications for non-residential purposes only. This is a restatement of existing rule 3.4.2 of the 1999 Rules, save for restricting its application in line with the provisions of the 2010 Act.

Rule 3.4.3 and Form 11C prescribe the requirements for an application for enforcement of a security over residential property.

Rule 3.4.4 prescribes the process that the sheriff must follow once an application is submitted.

Rule 3.4.5 prescribes that a defender who opposes an application may be required to lodge answers and specify the details of entitled residents to the extent that they are not already specified in the initial writ.

Rule 3.4.6 and Forms 11D and 11E provide for intimation to entitled residents who are specified either in the initial writ or answers.

Rule 3.4.7 prescribes the process for entitled residents to apply to court for a continuation or other order.

Rule 3.4.8 and Forms 11F and 11G prescribe the process in terms of which a party or entitled resident may apply for recall of decree.

Paragraphs 2(6) to (11) amend the Ordinary Cause Rules in consequence of the 2010 Act repealing the relevant provisions of the 2001 Act.

Paragraph 3(1) provides the procedure in terms of which applications or counter-applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970 for non-residential purposes are dealt with. If a remedy is craved other than one provided under Part II, then the application must be brought as an ordinary cause. In other cases the application or counter-application must be brought by summary application. Paragraph 3(3) makes corresponding amendments to rule 34.10 of the Ordinary Cause Rules.