

2011 No. 289

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Miscellaneous
Amendments) (No. 2) 2011**

Made - - - - - *28th June 2011*

Laid before the Scottish Parliament *29th June 2011*

Coming into force in accordance with paragraph 1(1) and (2)

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) (No. 2) 2011 and, subject to subparagraph (2), comes into force on 20th July 2011.

(2) Paragraphs 2 and 3 come into force on 7th July 2011.

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

(4) In this Act of Sederunt—

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

“Sheriff Court Bankruptcy Rules” means the Sheriff Court Bankruptcy Rules in the Schedule to the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008(c);

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

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- (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.
- (b) 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; and 2011/193.
- (c) S.S.I. 2008/119, amended by S.S.I. 2011/193.
- (d) 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; and 2011/193.

Damages (Scotland) Act 2011

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

(2) In rule 36.1 (application and interpretation of Part I to Chapter 36)—

- (a) in paragraph (1)(a), omit “by the executor of the deceased,”;
- (b) in paragraph (1)(b), omit “by any relative of the deceased,”; and
- (c) in paragraph (2), omit the definition of “relative”(a).

(3) In rule 36.19 (mesothelioma actions: special provisions)(b), for “section 1(2A) and (2B) of the Damages (Scotland) Act 1976(c) (liability where the personal injury in consequence of which the deceased died is mesothelioma)” substitute “section 5 of the Damages (Scotland) Act 2011 (discharge of liability to pay damages: exception for mesothelioma)”.

(4) In relation to any action raised in respect of any death occurring before 7th July 2011, rule 36.19 shall be construed in accordance with article 4 of the Damages (Scotland) Act 2011 (Commencement, Transitional Provisions and Savings) Order 2011(d).

3.—(1) The Summary Cause Rules are amended in accordance with the following subparagraph.

(2) In rule 34.6 (intimation to connected persons)—

- (a) in paragraph (1)(a), omit “by the executor of the deceased,”;
- (b) in paragraph (1)(b), omit “by any relative of the deceased,”; and
- (c) in paragraph (2), omit the definition of “relative”.

Remuneration of assessors

4. The remuneration of an assessor appointed by a sheriff is to be at a rate determined by the Lord President of the Court of Session.

Domestic Abuse (Scotland) Act 2011

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

(2) After rule 41.2(3)(d) (delivery of certain documents to the chief constable)(e) insert—

“(e) where a determination has previously been made in respect of such interdict under section 3(1) of the Domestic Abuse (Scotland) Act 2011(f), a copy of the interlocutor in Form DA1.”.

(3) After Chapter 41 (Protection from Abuse (Scotland) Act 2001)(g) insert—

“CHAPTER 41A

DOMESTIC ABUSE (SCOTLAND) ACT 2011

Interpretation and application of this Chapter

41A.1.—(1) In this Chapter—

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- (a) The definition of relative is amended by paragraph 1 of schedule 1 to the Damages (Scotland) Act 2011 (asp 7), which, by virtue of article 3 of S.S.I. 2011/268, comes into force at the same time as this instrument.
 - (b) Rule 36.19 was inserted by S.S.I. 2009/285.
 - (c) 1976 c. 13.
 - (d) S.S.I. 2011/268.
 - (e) Rule 41.2 was inserted by S.S.I. 2002/128 and amended by S.S.I. 2003/26 and 2006/207.
 - (f) 2011 asp 13.
 - (g) Chapter 41 was inserted by S.S.I. 2002/128 and amended by S.S.I. 2003/26 and 2006/207.

“the 2011 Act” means the Domestic Abuse (Scotland) Act 2011;

“interdict” includes interim interdict.

(2) This Chapter applies to an application for a determination under section 3(1) of the 2011 Act that an interdict is a domestic abuse interdict.

Applications for a determination that an interdict is a domestic abuse interdict

41A.2.—(1) An application made before the interdict is obtained must be made by crave in the initial writ, defences or counterclaim in which the interdict is sought.

(2) An application made after the interdict is obtained must be made by minute.

(3) Where a determination is made under section 3(1) of the 2011 Act, the interlocutor shall be in Form DA1.

(4) In pursuance of section 3(4) of the 2011 Act, the applicant must serve a copy of the interlocutor in Form DA1 on the person against whom the interdict has been granted and lodge in process a certificate of service in Form DA2.

(5) Where a determination is recalled under section 3(5)(b) of the 2011 Act, the interlocutor shall be in Form DA3.

(6) Paragraph (7) applies where, in respect of the same interdict—

(a) a power of arrest under section 1 of the Protection from Abuse (Scotland) Act 2001(a) is in effect; and

(b) a determination under section 3(1) of the 2011 Act is made.

(7) Where a determination is made or where such determination is recalled, the sheriff must appoint a person to send forthwith to such chief constable as the sheriff thinks fit a copy of—

(a) the interlocutor in Form DA1 and the certificate of service in Form DA2; or

(b) the interlocutor in Form DA3,

as the case may be.

(8) Where a person is required by virtue of this Chapter to send documents to a chief constable, such person must, after each such compliance, lodge in process a certificate of sending in Form DA4.”.

(4) In Appendix 1, after Form PA1 insert Forms DA1, DA2, DA3 and DA4 set out in Part 1 of the Schedule to this Act of Sederunt.

Service of sequestration petitions

6.—(1) Subject to subparagraph (4), the Sheriff Court Bankruptcy Rules are amended in accordance with the following subparagraphs.

(2) After rule 5 (applications), insert—

“Service of sequestration petitions

5A.—(1) This rule applies to citation of a debtor in pursuance of section 12(2) of the Act of 1985(b).

(2) Citation shall be effected by service on the debtor of Form 5A accompanied by a copy of the petition and warrant of citation.

(a) 2001 asp 14.

(b) The Bankruptcy (Scotland) Act 1985 c. 66.

- (3) Subject to the following paragraphs, service occurs if—
- (a) where the debtor is a living individual, a sheriff officer accompanied by a witness gives the documents personally to the debtor;
 - (b) where the debtor is deceased, a sheriff officer accompanied by a witness gives the documents personally to an executor or a person entitled to be appointed as executor to the deceased debtor, save that where such executor or appointee is a body corporate, paragraph (c)(iv) applies.
 - (c) where the debtor is an entity whose estate may be sequestrated by virtue of section 6(1) of the Act of 1985, a sheriff officer accompanied by a witness—
 - (i) in the case of a trust in respect of debts incurred by it, gives the documents personally to the individual trustees (if known);
 - (ii) subject to subparagraph (iii) in the case of a partnership or limited partnership within the meaning of the Limited Partnerships Act 1907, gives the documents personally to the individual partners (if known) and leaves them in the hands of an employee at an established place of business of the entity;
 - (iii) in the case of a dissolved partnership (including a dissolved partnership within the meaning of the Limited Partnerships Act 1907), gives the documents personally to the individual partners (if known);
 - (iv) in the case of a body corporate or an unincorporated body, gives the documents personally to a senior official (if known) and leaves them in the hands of an individual at an established place of business of the entity;

and section 3 of the Citation Amendment (Scotland) Act 1882(a) will not apply.

(4) Service on a debtor or other person to whom citation is required under this rule, in either case furth of Scotland, is to be effected in accordance with rule 5.5 (service on persons furth of Scotland)(b) of the Ordinary Cause Rules in the First Schedule to the Sheriff Courts (Scotland) Act 1907.

(5) A creditor may apply to the sheriff for authority to serve by such other means as the sheriff thinks fit.

(6) An application under paragraph (5) must be made—

- (a) by crave in the petition; or
- (b) by motion.

(7) A certificate of citation in Form 5B must be lodged with the sheriff clerk and state—

- (a) the method of citation; and
- (b) where citation is by a sheriff officer—
 - (i) Form 5B must be signed by the sheriff officer and the witness; and
 - (ii) where the method of citation was other than personal or postal citation, the full name and designation of any person to whom the citation was delivered.”.

(3) In Appendix 1, after Form 5 insert Forms 5A and 5B set out in Part 2 of the Schedule to this Act of Sederunt.

(a) 1882 c. 77.

(b) Rule 5.5 was amended by S.I. 1996/2445; and by S.S.I. 2003/26, 2004/197, 2007/440, 2008/365 and 2011/193.

(4) The Sheriff Court Bankruptcy Rules as they applied immediately before 20th July 2011 continue to have effect for the purpose of any action raised but not determined prior to that date.

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

Edinburgh
28th June 2011

SCHEDULE

PART 1

Paragraph 5(4)

Form DA1

Rule 41A.2(3)

Form of interlocutor for a determination of a domestic abuse interdict

Court ref no.

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

(Date)

The sheriff, in pursuance of section 3(1) of the Domestic Abuse (Scotland) Act 2011, makes a determination that the [interim*] interdict dated *(insert date)* [and to which a power of arrest was attached by interlocutor dated *(insert date)**] is a domestic abuse interdict. [The sheriff appoints *(insert name of person)*] to send forthwith a copy of this interlocutor and a copy of the certificate of service in Form DA2 to *(insert name(s) and address(es) of chief constable(s))**. (*delete as appropriate)

(Sheriff)

Form DA2

Rule 41A.2(4)

Form of certificate of service

Court ref no.

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

(Insert place and date)

I hereby certify that on *(insert date)* I duly served on *(insert name and address of person subject to the interdict)* a copy of Form DA1. This I did by *(state method of service)*.

(Signed)

(Solicitor/sheriff officer)

(add designation and business address)

Form DA3

Rule 41A.2(5)

Form of interlocutor for recall of a determination of a domestic abuse interdict

Court ref no.

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

(Date)

The sheriff, in pursuance of section 3(5)(b) of the Domestic Abuse (Scotland) Act 2011, recalls the determination that the [interim*] interdict dated *(insert date)* is a domestic abuse interdict. [The sheriff appoints *(insert name of person)*] to send forthwith a copy of this interlocutor to *(insert name(s) and address(es) of chief constable(s))**. (*delete as appropriate)

(Sheriff)

Form DA4

Rule 41A.2(8)

Form of certificate of sending documents to the chief constable(s)

Court ref no.

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

(Insert place and date)

I hereby certify that on *(insert date)* I duly sent to *(insert name and address of chief constable(s))* chief constable(s) of *(insert name(s) of constabulary)* a copy of [the interlocutor in Form DA1 and the certificate of service in Form DA2*] [the interlocutor in Form DA3*]. This I did by *(state method of sending)*. *(*delete as appropriate)*

(Signed)

(Solicitor/sheriff officer)

(add designation and business address)

PART 2

Paragraph 6(3)

Form 5A

Rule 5A(2)

Form of citation

CITATION

Court ref. no.

SHERIFFDOM OF (*insert name of Sheriffdom*)

AT (*insert place of sheriff court*)

[A.B.], (*insert designation and address*), Petitioner against [C.D.], (*insert designation and address*), Defender

[*Insert place and date*]. You [C.D.], are hereby served with this copy petition and warrant. If you wish to show cause why sequestration should not be awarded you should appear at (*insert name and address of sheriff court*) on (*insert date of hearing*).

IF YOU ARE UNCERTAIN 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 any Citizens' Advice Bureau or other advice agency.

PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may award sequestration.

Signed

[[P.Q.], Sheriff Officer]
or [[X.Y.] (*add designation and business address*)

Solicitor for the Petitioner]

Form 5B

Rule 5A(7)

Form of certificate of citation

CERTIFICATE OF CITATION

Court ref. no.

[Insert place and date] I, [insert name], certify that on [insert date] I duly cited [insert debtor's name] to answer to the attached petition by appearing at [insert name and address of sheriff court] on [insert date of hearing]. This I did by [state method of citation; if by sheriff officer add: in the presence of [insert name of witness] [insert designation], witness; and where citation served by post state method of postal service].

Signed

[[C.D.], Sheriff Officer

[P.Q.], witness] *or*

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

Solicitor for the Petitioner]

EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the Ordinary Cause Rules, the Summary Cause Rules and the Sheriff Court Bankruptcy Rules; and certain other minor changes.

Paragraphs 2 and 3 amend the Ordinary Cause Rules and the Summary Cause Rules in consequence of the Damages (Scotland) Act 2011.

The amendments made by paragraphs 2(2) and 3(2) are designed to simplify the rules so that there is now a general reference to claims in respect of the death of the deceased to cover both claims of relatives and claims of relatives' executors.

Paragraph 2(3) substitutes references to section 5(1) and (2) of the 2011 Act into rule 36.19 of the Ordinary Cause Rules, which makes special provision in relation to cases in which a personal injury in consequence of which a person dies is mesothelioma.

Paragraph 4 provides that the Lord President may determine the remuneration of an assessor appointed by a sheriff.

Paragraph 5 inserts a new Chapter into the Ordinary Cause Rules in consequence of the Domestic Abuse (Scotland) Act 2011. In particular, the rules specify how applications for a determination that an interdict is a domestic abuse interdict must be made; the Forms that must be served where a determination is made or recalled; and where a determination under section 3 of the 2011 Act and a power of arrest under section 1 of the Protection from Abuse (Scotland) Act 2001 are in effect in respect of the same interdict, certain documents must be sent to such chief constable(s) as the sheriff thinks fit. This is because in terms of section 2(2) of the 2011 Act, a person who breaches such an interdict commits a criminal offence.

Paragraph 6 amends the Sheriff Court Bankruptcy Rules to provide specific provisions in relation to the service of sequestration petitions. Paragraph 6(4) contains a savings provision.

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