SCOTTISH STATUTORY INSTRUMENTS

2003 No. 26

SHERIFF COURT

Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003

Made - - - -	*17th January 2003*
Coming into force - -	*24th January 2003*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(**1**), and section 2 of the Protection from Abuse (Scotland) Act 2001(**2**), 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 (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003, and shall come into force on 24th January 2003.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

(3) In this Act of Sederunt–

"Ordinary Cause Rules 1993" means Schedule 1 to the Sheriff Courts (Scotland) Act 1907(**3**);

"Summary Application Rules" means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(**4**);

"Summary Cause Rules" means the Act of Sederunt (Summary Cause Rules) 2002(**5**); and

(**1**) 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), schedule 5, paragraph 13, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c. 48).

(**2**) 2001 asp 14; see section 7 for the definition of "prescribed".

(**3**) 1907 c. 51; Schedule 1 was substituted by S.I.1993/1956 and amended by S.I. 1996/2167 and 2445, and by S.S.I.2000/239 and 408, 2001/8 and 144, and 2002/7 and 128 and 560.

(**4**) S.I. 1999/929; amended by S.S.I. 2000/148 and 387, 2001/142, and 2002/7 and 129, 130, 146 and 563.

(**5**) S.S.I. 2002/132.

"Small Claim Rules" means the Act of Sederunt (Small Claim Rules) 2002(**6**).

Amendment of Ordinary Cause Rules 1993

2.—(1) The Ordinary Cause Rules 1993 shall be amended in accordance with paragraphs (3) to (14).

(2) Any reference in this article to a rule, appendix or form means the rule, appendix or form so numbered in the Ordinary Cause Rules 1993.

(3) In rule 5.4 (service within Scotland by sheriff officer), insert at the end–

"(5) Where the firm which employs the sheriff officer has in its possession–

(a) the document or a copy of it certified as correct by the pursuer's solicitor, the sheriff officer may serve the document upon the defender without having the document or certified copy in his possession, in which case he shall if required to do so by the person on whom service is executed and within a reasonable time of being so required, show the document or certified copy to the person; or

(b) a certified copy of the interlocutor pronounced allowing service of the document, the sheriff officer may serve the document without having in his possession the certified copy interlocutor if he has in his possession a facsimile copy of the certified copy interlocutor (which he shall show, if required, to the person on whom service is executed).".

(4) In rule 5.5 (service on persons furth of Scotland)–

(a) after paragraph (1)(b)(v), omit "or"; and

(b) at the end of paragraph (1)(c), insert– "; or

(d) in a country to which Council Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters(**7**) applies, service may be effected by the methods prescribed in paragraphs (1)(b)(ii) and (iii) only in exceptional circumstances".

(5) In rule 20.4 (service on third party), for paragraph (3) substitute–

"(3) There shall be served with a third party notice–

(a) a copy of the pleadings (including any amendments or adjustments); and

(b) where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, a copy of that minute.".

(6) After rule 20.5 (answers to third party notice), insert–

"**Consequences of failure to amend pleadings**

20.5A. Where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, no motion for a finding, order or decree against a third party may be enrolled by the defender unless, at or before the date on which he enrols the motion, he enrols a motion to amend the pleadings in accordance with that minute.".

(7) In rule 23.1 (abandonment of causes), in paragraph (2) for "he" substitute "the pursuer".

(8) In rule 33.6 (averments where aliment or financial provision sought)–

(a) in paragraph (1)–

(i) for ""maintenance assessment"" substitute ""maintenance calculation""; and

(**6**) S.S.I. 2002/133.
(**7**) O.J. No. L 160, 30.06.00, p.37.

(ii) for "55" where it second appears, substitute "54"; and

(b) in paragraphs (2) and (4), for "assessment" wherever it appears substitute "calculation".

(9) In rule 33.51 (applications relating to orders for financial provision)–

(a) at the end of paragraph (3)(a), omit "or"; and

(b) after paragraph (3)(b), insert– "or

(c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999(**8**),".

(10) In rule 33.88 (interpretation of this Part), for ""maintenance assessment"" substitute ""maintenance calculation"".

(11) In rule 33.90 (effect of maintenance assessments)–

(a) in the heading, for "assessments" substitute "calculations"; and

(b) for "assessment" substitute "calculation".

(12) In rule 33.91 (effect of maintenance assessments on extracts relating to aliment)–

(a) in the heading, for "assessments" substitute "calculations"; and

(b) for "assessment" wherever it appears substitute "calculation".

(13) In rule 41.2 (attachment of power of arrest to interdict), in paragraph (1)(a) after "sought" insert ", or by minute, with answers if appropriate, should the sheriff so order".

(14) In appendix 1 (forms), in Form F9 in the second box of that form for "0800 317 500" substitute "0800 328 8970".

Amendment of Summary Application Rules

3.—(1) The Summary Application Rules shall be amended in accordance with paragraphs (3) to (5).

(2) Any reference in this article to a rule means the rule so numbered in the Summary Application Rules.

(3) In rule 2.11 (service within Scotland by sheriff officer), insert at the end–

"(5) Where the firm which employs the sheriff officer has in its possession–

(a) the document or a copy of it certified as correct by the pursuer's solicitor, the sheriff officer may serve the writ upon the defender without having the document or certified copy in his possession, in which case he shall if required to do so by the person on whom service is executed and within a reasonable time of being so required, show the document or certified copy to the person; or

(b) a certified copy of the interlocutor pronounced allowing service of the document, the sheriff officer may serve the document without having in his possession the certified copy interlocutor if he has in his possession a facsimile copy of the certified copy interlocutor (which he shall show, if required, to the person on whom service is executed).".

(4) In rule 2.12 (service on persons furth of Scotland)–

(a) after paragraph (1)(b), omit "or"; and

(b) at the end of paragraph (1)(c), insert– "; or

(d) in a country to which Council Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in

(**8**) 1999 c. 30.