SCOTTISH STATUTORY INSTRUMENTS

# 2002 No. 7

# SHERIFF COURT

## Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002

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| *Made - - - -* | *10th January 2002* |
| *Coming into force - -* | *17th January 2002* |

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 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 (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 and shall come into force on 17th January 2002.

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

(3) In this Act of Sederunt–

"the Ordinary Cause Rules" means the First Schedule to the Sheriff Courts (Scotland) Act 1907(**2**) and a rule referred to by number in paragraph 2 of this Act of Sederunt means the rule so numbered in the Ordinary Cause Rules; and

"the Summary Applications Rules" means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(**3**) and a rule referred to by number in

(**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), and the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c. 48).

(**2**) 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 and 2001/8 and 144.

(**3**) S.I. 1999/929, as amended by S.S.I. 2000/148 and 387 and 2001/142.

paragraph 3 of this Act of Sederunt means the rule so numbered in the Summary Applications Rules.

**Amendment of the Ordinary Cause Rules**

**2.**—(1) The Ordinary Cause Rules shall be amended in accordance with the following paragraphs.

(2) In rule 3.2 (actions relating to heritable property) insert at the end–

"(3) In an action falling within section 1(1)(b) or (c) of the Mortgage Rights (Scotland) Act 2001(**4**), the initial writ shall include averments about those persons who appear to the pursuer to be entitled to apply for an order under section 2 of that Act and such persons shall, so far as known to the pursuer, be called as defenders for their interest.".

(3) In rule 3.3 (warrants of citation)–

(a) after paragraph (1)(c) insert–

"(d) an action to which rule 3.2(3) applies,"; and

(b) insert at the end–

"(4) In an action to which rule 3.2(3) applies, the warrant of citation shall be in Form O2A.".

(4) In rule 5.2 (form of citation and certificate)–

(a) at the end of paragraph (1)(b) omit "or";

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

(c) after paragraph (1)(c) insert–

"(d) an action to which rule 3.2(3) applies,"; and

(d) after paragraph (2) insert–

"(2A) In an action to which rule 3.2(3) applies, citation shall be in Form O5A which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.".

(5) After rule 34.11 (service on unnamed occupiers), insert–

"**Applications under the Mortgage Rights (Scotland) Act 2001**

**34.12.**—(1) In an action to which rule 3.2(3) applies, an application under either of the following provisions of the Mortgage Rights (Scotland) Act 2001 shall be made by minute in the action:–

(a) section 1(2) (application to the court for an order under section 2);

(b) section 2(5) (application to vary or revoke an order or to further continue proceedings).

(2) Any such minute may be lodged by a person who is entitled to make an application even although that person has not been called as a defender and such a person may appear or be represented at any hearing to determine the application.".

(6) In Appendix 1 (forms)–

(a) after Form O2 insert Form O2A;

(b) after Form O5 insert Form O5A; and

(c) for Form O6 substitute Form O6,

set out in Schedule 1 to this Act of Sederunt.

(**4**) 2001 asp 11.

**Amendment of the Summary Applications Rules**

**3.**—(1) The Summary Applications Rules shall be amended in accordance with the following paragraphs.

(2) In rule 2.7 (warrants, forms and certificate of citation)–

(a) in paragraph (4)(a), for "paragraph (5)" substitute "paragraphs (5) and (7A)(a)";

(b) in paragraph (4)(b), for "paragraph (7)" substitute "paragraphs (7) and (7A)(b),"; and

(c) after paragraph (7) insert–

"(7A) In a summary application falling within section 1(1)(b) or (c) of the Mortgage Rights (Scotland) Act 2001–

(a) the warrant of citation shall be in Form 6A; and

(b) citation shall be in Form 6B which shall be attached to a copy of the initial writ and warrant of citation.".

(3) After rule 2.22 (applications for time to pay directions), insert–

"**Applications under the Mortgage Rights (Scotland) Act 2001**

**2.22A.**—(1) This rule applies to a summary application to which rule 2.7(7A) applies.

(2) Subject to paragraph (3), an application under either of the following provisions of the Mortgage Rights (Scotland) Act 2001 shall be made by minute in the summary application:–

(a) section 1(2) (application to the court for an order under section 2);

(b) section 2(5) (application to vary or revoke an order or to further continue proceedings).

(3) A defender may apply orally for an order under section 2 when the summary application first calls in court or as the sheriff otherwise directs.

(4) A minute under paragraph (2) may be lodged by a person who is entitled to make an application even although that person has not been called as a defender and such a person may appear or be represented at any hearing to determine the application made in the minute.

(5) Except where the sheriff otherwise directs, any such minute shall be lodged in accordance with, and regulated by, Chapter 14 of the Ordinary Cause Rules.".

(4) In Schedule 1 (forms)–

(a) after Form 6 insert Forms 6A and 6B; and

(b) for Form 7 substitute Form 7,

set out in Schedule 2 to this Act of Sederunt.

Edinburgh,
10th January 2002

*W DOUGLAS CULLEN*
Lord President I.P.D.

## SCHEDULE 1

Paragraph 2(6)

FORM O2AForm of warrant in an action to which rule 3.2(3) applies

**Rule 3.3(4)**

(*Insert place and date*) Grants warrant to cite the defender (*insert name and address*) by serving a copy of the writ and warrant and Form O7 on a period of notice of (*insert period of notice*) days and ordains him [*or* her] if he [*or* she]–

(a) intends to defend the action or make any claim, to lodge a notice of intention to defend with the sheriff clerk at (*insert place of sheriff court*) within the said period of notice after such service [and grants warrant to arrest on the dependence]; or

(b) intends to apply for an order under section 2 of the Mortgage Rights (Scotland) Act 2001, to lodge a minute applying for an order under that section before the conclusion of the proceedings.

[Meantime grants interim interdict *or otherwise as the case may be*.]

FORM O5AForm of citation in an action to which rule 3.2(3) applies