

2001 No. 8

SHERIFF COURT

**Act of Sederunt (Ordinary Cause Rules) Amendment
(Commercial Actions) 2001**

Made

11th January 2001

Coming into force

1st March 2001

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 and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause Rules) Amendment (Commercial Actions) 2001 and shall come into force on 1st March 2001.

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

Amendment of Ordinary Cause Rules 1993

2.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(b) shall be amended in accordance with the following paragraphs.

(2) In Chapter 3 (commencement of causes), for paragraph (1) of rule 3.1 substitute—

“(1) A cause shall be commenced—

- (a) in the case of an ordinary cause, by initial writ in Form G1; or
- (b) in the case of a commercial action within the meaning of Chapter 40, by initial writ in Form G1A.”.

(3) In Chapter 9 (standard procedure in defended cases), insert after rule 9.1(2)—

“(3) This Chapter shall not apply to a commercial action within the meaning of Chapter 40.”.

(4) In Chapter 16 (decrees by default)—

- (a) for “rule” in the first line of rule 16.1, substitute “Chapter”;
- (b) omit the word “or” after rule 16.1(b); and
- (c) insert after rule 16.1(c)—
“; or
- (d) a commercial action within the meaning of Chapter 40.”.

(a) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), and by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2).
(b) 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.

- (5) After Chapter 39 (curators *ad litem*), insert–

**“CHAPTER 40
COMMERCIAL ACTIONS**

Application and interpretation of this Chapter

40.1.—(1) This Chapter applies to a commercial action.

(2) In this Chapter–

- (a) “commercial action” means–
an action arising out of, or concerned with, any transaction or dispute of a commercial or business nature including, but not limited to, actions relating to–
- (i) the construction of a commercial document;
 - (ii) the sale or hire purchase of goods;
 - (iii) the export or import of merchandise;
 - (iv) the carriage of goods by land, air or sea;
 - (v) insurance;
 - (vi) banking;
 - (vii) the provision of services;
 - (viii) a building, engineering or construction contract; or
 - (ix) a commercial lease; and
- (b) “commercial action” does not include an action in relation to consumer credit transactions.

(3) A commercial action may be raised only in a sheriff court where the Sheriff Principal for the sheriffdom has directed that the procedure should be available.

Proceedings before a nominated sheriff

40.2. All proceedings in a commercial action shall be brought before–

- (a) a sheriff of the sheriffdom nominated by the Sheriff Principal; or
- (b) where a nominated sheriff is not available, any other sheriff of the sheriffdom.

Procedure in commercial actions

40.3.—(1) In a commercial action the sheriff may make such order as he thinks fit for the progress of the case in so far as not inconsistent with the provisions in this Chapter.

(2) Where any hearing is continued, the reason for such continuation shall be recorded in the interlocutor.

Election of procedure for commercial actions

40.4. The pursuer may elect to adopt the procedure in this Chapter by bringing an action in Form G1A.

Transfer of action to be a commercial action

40.5.—(1) In an action within the meaning of rule 40.1(2) in which the pursuer has not made an election under rule 40.4, any party may apply by motion at any time to have the action appointed to be a commercial action.

(2) An interlocutor granted under paragraph (1) shall include a direction as to further procedure.

Appointment of a commercial action as an ordinary cause

40.6.—(1) At any time before, or at the Case Management Conference, the sheriff shall appoint a commercial action to proceed as an ordinary cause–

- (a) on the motion of a party where—
 - (i) detailed pleadings are required to enable justice to be done between the parties; or
 - (ii) any other circumstances warrant such an order being made; or
- (b) on the joint motion of parties.

(2) If a motion to appoint a commercial action to proceed as an ordinary action is refused, no subsequent motion to appoint the action to proceed as an ordinary cause shall be considered except on a material change of circumstances.

(3) Where the sheriff orders that a commercial action shall proceed as an ordinary cause the interlocutor granting such shall prescribe—

- (a) a period of adjustment, if appropriate; and
- (b) the date, time and place for any options hearing fixed.

(4) In determining what order to make in deciding that a commercial action proceed as an ordinary cause the sheriff shall have regard to the periods prescribed in rule 9.2.

Special requirements for initial writ in a commercial action

40.7.—(1) Where the construction of a document is the only matter in dispute no pleadings or pleas-in-law require to be included in the initial writ.

(2) There shall be appended to an initial writ in Form G1A a list of the documents founded on or adopted as incorporated in the initial writ.

Notice of Intention to Defend

- 40.8.**—(1) Where the defender intends to—
- (a) challenge the jurisdiction of the court;
 - (b) state a defence; or
 - (c) make a counterclaim,

he shall, before the expiry of the period of notice lodge with the sheriff clerk a notice of intention to defend in Form O7 and shall, at the same time, send a copy to the pursuer.

(2) The lodging of a notice of intention to defend shall not imply acceptance of the jurisdiction of the court.

Defences

40.9.—(1) Where a notice of intention to defend has been lodged, the defender shall lodge defences within 7 days after the expiry of the period of notice.

(2) There shall be appended to the defences a list of the documents founded on or adopted as incorporated in the defences.

(3) Subject to the requirement that each article of condescendence in the initial writ need not be admitted or denied, defences shall be in the form of answers that allow the extent of the dispute to be identified and shall have appended a note of the pleas-in-law of the defender.

Fixing date for Case Management Conference

40.10.—(1) On the lodging of defences, the sheriff clerk shall fix a date and time for a Case Management Conference, which date shall be on the first suitable court day occurring not sooner than 14 days, nor later than 28 days after the date of expiry of the period of notice.

- (2) On fixing the date for the Case Management Conference, the sheriff clerk shall—
 - (a) forthwith intimate to the parties the date and time of the Case Management Conference; and
 - (b) prepare and sign an interlocutor recording that information.

(3) The fixing of the date of the Case Management Conference shall not affect the right of a party to make application by motion, to the court.

Applications for summary decree in a commercial action

40.11. Where a pursuer, in terms of rule 17.2(1) (applications for summary decree), or a defender in terms of rule 17.3(1) (application of summary decree to counterclaims), applies for summary decree in a commercial action, the period of notice mentioned in rule 17.2(3) shall be 48 hours.

Case Management Conference

40.12.—(1) At the Case Management Conference in a commercial action the sheriff shall seek to secure the expeditious resolution of the action.

(2) Parties shall be prepared to provide such information as the sheriff may require to determine—

- (a) whether, and to what extent, further specification of the claim and defences is required; and
- (b) the orders to make to ensure the expeditious resolution of the action.

(3) The orders the sheriff may make in terms of paragraph 2(b) may include but shall not be limited to—

- (a) the lodging of written pleadings by any party to the action which may be restricted to particular issues;
- (b) the lodging of a statement of facts by any party which may be restricted to particular issues;
- (c) allowing an amendment by a party to his pleadings;
- (d) disclosure of the identity of witnesses and the existence and nature of documents relating to the action or authority to recover documents either generally or specifically;
- (e) the lodging of documents constituting, evidencing or relating to the subject matter of the action or any invoices, correspondence or similar documents;
- (f) the exchanging of lists of witnesses;
- (g) the lodging of reports of skilled persons or witness statements;
- (h) the lodging of affidavits concerned with any of the issues in the action;
- (i) the lodging of notes of arguments setting out the basis of any preliminary plea;
- (j) fixing a debate or proof, with or without any further preliminary procedure, to determine the action or any particular aspect thereof;
- (k) the lodging of joint minutes of admission or agreement;
- (l) recording admissions made on the basis of information produced; or
- (m) any order which the sheriff thinks will result in the speedy resolution of the action (including the use of alternative dispute resolution), or requiring the attendance of parties in person at any subsequent hearing.

(4) In making any order in terms of paragraph (3) the sheriff may fix a period within which such order shall be complied with.

(5) The sheriff may continue the Case Management Conference to a specified date where he considers it necessary to do so—

- (a) to allow any order made in terms of paragraph (3) to be complied with; or
- (b) to advance the possibility of resolution of the action.

(6) Where the sheriff makes an order in terms of paragraph (3) he may ordain the pursuer to—

- (a) make up a record; and
 - (b) lodge that record in process,
- within such period as he thinks fit.

Lodging of productions

40.13. Prior to any proof or other hearing at which the documents listed in terms of rules 40.7(2) and 40.9(2) are to be referred to parties shall, in addition to lodging the productions in terms of rule 21.1, prepare, for the use of the sheriff, a working bundle in which the documents are arranged chronologically or in another appropriate order.

Hearing for further procedure

40.14. At any time before final judgement, the sheriff may–

- (a) of his own motion or on the motion of any party, fix a hearing for further procedure; and
- (b) make such other order as he thinks fit.

Failure to comply with rule or order of sheriff

40.15. Any failure by a party to comply timeously with a provision in this Chapter or any order made by the sheriff in a commercial action shall entitle the sheriff, of his own motion–

- (a) to refuse to extend any period for compliance with a provision in these Rules or an order of the court;
 - (b) to dismiss the action or counterclaim, as the case may be, in whole or in part;
 - (c) to grant decree in respect of all or any of the craves of the initial writ or counterclaim, as the case may be; or
 - (d) to make an award of expenses,
- as he thinks fit.

Determination of action

40.16. It shall be open to the sheriff, at the end of any hearing, to restrict any interlocutor to a finding.

Parts of Process

40.17. All parts of process lodged in a commercial action shall be clearly marked “Commercial Action”.

(6) In Appendix 1 (forms), after Form G1 insert Form G1A as set out in the Schedule to this Act of Sederunt.

RODGER OF EARLSFERRY
Lord President,
I.P.D.

Edinburgh
11th January 2001

SCHEDULE

Rule 3.1(1)(b) and 40.4

FORM G1A

Form of initial writ in a commercial action

SHERIFFDOM OF *(insert name of sheriffdom)*
AT *(insert place of sheriff court)*

COMMERCIAL ACTION

[A.B.] *(design and state any special capacity in which the pursuer is suing)*. Pursuer.

Against

[C.D.] *(design and state any special capacity in which the defender is being sued)*. Defender.

[A.B.] for the Pursuer craves the Court *(specify the orders sought)*

CONDESCENDENCE

(provide the following, in numbered paragraphs–

- *information sufficient to identify the transaction or dispute from which the action arises;*
- *a summary of the circumstances which have resulted in the action being raised; and*
- *details setting out the grounds on which the action proceeds.)*

Note: *Where damages are sought, the claim may be summarised in the pleadings–*

- *in the form of a statement of damages; or*
- *by lodging with the initial writ a schedule detailing the claim.*

PLEAS-IN-LAW

(state in numbered sentences)

Signed
[A.B.], Pursuer
or [X.Y.], Solicitor for the
Pursuer *(state designation
and business address)*

EXPLANATORY NOTE

(This note does not form part of the Act of Sederunt)

This Act of Sederunt inserts a new Chapter (Chapter 40) into the Ordinary Cause Rules 1993 (S.I. 1993/1956) (“the Rules”) to make provision for a new category of actions (commercial actions) (paragraph 2(5)). The rules comprising the new Chapter 40 provide as follows:–

rule 40.1 defines a commercial action;

rule 40.2 provides for who may hear a commercial action;

rules 40.3-40.6 and 40.13-40.17 provide for various matters of procedure in commercial actions;

rules 40.7-40.9 provide for certain aspects of pleading in commercial actions;

rules 40.10 and 40.12 provide for a Case Management Conference, which will be held in place of an Options Hearing in commercial actions; and

rule 40.11 specifies the period of notice for applications for summary decree in commercial actions as 48 hours.

In addition, the Act of Sederunt makes the following consequential amendments to existing chapters of the Rules–

- (a) replaces rule 3.1(1) in Chapter 3 (commencement of causes) with a new provision requiring commercial actions to be brought in new Form G1A (paragraph 2(2)); and
- (b) disapplies–
 - (i) Chapter 9 (standard procedure in defended cases) (paragraph 2(3)); and
 - (ii) Chapter 16 (decrees by default) (paragraph 2(4)),

from commercial actions.

Separately, it makes a minor amendment to Rule 16.1 to replace the word “rule” with the word “Chapter” (paragraph 2(4)(a)).

The Act of Sederunt also inserts new Form G1A into Appendix 1 to the Rules (paragraph 2(6) and the Schedule).

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(Commercial Actions) 2001

£2.00

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Published and printed in the UK by The Stationery Office Limited under the authority and
superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and
Queen's Printer of Acts of Parliament
500 01/01 19593

ISBN 0-11-059557-2



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