

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**

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(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 (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(b) 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(c) and a rule referred to by number in 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.

(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), 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).
(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 and 2001/8 and 144.
(c) S.I. 1999/929, as amended by S.S.I. 2000/148 and 387 and 2001/142.

- (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(a), 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.

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.

W DOUGLAS CULLEN
Lord President
I.P.D.

Edinburgh,
10th January 2002

SCHEDULE 1

Rule 3.3(4)

FORM O2A

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

(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.*]

Rule 5.2(2A)

FORM O5A

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

CITATION

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

Court Ref No:

(Insert place and date). You [C.D.], are hereby served with this copy writ and warrant, with Form O7 (notice of intention to defend).

Form O7 is served on you for your use should you wish to intimate an intention to defend this action.

IF YOU WISH TO DEFEND THIS ACTION you should consult a solicitor with a view to lodging a notice of intention to defend (Form O7). The notice of intention to defend, together with the court fee of £ *(insert amount)*, must be lodged with the Sheriff Clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed NB Rule 5.3(2) relating to postal service)*.

A copy of any notice of intention to defend should be sent to the Solicitor for the pursuer at the same time as your notice of intention to defend is lodged with the Sheriff Clerk.

IF YOU WISH TO MAKE AN APPLICATION FOR AN ORDER UNDER SECTION 2 OF THE MORTGAGE RIGHTS (SCOTLAND) ACT 2001 you should consult a solicitor with a view to lodging a minute applying for an order under that section. The minute, together with the court fee of £ *(insert amount)*, must be lodged with the Sheriff Clerk at the above address before the conclusion of the proceedings.

IF YOU ARE UNCERTAIN AS TO 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 regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed
[P.Q.], Sheriff Officer,
or [X.Y.] *(add designation and business address)*
Solicitor for the Applicant

Rule 5.2(3)

FORM O6

Form of certificate of citation

CERTIFICATE OF CITATION

(Insert place and date) I, _____ hereby certify that upon the _____ day of _____ I duly cited [C.D.], Defender, to answer to the foregoing writ. This I did by *(state method of service; if by officer and not by post, add: in presence of [L.M.], (insert designation), witness hereto with me subscribing; and where service executed by post state whether by registered post or the first class recorded delivery service)*.

(In actions in which a time to pay direction may be applied for, state whether Form O2 and Form O3 were sent in accordance with rule 3.3).

(In actions to which rule 3.2(3) applies, state whether Form O2A was sent in accordance with rule 3.3).

Signed
[P.Q.], Sheriff officer
[L.M.], witness
or [X.Y.]. *(add designation and business address)*
Solicitor for the pursuer

SCHEDULE 2

Rule 2.7(7A)(a)

FORM 6A

Form of warrant of citation in an application to which rule 2.7(7A) applies

(Insert place and date). Grants warrant to cite the defender *(insert name and address)* by serving a copy of the writ and warrant together with Form 6B [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 answer within the Sheriff Court House *(insert place and address of sheriff court)* [in Room No , *or in chambers, or otherwise, as the case may be*] on the day of at o'clock noon] [*or otherwise, as the case may be*]; or
- (b) intends to apply for an order under section 2 of the Mortgage Rights (Scotland) Act 2001 to be present or represented at that diet.

Rule 2.7(7A)(b)

FORM 6B

Form of citation in an application to which rule 2.7(7A) applies

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

Court ref. no:

(Insert place and date). You [C.D.], are hereby served with this copy writ and warrant, and you are required to answer it.

IF YOU WISH TO MAKE AN APPLICATION FOR AN ORDER UNDER SECTION 2 OF THE MORTGAGE RIGHTS (SCOTLAND) ACT 2001 you should be present or represented at the diet on *(insert date and time)* within *(insert name and address of sheriff court)*

IF YOU ARE UNCERTAIN AS TO 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 regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed
[P.Q.], Sheriff Officer,
or [X.Y.] *(add designation and business address)*
Solicitor for the Applicant

Rule 2.7(8)

FORM 7

Form of certificate of citation

CERTIFICATE OF CITATION

(Insert place and date) I, _____ hereby certify that upon the _____ day of _____ I duly cited [C.D.], Defender, to answer the foregoing writ. I did this by *(state method of service; [if by officer and not by post, add: in the presence of [L.M.], (insert designation), witness hereto with me subscribing;] and where service executed by post state whether by registered post or the first class recorded delivery service)*.

(In actions in which a time to pay direction may be applied for, state whether Form 4 and Form 5 were sent in accordance with rule 2.7(5) and (6).)

(In actions in 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).)

Signed
[P.Q.], Sheriff Officer
[L.M.], witness
or [X.Y.] *(add designation and
business address)*
Solicitor for the Pursuer

EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause Rules and the Summary Applications Rules so as to regulate proceedings in which an order under section 2 of the Mortgage Rights (Scotland) Act 2001 (“the 2001 Act”) may be applied for by a defender (being applications under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 and proceedings under section 5 of the Heritable Securities (Scotland) Act 1894).

The Ordinary Cause Rules are amended as follows:–

- (a) Rule 3.2 is amended by inserting a new provision requiring the initial writ in a relevant action to include averments about those persons who appear to the pursuer to be entitled to apply for such an order and requiring such persons so far as known to the pursuer to be called as defenders for their interest (paragraph 2(2)).
- (b) Rule 3.3 is amended so that the warrant of citation in a relevant action is in a particular form (form O2A) (paragraph 2(3)).
- (c) Rule 5.2 is amended so that the form of citation in a relevant action is in a particular form (form O5A) (paragraph 2(4)).
- (d) A new rule 34.12 is inserted to provide a procedure to be followed when a person wishes to apply for an order under section 2 of the 2001 Act (paragraph 2(5)).
- (e) Paragraph 2(6) inserts the new forms O2A and O5A. It also substitutes the form of certificate of citation in an action (form O6) with a new form that includes a reference to the sending of a form O2A.

The Summary Applications Rules are amended as follows:–

- (a) Rule 2.7 is amended so that the warrant and form of citation in a relevant action are in particular forms (forms 6A and 6B) (paragraph 3(2)).
- (b) A new rule 22.2A is inserted so as to provide a procedure to be followed when a person wishes to apply for an order under section 2 of the 2001 Act (paragraph 3(3)).
- (c) Paragraph 3(4) inserts the new forms 6A and 6B. It also substitutes the form of certificate of citation in an application (form 7) with a new form that includes a reference to the sending of a form 6B.

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