

2006 No. 198

SHERIFF COURT

Act of Sederunt (Sheriff Court Caveat Rules) 2006

Made - - - - *3rd April 2006*

Coming into force - - *28th April 2006*

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 Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Caveat Rules) 2006 and shall come into force on 28th April 2006.

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

Orders against which caveats may be lodged

2.—(1) Subject to paragraphs (2) and (3), a person may lodge a caveat against only—

- (a) an interim interdict sought against the person in an ordinary cause before the person has lodged a notice of intention to defend;
- (b) an interim order sought against the person in an ordinary cause before the expiry of the period within which the person could lodge a notice of intention to defend;
- (c) an interim order sought against the person in a summary application before service of the initial writ;
- (d) an order for intimation, service and advertisement of a petition to wind up, or appoint an administrator to, a company in which he has an interest;
- (e) an order for intimation, service and advertisement of a petition for his sequestration; and
- (f) the disposal of a commissary application.

(2) In this rule—

- (a) “interim order” does not include an order under section 1 of the Administration of Justice (Scotland) Act 1972 (orders for inspection of documents and other property etc.);^(b) and
- (b) “commissary application” means an application for—
 - (i) confirmation;
 - (ii) appointment of an executor; or

^(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 2001 (asp 4), Schedule 5, paragraph 13, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2) and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49.

^(b) 1972 c.59.

(iii) restriction of caution in respect of an executor.

(3) A person may lodge a caveat against an order mentioned in paragraph (1)(d) only where the person is a company, debenture holder, holder of a floating charge, receiver, shareholder of the company or other person claiming an interest.

Form, lodging and renewal of caveats

3.—(1) A caveat shall be in the form set out in the Schedule to this Act of Sederunt, or a form substantially to the same effect with such variation as circumstances may require, and shall be lodged with the sheriff clerk.

(2) A caveat shall remain in force for a period of one year from the date on which it was lodged and may be renewed on its expiry for a further period of one year and yearly thereafter.

(3) An application for the renewal of a caveat shall be made in writing to the sheriff clerk not less than 7 days before its expiry.

(4) Where a caveat has been lodged and has not expired, no order in respect of which the caveat was lodged may be pronounced unless the sheriff is satisfied that all reasonable steps have been taken to afford the person lodging the caveat an opportunity of being heard; and the sheriff may continue the hearing on such an order until he is satisfied that such steps have been taken.

Amendments

4.—(1) Rule 20 of the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986(a) shall be omitted.

(2) Chapter 4 of, and Form G2 in Appendix 1 to, the Ordinary Cause Rules 1993 in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(b) shall be omitted.

(3) Rules 2.8 and 2.9 of, and Form 8 in Schedule 1 to, the Act of Sederunt (Summary Applications, Statutory Applications, and Appeals etc. Rules) 1999(c) shall be omitted.

Transitional and savings provision

5.—(1) Subject to paragraph (2), nothing in this Act of Sederunt shall affect a caveat lodged prior to 28th April 2006.

(2) A caveat lodged prior to 28th April 2006 may not be renewed unless the caveat complies with the requirements of this Act of Sederunt.

BRIAN GILL
Lord Justice Clerk,
I.P.D.

Edinburgh,
3rd April 2006

(a) S.I. 1986/2297, last amended by S.S.I. 2003/388.

(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 566, 2003/25 and 26, 2004/197 and 350, 2005/20 and 189.

(c) S.I. 1999/929, amended by S.S.I. 2000/148 and 387, 2001/142, 2002/7, 129, 130, 146 and 563, 2003/26, 27, 98, 261, 316, 346 and 556 and 2004/197, 222, 334 and 455 and 2005/61.

SCHEDULE

Rule 3(1)

Form of Caveat

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

CAVEAT for [A.B.] *(insert designation and address*)*

Should any application be made for *(here specify, under reference to sub-paragraphs of rule 2(1), the application(s) to which this caveat is to apply)* [before the lodging of a notice of intention to defend [*or (specify for each application which of the following alternatives is to apply: the expiry of the period within which a notice of intention to defend may be lodged; before service of the initial writ or petition)*]], it is requested that intimation be made to the caveator before any order is pronounced.

Date *(insert date)*

Signed

[A.B.]

or [X.Y.] Solicitor for [A.B.] (add designation, business address and email address)

Caveator's telephone and fax number *(insert where caveat is not lodged by solicitors)*

Solicitor *(insert name and address, telephone and fax number and reference)*

Out of hours contacts:

1. *(insert name and telephone number)*
2. *(insert name and telephone number)*

*State whether the caveat is lodged in an individual capacity, or a specified representative capacity (e.g. as a trustee of a named trust) or both. Where appropriate, state the nature of the caveator's interest (e.g. shareholder, debenture holder).

EXPLANATORY NOTE

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

This Act of Sederunt sets out the rules for lodging caveats in the sheriff court.

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