

**2006 No. 206**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session Amendment  
No. 3) (Family Law (Scotland) Act 2006) 2006**

*Made* - - - - - *12th April 2006*

*Coming into force* - - - - - *4th May 2006*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(a) and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation and commencement**

**1.**—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Family Law (Scotland) Act 2006) 2006 and shall come into force on 4th May 2006.

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

**Amendment of the Rules of the Court of Session**

**2.**—(1) The Rules of the Court of Session 1994(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 49.1(1)(interpretation of Chapter 49: family actions)(c), after sub-paragraph (p) there shall be inserted the following:—

“(q) an application under section 28 or 29 of the Family Law (Scotland) Act 2006 (financial provision for former co-habitants).”.

(3) In rule 49.8 (warrants for intimation in family actions)(d)—

(a) in paragraph (1), for the sub-paragraphs following sub-paragraph (l) there shall be substituted—

“(m) in an action where the pursuer makes an application for an order under Chapter 3 of Part 3 of the CP Act of 2004 where the application is under section 102(1)(e), 102(4)(a), 103(1), 103(2), 104, 107 or 112 of that Act and the entitled civil partner is a tenant or occupies the family home by permission of a third party, to the landlord or the third party, as the case may be, in the following terms:—  
“Warrant to intimate to (*name and address*) as a person with an interest in the order sought in the (*number*) conclusion of this summons;

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(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3) and by the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45.

(b) S.I. 1994/1443, last amended by S.S.I. 2006/199.

(c) Rule 49.1 was amended by S.I. 1996/2587 and S.S.I. 2005/193 and 632.

(d) Rule 49.8 was amended by S.S.I. 2005/632 and 2006/83.

- (n) in an action where the pursuer makes an application for an order under section 29(2) of the Act of 2006 (application by survivor for provision on intestacy) to any person having an interest in the deceased's net intestate estate, in the following terms:– “Warrant to intimate to (*name and address*) as a person having an interest in the deceased's net intestate estate referred to in the condescendence attached to this summons.”; and
- (b) for paragraph (2) there shall be substituted–  
“(2) Expressions used in–  
(i) paragraph (1)(k) which are also used in the Act of 1981;  
(ii) paragraph (1)(m) which are also used in the CP Act of 2004; and  
(iii) paragraph (1)(n) which are also used in section 29 of the Act of 2006,  
have the meanings given in those Acts, or that section, as the case may be.”;
- (c) in paragraph (3), for the sub-paragraphs following sub-paragraph (l) there shall be substituted–  
“(m) under–  
(i) paragraph (1)(l)(i) (orders for pension lump sums) in Form 49.8-M; and  
(ii) paragraph (1)(l)(ii) (person sharing orders), in Form 49.8MA;  
(n) under paragraph (1)(m) (order sought under Chapter 3 of Part 3 of the CP Act of 2004), in Form 49.8-O; and  
(o) under paragraph (1)(n)(order under section 29 of the Act of 2006), in Form 49.8-P”.
- (4) In rule 49.14(1) (notices in certain actions of divorce or separation)(a)–  
(a) in sub-paragraph (a), for “two years” there shall be substituted “one year”; and  
(b) in sub-paragraph (b), for “five” there shall be substituted “two”.
- (5) In rule 49.14A (notices in certain actions of dissolution of civil partnership or separation of civil partners)(b)–  
(a) in sub-paragraph (a), for “two years” there shall be substituted “one year”; and  
(b) in sub-paragraph (b), for “five” there shall be substituted “two”.
- (6) In rule 49.17(2)(b) (appointment of curators *ad litem* to defenders)(c), for “two years” there shall be substituted “one year”.
- (7) In rule 49.19(1) (notices of consent to divorce, separation, dissolution of civil partnership or separation of civil partners)(d), for “two years” there shall be substituted “one year”.
- (8) In rule 49.26(1)(c)(ii) (intimation to local authority before supervised contact order)(e), “to” where it second occurs shall be omitted.
- (9) After rule 49.27B (corrected gender recognition certificate)(f) there shall be inserted–

**“Applications for postponement of decree under section 3A of the Act of 1976**

**49.27C.** An application under section 3A(1) (application for postponement of decree where religious impediment to remarry exists) or section 3A(4) (application for recall of postponement) of the Act of 1976(g) shall be made by minute in the process of the action to which the application relates.”.

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(a) Rule 49.14(1) was amended by S.S.I. 2005/193.  
(b) Rule 49.14A was inserted by S.S.I. 2005/632.  
(c) Rule 49.17 was amended by S.S.I. 2005/632.  
(d) Rule 49.19 was amended by S.S.I. 2005/632.  
(e) Rule 49.26 was amended by S.I. 1996/2587.  
(f) Rule 49.27B was inserted by S.S.I. 2005/193.  
(g) Section 3A was inserted by the Family Law (Scotland) Act 2006 (asp 2), section 15.

(10) In rule 49.66 (defenders in causes under the Matrimonial Homes (Family Protection) (Scotland) Act 1981)–

(a) in paragraph (b), “and” shall be omitted; and

(b) after paragraph (c), there shall be inserted–

“; and

(d) where the application is made under section 18A of the Act of 1981 (application for domestic interdict) **(a)**, the other partner.”.

(11) In rule 49.67(1) (applications by motion under the Act of 1981), sub-paragraphs (d) and (e) shall be omitted.

(12) Rule 49.70 (certificates of execution of delivery of documents to chief constable) shall be omitted.

(13) In rule 49.71D(1) (applications by motion under Chapters 3 and 4 of the Civil Partnership Act 2004)**(b)**, sub-paragraphs (d) and (e) shall be omitted.

(14) Rule 49.71G (certificates of intimation of execution of delivery to the chief constable)**(c)** shall be omitted.

(15) In rule 49.72(1) (application and interpretation of, and directions under Part XI of Chapter 49: simplified divorce applications)**(d)**–

(a) in sub-paragraph (a)–

(i) for “two years” there shall be substituted “one year”; and

(ii) for “five” there shall be substituted “two”;

(b) in sub-paragraph (e) “and” shall be omitted; and

(c) after sub-paragraph (f) there shall be inserted–

“; and

(g) there is no religious impediment to the remarriage of either party in terms of section 3A of the Act of 1976**(e)**.”

(16) In rule 49.73 (form of applications for simplified divorce)–

(a) in paragraph (1), for “two years” there shall be substituted “one year”; and

(b) in paragraph (2), for “five” there shall be substituted “two”.

(17) In rule 49.75(2) (warrants for service or intimation of simplified divorce applications)**(f)**, for “five” there shall be substituted “two”.

(18) In rule 49.76(3) (execution of service or intimation of simplified divorce applications)**(g)**–

(a) for “two years” there shall be substituted “one year”; and

(b) for “five” there shall be substituted “two”.

(19) In rule 49.80A (application and interpretation of, and directions made under Part XIA of Chapter 49: simplified applications for dissolution of civil partnerships)**(h)**–

(a) in paragraph (1), before “family” there shall be inserted “the”; and

(b) in paragraph (2)**(a)**–

(i) for “two years” there shall be substituted “one year”; and

(ii) for “five” there shall be substituted “two”.

(20) In rule 49.80B (form of application for simplified dissolution of a civil partnership)**(i)**–

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**(a)** Section 18A was inserted by the Family Law (Scotland) Act 2006 (asp 2), section 31.

**(b)** Rule 49.71D was inserted by S.S.I. 2005/632, paragraphs (d) and (e) shall be omitted.

**(c)** Rule 49.71G was inserted by S.S.I. 2005/632.

**(d)** Rule 49.72 was amended by S.S.I. 2005/632.

**(e)** Section 3A was inserted by section 15 of the Family Law (Scotland) Act 2006.

**(f)** Rule 49.75 was amended by S.S.I. 2005/632.

**(g)** Rule 49.76 was amended by S.S.I. 2005/632.

**(h)** Rule 49.80A was inserted by S.S.I. 2005/632.

**(i)** Rule 49.80B was inserted by S.S.I. 2005/632.

(a) in paragraph (1), for “two years” there shall be substituted “one year”; and

(b) in paragraph (2), for “five” there shall be substituted “two”.

(21) In rule 49.80D(2) (warrants for service or intimation of simplified dissolution applications)(a), for “five” there shall be substituted “two”.

(22) In rule 49.80E(3) (execution of service or intimation of simplified dissolution application)(b)–

(a) for “two years” there shall be substituted “one year”; and

(b) for “five” there shall be substituted “two”.

(23) After rule 49.89 (management of child’s property by virtue of section 9(5)(a) or 11(2)(g) of the Children (Scotland) Act 1995) there shall be inserted–

## “PART XVA

### APPLICATION BY SURVIVOR FOR PROVISION ON INTESTACY

**49.90.**—(1) The applicant for an order under section 29(2) of the Act of 2006 (application by survivor for provision on intestacy) shall call the deceased’s executor as a defender.

(2) An application under section 29(9) of the Act of 2006 for variation of the date or method of payment of the capital sum shall be made by minute in the process of the action to which the application relates.

(3) Words and expressions used in this Part shall have the same meaning as in section 29 of the Act of 2006.”.

(24) In rule 85.2(2) (attachment of power of arrest to interdict), after “section 1(2)” there shall be inserted “or (1A)(c)”.

(25) In the appendix–

(a) after Form 49.8–O(d) there shall be inserted the form set out in the Schedule to this Act of Sederunt;

(b) in Form 49.14–A(e), in paragraph 1, for “two years” there shall be substituted “one year”;

(c) in Form 49.14–C, in paragraph 1, for “two years” there shall be substituted “one year”;

(d) in Form 49.14–E(f)–

(i) in the heading, for “five” there shall be substituted “two”; and

(ii) in paragraph 1–

(aa) for “five” there shall be substituted “two”; and

(bb) the words from “unless” to the end of that paragraph shall be omitted;

(e) in Form 49.14–F(g)–

(i) in the heading, for “five” there shall be substituted “two”; and

(ii) in paragraph (1)–

(aa) for “five” there shall be substituted “two”; and

(bb) the words from “unless” to the end of that paragraph shall be omitted;

(f) in Form 49.14A–A(h), in paragraph 1, for “two years” there shall be substituted “one year”;

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(a) Rule 49.80D was inserted by S.S.I. 2005/632.

(b) Rule 49.80E was inserted by S.S.I. 2005/632.

(c) Section 1(1A) was inserted by section 32 of the Family Law (Scotland) Act 2006.

(d) Form 49.8–O was inserted by S.S.I. 2005/632.

(e) Form 49.14–A was amended by S.I. 1994/2901 and 1996/2587.

(f) Form 49.14–E was amended by S.I. 1994/2901 and 1996/2587.

(g) Form 49.14–F was amended by S.I. 1994/2901 and 1996/2587.

(h) Form 49.14A–A was inserted by S.S.I. 2005/632.



- (n) in Form 49.76–A, in the heading in block capitals, for “two years” there shall be substituted “one year”;
- (o) in Form 49.76–B–
  - (i) in the heading in block capitals, for “five” there shall be substituted “two”;
  - (ii) in the first paragraph, for “five” there shall be substituted “two”; and
  - (iii) paragraph 1(b) shall be omitted;
- (p) in Form 49.76–C, in the heading in block capitals, for “five” there shall be substituted “two”;
- (q) in Form 49.80B–A(a)–
  - (i) in the heading in block capitals, for “two years” there shall be substituted “one year”;
  - (ii) in the notes on section 5 of Part 1–
    - (aa) for “two years” wherever it appears there shall be substituted “one year”;
    - (bb) for “two years” there shall be substituted “one year’s”; and
    - (cc) for “two year” wherever it appears there shall be substituted “one year”;
  - (iii) in section 5 of Part 1, for “2 years” there shall be substituted “1 year”;
  - (iv) in section 8 of Part 1, for “illness or deficiency” there shall be substituted “mental illness, personality disorder or learning disability”; and
  - (v) in paragraph (b) of Part 2, for “two years” there shall be substituted “one year”;
- (r) in Form 49.80B–B(b)–
  - (i) in the heading in block capitals, for “five” there shall be substituted “two”;
  - (ii) in the notes on section 7 of Part 1, for “5” wherever it appears there shall be substituted “2”;
  - (iii) in section 7 of Part 1, for “5½” there shall be substituted “2½”;
  - (iv) in section 9 of Part 1, for “illness or deficiency” there shall be substituted “mental illness, personality disorder or learning disability”; and
  - (v) in section 12 of Part 1, the words from “I believe” to “application” shall be omitted;
- (s) in Form 49.80B–C(c), in section 8 of Part 1, for “illness or deficiency” there shall be substituted “mental illness, personality disorder or learning disability”;
- (t) in Form 49.80E–A(d), in the heading in block capitals, for “two years” there shall be substituted “one year”;
- (u) in Form 49.80E–B(e)–
  - (i) in the heading in block capitals, for “five” there shall be substituted “two”;
  - (ii) in the first paragraph, for “five” there shall be substituted “two”; and
  - (iii) paragraph 1(b) shall be omitted; and

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(a) Form 49.80B–A was inserted by S.S.I. 2005/632.  
 (b) Form 49.80B–A was inserted by S.S.I. 2005/632.  
 (c) Form 49.80B–C was inserted by S.S.I. 2005/632.  
 (d) Form 49.80E–A was inserted by S.S.I. 2005/632.  
 (e) Form 49.80E–B was inserted by S.S.I. 2005/632.

(v) in Form 49.80E–D(a), in the heading in block capitals, for “five” there shall be substituted “two”.

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

Edinburgh  
12th April 2006

## SCHEDULE

Paragraph 2(25)(a)

FORM 49.8-P

Rule 49.8(3)(o)

### **Form of intimation of application for financial provision on intestacy under section 29(2) of the Family Law (Scotland) Act 2006**

Date: *(date of posting or other method of intimation)*

To: *(insert name and address as in warrant for intimation)*

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. The pursuer is seeking an order for financial provision on intestacy under section 29(2) of the Family Law (Scotland) Act 2006.

You may apply by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh, EH1 1RQ within [21] days after the date of intimation to you of the summons [*or if the warrant for intimation is executed before the calling of the summons*, within seven days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date situation at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

*(Signed)*

Messenger-at-Arms

[*or Solicitor [or Agent] for pursuer*]

*(Address)*



## **EXPLANATORY NOTE**

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

This Act of Sederunt amends the Rules of the Court of Session 1994 (S.I. 1994/1443) in consequence of the Family Law (Scotland) Act 2006 (“the 2006 Act”). In particular, it makes changes to the rules as a result of the reduction in the separation periods for divorce and the amendments made to the Protection of Abuse (Scotland) Act 2005 in respect of the attachment of powers of arrest to matrimonial interdicts and relevant interdicts under the Civil Partnership Act 2004. It also makes provision for applications under sections 28 and 29 of the 2006 Act for orders for financial provision where cohabitation ends otherwise than by death and on intestacy. Consequential changes are also made to the forms set out in the appendix to the rules.

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No. 3) (Family Law (Scotland) Act 2006) 2006

**£3.00**

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