

2006 No. 410

SHERIFF COURT

**Act of Sederunt (Ordinary Cause and Summary Application
Rules) Amendment (Miscellaneous) 2006**

Made - - - - - *21st July 2006*

Coming into force - - - - - *18th August 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 that Act, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause and Summary Application Rules) Amendment (Miscellaneous) 2006 and shall come into force on 18th August 2006.

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

Amendment of Ordinary Cause Rules

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 sub-paragraphs.

(2) For rule 9.2A (second or subsequent Options Hearing)(c) there shall be substituted the following:—

“Alteration of date for Options Hearing

9.2A.—(1) Subject to paragraph (2), at any time before the date and time fixed under rule 9.2 (fixing date for Options Hearing) or under this rule, the sheriff—

- (a) may, of his own motion or on the motion of any party—
 - (i) discharge the Options Hearing; and
 - (ii) fix a new date and time for the Options Hearing; 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 2000 (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) 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, 189, 638 and 648 and 2006/207 and 293.

(c) Rule 9.2A was inserted by S.I. 1996/2445.

- (b) shall, on the joint motion of the parties–
 - (i) discharge the Options Hearing; and
 - (ii) fix a new date and time for the Options Hearing.
- (2) The date and time to be fixed–
 - (a) under paragraph (1)(a)(ii) may be earlier or later than the date and time fixed for the discharged Options Hearing;
 - (b) under paragraph (1)(b)(ii) shall be earlier than the date and time fixed for the discharged Options Hearing.
- (3) Where the sheriff is considering making an order under paragraph (1)(a) of his own motion and in the absence of the parties, the sheriff clerk shall–
 - (a) fix a date, time and place for the parties to be heard; and
 - (b) inform the parties of that date, time and place.
- (4) The sheriff may discharge a hearing fixed under paragraph (3) on the joint motion of the parties.
- (5) On the discharge of the Options Hearing under paragraph (1), the sheriff clerk shall forthwith intimate to all parties–
 - (a) that the Options Hearing has been discharged under paragraph (1)(a) or (b), as the case may be;
 - (b) the last date for lodging defences, if appropriate;
 - (c) the last date for adjustment, if appropriate; and
 - (d) the new date and time fixed for the Options Hearing under paragraph (1)(a) or (b), as the case may be.
- (6) Any reference in these Rules to the Options Hearing or a continuation of it shall include a reference to an Options Hearing for which a date and time has been fixed under this rule.”.
- (3) At the end of rule 9.12 (options hearing) there shall be inserted the following:–
 - “(8) Where the cause is appointed, under paragraph (3), to a proof or proof before answer, the sheriff shall consider whether a pre-proof hearing should be fixed under rule 28A.1”.
- (4) In rule 10.6 (procedural hearing)–
 - (a) in paragraph (4)–
 - (i) for the words from “rule” to “action)” there shall be substituted “rules 16.2 (decrees where party in default), 33.37 (decree by default in family action) and 33A.37 (decree by default in civil partnership action)(a)”;
 - (ii) for “that rule” there shall be substituted “those rules”;
 - (b) at the end there shall be inserted the following:–
 - “(5) Where the cause is appointed, under paragraph (3), to a proof or proof before answer, the sheriff shall consider whether a pre-proof hearing should be fixed under rule 28A.1”.
- (5) In rule 16.2 (decrees where party in default)–
 - (a) in paragraph (1)(b) “or” shall be omitted;
 - (b) after paragraph (1)(c) there shall be inserted the following:–
 - “; or
 - (d) otherwise to comply with any requirement imposed upon that party by these Rules”;

(a) Rule 33A.7 was inserted by S.S.I. 2005/638.

- (c) for paragraph (2) there shall be substituted—
 - “(2) Where a party is in default the sheriff may, as the case may be—
 - (a) grant decree as craved with expenses;
 - (b) grant decree of absolvitor with expenses;
 - (c) dismiss the cause with expenses; or
 - (d) make such other order as he thinks fit to secure the expeditious progress of the cause.”.
- (6) After Chapter 28 (recovery of evidence) there shall be inserted the following:—

“CHAPTER 28A PRE-PROOF HEARING

Pre-proof hearing

28A.1.—(1) On the appointment of a cause to a proof before answer or thereafter on the motion of any party or of his own motion, the sheriff may appoint the cause to a pre-proof hearing.

(2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.

(3) At a pre-proof hearing the sheriff shall ascertain, so far as is reasonably practicable, whether the cause is likely to proceed to proof on the date fixed for that purpose and, in particular—

- (a) the state of preparation of the parties; and
- (b) the extent to which the parties have complied with their duties under rules 9A.2, 9A.3, 29.11 and 29.15 and any orders made by the sheriff under rules 9.12(3)(a) or (b) or 10.6(3)(a) or (b).

(4) At a pre-proof hearing the sheriff may—

- (a) discharge the proof or proof before answer and fix a new date for such proof or proof before answer;
- (b) adjourn the pre-proof hearing; or
- (c) make such other order as he thinks fit to secure the expeditious progress of the cause.

(5) For the purposes of rules 16.2 (decrees where party in default), 33.37 (decree by default in family action) and 33A.37 (decree by default in civil partnership action), a pre-proof hearing shall be a diet in accordance with those rules.”.

- (7) In rule 29.4 (renouncing probation)—
 - (a) in paragraph (1) for “, on or at any time after, the closing of the record,” there shall be substituted “at any time”; and
 - (b) in paragraph (2), for “order a debate” there shall be substituted “make such order as he thinks fit to secure the expeditious progress of the cause”.
- (8) In rule 29.11(1) (time limit for lodging productions), for “14” there shall be substituted “28”.
- (9) In rule 33.37 (family actions: decree by default)—
 - (a) in paragraph (1)(b) “or” shall be omitted;
 - (b) after paragraph (1)(c) there shall be inserted the following:—
 - “, or
 - (d) otherwise to comply with any requirement imposed upon that party by these Rules”;

- (c) in paragraph (2)(d), for “and” there shall be substituted “or”; and
 - (d) after paragraph (2)(d) there shall be inserted the following:–
 - “(da) make such other order as he thinks fit to secure the expeditious progress of the cause; and”.
- (10) In rule 33A.37 (civil partnership actions: decree by default)–
- (a) in paragraph (1)(b) “or” shall be omitted;
 - (b) after paragraph (1)(c) there shall be inserted the following:–
 - “or
 - (d) otherwise to comply with any requirement imposed upon that party by these Rules”;
 - (c) in paragraph (2)(d), for “and” there shall be substituted “or”; and
 - (d) after paragraph (2)(d) there shall be inserted the following:–
 - “(da) make such other order as he thinks fit to secure the expeditious progress of the cause; and”.

Amendment of Summary Application Rules

3.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(a) is amended in accordance with the following sub-paragraphs.

- (2) Rule 3.27.4 (notification of making etc. of ASBOs and interim ASBOs)(b) shall be omitted.
- (3) In rule 3.29.4(c) (service of RSHOs)–
 - (a) for paragraph (2) there shall be substituted–
 - “(2) The sheriff clerk shall serve a copy of the order on the person against whom it has effect.”;
 - (b) for paragraph (3) there shall be substituted–
 - “(3) For the purposes of paragraph (2), the copy of the order is served–
 - (a) where the person against whom the order has effect is present in court when the order is made–
 - (i) by giving it to the person and obtaining a receipt therefor;
 - (ii) by sending it to the person by recorded delivery or registered post; or
 - (iii) by causing it to be served by sheriff officer; or
 - (b) where the person against whom the order has effect is not present in court when the order is made–
 - (i) by sending it to the person by recorded delivery or registered post; or
 - (ii) by causing it to be served by sheriff officer.”.

A C HAMILTON
Lord President, I.P.D.

Edinburgh
21st July 2006

(a) S.I. 1999/929, amended by S.S.I. 2000/18 and 387, 2001/142, 2002/7, 129, 130, 146 and 583, 2003/26, 27, 98, 261, 319, 346 and 556, 2004/197, 222, 334 and 455 and 2005/61, 473, 504 and 648.
 (b) Rule 3.27.4 was inserted by S.S.I. 2004/455.
 (c) Rule 3.29.4 was inserted by S.S.I. 2005/473.

EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the rules of procedure in the sheriff court. It amends the Ordinary Cause Rules and the Summary Applications, Statutory Applications and Appeals etc. Rules.

The following amendments are made to the Ordinary Cause Rules–

- (a) the substitution of a rule 9.2A in relation to the fixing of a second or subsequent options hearing;
- (b) the introduction of a new Chapter 28A to provide for a pre-proof hearing;
- (c) the amendment of rule 10.6 to provide that the Procedural Hearing is a diet for the purposes of rule 16.2, 33.37 and 33A.37 in relation to decrees where a party is in default;
- (d) the amendment of rules 16.2, 33.37 and 33A.37 to allow the sheriff, where a party is in default, to make such order as he thinks fit to secure the expeditious progress of the cause;
- (e) the amendment of the time limit for lodging productions where proof is allowed from 28 days before the diet of proof to 14 days.

In addition, the following amendments are made to the Summary Application Rules–

- (a) the deletion of rule 3.27.4 in relation to the notification of the making of antisocial behaviour orders and interim antisocial behaviour orders;
- (b) the amendment of rule 3.29.4 which makes provision for the service of risk of sexual harm orders to allow service by sheriff officer.

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