
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 6

Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007

Amendment of Ordinary Cause Rules

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

(2) In rule 1.2(1) (interpretation), after the definition of “document” there shall be inserted the following:—

““enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”.

(3) In rule 1.3 (representation) after paragraph (2) there shall be inserted the following:—

“(3) A party may be represented by any person authorised under any enactment to conduct proceedings in the sheriff court in accordance with the terms of that enactment.

(4) The person referred to in paragraph (3) may do everything for the preparation and conduct of an action as may have been done by an individual conducting his own action.”.

(4) In rule 3.3 (warrants of citation)(2)–

(a) in paragraph (1)(c), after “1987” there shall be inserted “or a time order under the Consumer Credit Act 1974(3)”; and

(b) in paragraph (2), after “1987” there shall be inserted “or a time order under the Consumer Credit Act 1974”.

(5) In rule 5.2 (form of citation and certificate)(4)–

(a) in paragraph (1)(c), after “1987” there shall be inserted “or a time order under the Consumer Credit Act 1974”; and

(b) in paragraph (2), after “1987” there shall be inserted “or a time order under the Consumer Credit Act 1974”.

(6) In rule 7.2(1)(minute for granting decree without attendance)–

(a) in sub-paragraph (b) after “1987” there shall be inserted “or a time order under the Consumer Credit Act 1974”; and

(b) in sub-paragraph (c), after “direction” there shall be inserted “or time order”.

(7) In rule 7.3 (applications for time to pay directions in undefended causes)–

(a) in the cross-heading, after “directions” there shall be inserted “or time orders”;

(1) 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, 293, 410 and 509.

(2) Rule 3.3 was amended by S.S.I. 2005/638.

(3) 1974 c. 39.

(4) Rule 5.2 was amended by S.S.I. 2006/207.

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- (b) in paragraph (1)–
- (i) after “which” the existing words shall be numbered sub-paragraph (a); and
 - (ii) at the end there shall be inserted the following:–
 - “; or
 - (b) a time order may be applied for under the Consumer Credit Act 1974”;
- (c) in paragraph (2), after “direction” there shall be inserted “or time order”.
- (8) For rule 9A.4(5) there shall be substituted the following:–

“Applications in respect of time to pay directions, arrestments and time orders

9A.4. An application for–

- (a) a time to pay direction under section 1(1) of the Debtors (Scotland) Act 1987;
- (b) the recall or restriction of an arrestment under section 2(3) or 3(1) of that Act; or
- (c) a time order under section 129 of the Consumer Credit Act 1974,

in a cause which is defended, shall be made by motion lodged before the sheriff grants decree.”.

(9) In rule 18.5 (service of amended pleadings), in paragraph (1)(a)(i), after “1987” there shall be inserted “or a time order under the Consumer Credit Act 1974”.

(10) In rule 28.2 (applications for commission and diligence for recovery of documents or for orders under section 1 of the Administration of Justice (Scotland) Act 1972)–

- (a) for paragraph (3)(c)(6) (intimation of specifications) there shall be substituted the following:–

“(c) where necessary–

- (i) the Advocate General for Scotland (in a case where the document or other property sought is in the possession of either a public authority exercising functions in relation to reserved matters within the meaning of Schedule 5 to the Scotland Act 1998, or a cross-border public authority within the meaning of section 88(5) of that Act); or
- (ii) the Lord Advocate (in any other case),

and, if there is any doubt, both.”; and

- (b) for paragraph (5) (hearing) there shall be substituted the following:–

“(5) The Advocate General for Scotland or the Lord Advocate or both, as appropriate, may appear at the hearing of any motion under paragraph (1).”.

(11) After rule 30.9 (service of charge where address of defender not known) there shall be inserted the following:–

“Expenses

30.10. A party who–

- (a) is or has been represented by a person authorised under any enactment to conduct proceedings in the sheriff court; and
- (b) would have been found entitled to expenses if he had been represented by a solicitor or an advocate,

(5) Rule 9A.4 was inserted by [S.S.I. 2004/197](#).

(6) Rule 28.2(3) was substituted by [S.I. 1996/2445](#).

may be awarded any expenses or outlays to which a party litigant may be found entitled under the Litigants in Person (Costs and Expenses) Act 1975(7) or any enactment under that Act.”.

(12) For rule 31.2(3) (applications for leave to appeal) there shall be substituted the following:–

“(3) An application for leave to appeal from a decision in relation to–

- (a) a time to pay direction under section 1 of the Debtors (Scotland) Act 1987;
- (b) the recall or restriction of an arrestment made under section 3(4) of that Act; or
- (c) a time order under section 129 of the Consumer Credit Act 1974,

shall specify the question of law on which the appeal is made.”.

(13) After Chapter 32 (taxation of expenses) there shall be inserted the following:–

“Chapter32A

LIVE LINKS

32A.1.—(1) On cause shown, a party may apply by motion for authority for the whole or part of–

- (a) the evidence of a witness or the party to be given; or
- (b) a submission to be made,

through a live link.

(2) In paragraph (1)–

“witness” means a person who has been or may be cited to appear before the court as a witness;

“submission” means any oral submission which would otherwise be made to the court by the party or his representative in person including an oral submission in support of a motion; and

“live link” means a live television link or such other arrangement as may be specified in the motion by which the witness, party or representative, as the case may be, is able to be seen and heard in the proceedings or heard in the proceedings and is able to see and hear or hear the proceedings while at a place which is outside the courtroom.”.

(14) In rule 33.27A (applications for postponement of decree under section 3A of the Act of 1976)(8)–

- (a) “religious” shall be omitted; and
- (b) for “to marry” there shall be substituted “to religious marriage”.

(15) For rule 33.73(1)(g)(9) (application of Part XI: simplified divorce applications) there shall be substituted the following:–

“(g) neither party to the marriage applies for postponement of decree under section 3A of the Act of 1976(10) (postponement of decree where impediment to religious marriage exists).”.

(16) In Appendix 1–

(a) in Form 02–

- (i) in the heading, after “direction” there shall be inserted “or time order”;
- (ii) in paragraph (b), after “direction” there shall be inserted “[or time order]”;

(7) 1975 c. 47.

(8) Rule 33.27A was substituted by S.S.I. 2006/207.

(9) Rule 33.73(1)(g) was inserted by S.S.I. 2006/207.

(10) Section 3A was inserted by section 15 of the [Family Law \(Scotland\) Act 2006 \(asp 2\)](#).

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- (b) in Form 03—
- (i) in the heading, after “direction” there shall be inserted “or time order”;
 - (ii) after “**SERVICE**” there shall be inserted the following:—
 - “(1) Time to pay directions”; and
 - (iii) after “frozen.” there shall be inserted the following:—
 - “*Time Orders*
 - (2) The Consumer Credit Act 1974 allows you to apply to the court for a “time order” during a court action. A time order is similar to a time to pay direction but can only be applied for in certain circumstances, e.g. in relation to certain types of credit agreement. Payment under a time order can only be made by instalments, so that you cannot apply to pay by deferred lump sum.”;
 - (iv) after “**HOW TO APPLY FOR A TIME TO PAY DIRECTION**” there shall be inserted “**OR TIME ORDER**”;
 - (v) in paragraph 1, after “direction” there shall be inserted “or time order”;
 - (vi) in the paragraph headed “NOTE”, after “direction” where it twice appears there shall be inserted “or time order”;
 - (vii) in the heading of the form of application for a time to pay direction, after “**1987**” there shall be inserted “[or **A TIME ORDER UNDER THE CONSUMER CREDIT ACT 1974**]”;
 - (viii) in paragraph 2 of Part B of that form, after “direction” there shall be inserted “or time order”;
 - (ix) in paragraph 6 of Part D of that form, after “1987” there shall be inserted “[or section 129(1) of the Consumer Credit Act 1974]”;
 - (x) in the section beginning “*a” of Part D of that form, after direction there shall be inserted “[or time order]”;
- (c) in Form 05(**11**)—
- (i) in the heading, after “direction” there shall be inserted “or time order”;
 - (ii) for “Form 03 (application for time to pay direction)” there shall be substituted “Form 03 (application for time to pay direction or time order)”;
 - (iii) in the box beginning “Form 03 is served” after “direction” where it twice appears there shall be inserted “or time order”;
- (d) in Form 06(**12**), after “direction” there shall be inserted “or time order”;
- (e) in Form 08—
- (i) in the heading, after “direction” there shall be inserted “or time order”;
 - (ii) for “Form 03 (application for time to pay direction)” there shall be substituted “Form 03 (application for time to pay direction or time order)”;
 - (iii) in the box beginning “Form 03 is served”, after “direction” where it twice appears there shall be inserted “or time order”;
- (f) in Form F31(**13**)—
- (i) section 10A of Part 1 (remarriage) shall be omitted;

(11) Form 05 was substituted by [S.S.I. 2000/239](#).

(12) Form 06 was substituted by [S.S.I. 2002/7](#).

(13) Form F31 was amended by [S.S.I. 2006/207](#).

- (ii) in section 11 of Part 1–
 - (aa) for the heading there shall be substituted “DECLARATION AND REQUEST FOR DIVORCE”; and
 - (bb) after “application.” there shall be inserted the following:–
 - “I do NOT ask the court to postpone the grant of decree under section 3A of the Divorce (Scotland) Act 1976.”;
- (iii) in Part 2, in paragraph (d) of the statement of consent “and” shall be omitted; and
- (iv) in Part 2, for paragraph (e) of the statement of consent there shall be inserted the following:–
 - “(e) I do not ask the court to postpone the grant of decree under section 3A of the Divorce (Scotland) Act 1976; and
 - (f) I CONSENT TO DECREE OF DIVORCE BEING GRANTED IN RESPECT OF THIS APPLICATION.”
- (g) in Form F33(14)–
 - (i) section 11A of Part 1 (remarriage) shall be omitted; and
 - (ii) in section 12 of Part 1, after “application.” there shall be inserted the following:–
 - “I do NOT ask the court to postpone the grant of decree under section 3A of the Divorce (Scotland) Act 1976.”;
- (h) in Form F33A(15), in section 11 of Part 1, after “application.” there shall be inserted the following:–
 - “I do NOT ask the court to postpone the grant of decree under section 3A of the Divorce (Scotland) Act 1976.”;
- (i) in Form F34(16)–
 - (ii) after paragraph 1.(a) there shall be inserted–
 - “(b) that no application may be made under this procedure for postponement of decree under section 3A of the Divorce (Scotland) Act 1976 (postponement of decree where impediment to religious marriage exists).”;
 - (iii) in the Note, after “provision” there shall be inserted “, or if you wish to apply for postponement of decree under section 3A of the Divorce (Scotland) Act 1976 (postponement of decree where impediment to religious marriage exists).”;
- (i) in Form F35(17)–
 - (i) after paragraph 1.(a) there shall be inserted–
 - “(b) that no application may be made under this procedure for postponement of decree under section 3A of the Divorce (Scotland) Act 1976 (postponement of decree where impediment to religious marriage exists).”;
 - (ii) in the Note, after “provision” there shall be inserted “, or if you wish to apply for postponement of decree under section 3A of the Divorce (Scotland) Act 1976 (postponement of decree where impediment to religious marriage exists).”;

(14) Form F33 was inserted by [S.S.I. 2006/207](#).

(15) Form F33A was inserted by [S.S.I. 2006/207](#).

(16) Form F34 was amended by [S.S.I. 2006/207](#).

(17) Form F35 was amended by [S.S.I. 2006/207](#).

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(j) in Form F35A(18)–

(i) after paragraph 2 there shall be inserted the following:–

“**2A.** Please note that no application may be made under this procedure for postponement of decree under section 3A of the Divorce (Scotland) Act 1976 (postponement of decree where impediment to religious marriage exists).”; and

(ii) in the Note, after “provision” there shall be inserted “, or if you wish to apply for postponement of decree under section 3A of the Divorce (Scotland) Act 1976 (postponement of decree where impediment to religious marriage exists).”.

Commencement Information

I1 Para. 2(1)-(13)(16)(a)-(e) in force at 29.1.2007, see [para. 1\(1\)](#)

I2 Para. 2(14)(15)(16)(f)-(k) in force at 26.2.2007, see [para. 1\(2\)](#)

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