
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 279

**Act of Sederunt (Sheriff Court Rules)
(Miscellaneous Amendments) 2010**

Companies Act 2006: derivative proceedings

5. After Chapter 45 (Vulnerable Witnesses (Scotland) Act 2004)(1) of the Ordinary Cause Rules, insert—

“CHAPTER 46

COMPANIES ACT 2006

Leave to raise derivative proceedings

46.1.—(1) Where leave of the court is required under section 266(1) (derivative proceedings: requirement for leave and notice) of the Companies Act 2006(2) (the “2006 Act”), the applicant must lodge, along with the initial writ, a written application in the form of a letter addressed to the sheriff clerk stating the grounds on which leave is sought.

(2) Subject to paragraph (4), an application under paragraph (1) is not to be served on, or intimated to, any party.

(3) The application is to be placed before the sheriff, who shall consider it for the purposes of section 266(3) of the 2006 Act without hearing the applicant.

(4) Service under section 266(4)(a) of the 2006 Act may be given by any of the methods provided for in Chapter 5 (citation, service and intimation) and a certificate of service must be lodged.

(5) If the company wishes to be heard it must, within 21 days after the date of service of the application, lodge written submissions setting out its position in relation to the application.

(6) Subject to section 266(4)(b) of the 2006 Act, the next stage in the proceedings is a hearing at which the applicant and the company may be heard.

(7) The sheriff clerk is to fix the hearing and intimate its date to the applicant and the company.

(8) Where an application under paragraph (1) is granted, a copy of the sheriff’s interlocutor must be served on the defender along with the warrant of citation.

(1) Chapter 45 was inserted by [S.S.I. 2007/463](#).

(2) [2006 c.46](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Application to continue proceedings as derivative proceedings

46.2. An application under section 267(2) (application to continue proceedings as derivative proceedings) of the 2006 Act is to be in the form of a minute and Chapter 14 (applications by minute) applies with the necessary modifications.”.