

**2010 No. 324**

**SHERIFF COURT**

**Act of Sederunt (Sheriff Court Rules) (Enforcement of  
Securities over Heritable Property) 2010**

*Made* - - - - *9th September 2010*

*Coming into force* - - *30th September 2010*

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 said Act of 1971, do hereby enact and declare:

**Citation, commencement and interpretation**

**1.**—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Enforcement of Securities over Heritable Property) 2010 and comes into force on 30th September 2010.

(2) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(3) In this Act of Sederunt—

“the Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(b); and

“the Summary Application Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(c).

**Amendments in consequence of the Home Owner and Debtor Protection (Scotland) Act 2010**

**2.**—(1) The Summary Application Rules are amended in accordance with the subparagraphs (2) to (5).

(2) In rule 2.7 (warrants, forms and certificate of citation), omit paragraph (7A)(d).

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- (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) (the “2000 asp”), schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”), section 33. Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10. Section 32 was extended by the Debtors (Scotland) Act 1987 (c.18), section 97; the Child Support Act 1991 (c.48), sections 39(2) and 49; and by section 2(4) of the 2000 asp.
- (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 560; 2003/25, 26 and 601; 2004/197 and 350; 2005/20, 189, 638 and 648; 2006/198, 207, 293, 410 and 509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 284, 285, 294 and 402; 2010/120 and 279.
- (c) S.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, 319, 346 and 556; 2004/197, 222, 334 and 455; 2005/61, 445, 473, 504 and 648; 2006/198, 410, 437 and 509; 2007/6, 233, 339, 440 and 463; 2008/9, 41, 111, 223, 335, 365 and 375; 2009/107, 109, 164, 294, 320 and 402.
- (d) Rule 2.7(7A) was inserted by S.S.I. 2002/7.

(3) Rule 22.2A (applications under the Mortgage Rights (Scotland) Act 2001)(a) is omitted.

(4) For Part IV (Conveyancing and Feudal Reform (Scotland) Act 1970) of Chapter 3 substitute—

## “PART IV

### ENFORCEMENT OF SECURITIES OVER HERITABLE PROPERTY

#### SECTION 1 *Interpretation*

3.4.1. In this Part—

“the 1894 Act” means the Heritable Securities (Scotland) Act 1894(b);

“the 1970 Act” means the Conveyancing and Feudal Reform (Scotland) Act 1970(c);

“application for enforcement of security over residential property” means any of the following—

- (a) an application under section 24(1B) of the 1970 Act alone (“a 1970 Act only application”);
- (b) an application under section 5(1) of the 1894 Act, in a case falling within section 5(2) of that Act, alone (“an 1894 Act only application”);
- (c) an application under paragraphs (a) and (b) together (“a combined 1970 Act and 1894 Act application”);

“entitled resident” means—

- (a) in a 1970 Act only application, a person falling within the definition of that expression provided by section 24C of the 1970 Act;
- (b) in an 1894 Act only application, a person falling within the definition of that expression provided by section 5D of the 1894 Act;
- (c) in a combined 1970 Act and 1894 Act application, a person falling within either of those definitions;

“entitled resident application” means any of the following—

- (a) an application under section 24B of the 1970 Act alone;
- (b) an application under section 5C of the 1894 Act alone;
- (c) an application under paragraphs (a) and (b) together.

“pre-action requirements” means—

- (a) in a 1970 Act only application, the requirements specified in sections 24A(2) to (6) of the 1970 Act, together with any provision made under section 24A(8) of that Act;
- (b) in an 1894 Act only application, the requirements specified in sections 5B(2) to (6) of the 1894 Act, together with any provision made under section 5B(8) of that Act;
- (c) in a combined 1970 Act and 1894 Act application, both of those sets of requirements;

“a recall of decree application” means any of the following—

- (a) an application under section 24D of the 1970 Act alone;
- (b) an application under section 5E of the 1894 Act alone;
- (c) an application under paragraphs (a) and (b) together.

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(a) Rule 2.22A was inserted by S.S.I. 2002/7.

(b) 1894 c.44.

(c) 1970 c.35.

SECTION 2 *Disposal of applications under Part II of the 1970 Act for non-residential purposes*

**3.4.2.**—(1) This rule applies to an application or counter-application made by virtue of paragraph (3)(2)(b) of the Act of Sederunt (Sheriff Court Rules) (Enforcement of Securities over Heritable Property) 2010(a).

(2) An interlocutor of the sheriff disposing of an application or counter-application is final and not subject to appeal except as to a question of title or as to any other remedy granted.

SECTION 3 *Initial writ*

**3.4.3.**—(1) An application for enforcement of security over residential property must include averments that the pre-action requirements have been complied with.

(2) The pursuer must lodge Form 11C with the initial writ.

(3) The initial writ must specify the name and particulars of all persons known by the pursuer to be entitled residents; and crave warrant for intimation to such persons.

SECTION 4 *Appointment of Hearing*

**3.4.4.** On an application being submitted under rule 3.4.3, the sheriff must—

- (a) fix a hearing;
- (b) appoint service and intimation of the initial writ and Form 11C.

SECTION 5 *Answers*

**3.4.5.**—(1) Where a defender opposes an application, the sheriff may order answers to be lodged within such period that the sheriff specifies.

(2) The answers must—

- (a) specify the name and particulars of all persons known by the defender to be entitled residents who have not already been named in the initial writ; and crave warrant for intimation to such persons; or
- (b) state that to the best of the defender's knowledge there are no other entitled residents.

SECTION 6 *Intimation to known entitled residents*

**3.4.6.** The sheriff must order that a copy of the initial writ together with a notice in Form 11D and Form 11E be intimated to all entitled residents referred to in rules 3.4.3(3) and 3.4.5(2)(a).

SECTION 7 *Application to court by entitled residents*

**3.4.7.**—(1) This rule applies to an entitled resident application.

(2) Such application is to be made by lodging a minute in Form 11E in the principal application to which the application relates.

(3) On a Form 11E being lodged, the sheriff must—

- (a) fix a hearing of the entitled resident application;
- (b) order parties to lodge answers (where the sheriff considers it appropriate to do so) within such period that the sheriff specifies;
- (c) order the applicant to serve upon every party and intimate to every entitled resident—
  - (i) a copy of the entitled resident application;
  - (ii) a note of the date, time and place of the hearing.

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(a) S.S.I. 2010/324.

SECTION 8 *Recall of decree*

- 3.4.8.**—(1) This rule applies to a recall of decree application.
- (2) Such application is to be made by lodging a minute in Form 11F.
- (3) On a Form 11F being lodged, the sheriff clerk must fix a hearing of the recall of decree application.
- (4) Where a hearing has been fixed under paragraph (3) the person seeking recall must, not less than seven days before the date fixed for the hearing, serve upon every party and intimate to every entitled resident—
- (a) a copy of the recall of decree application;
  - (b) a note of the date, time and place of the hearing.
- (5) At a hearing fixed under paragraph (3), the sheriff must recall the decree so far as not implemented and the hearing will then proceed as a hearing held under rule 3.4.4(a).
- (6) A minute for recall of a decree, when lodged and served or intimated in terms of this rule, will have the effect of preventing any further action being taken to enforce the decree.
- (7) If it appears to the sheriff that there has been any failure or irregularity in service or intimation of the minute for recall of a decree, the sheriff may order re-service or re-intimation of the minute (as the case may be) on such conditions as he or she thinks fit.
- (8) Where the person seeking recall does not appear or is not represented at the hearing for recall, the sheriff will pronounce an interlocutor ordaining that person to appear or be represented at a peremptory diet fixed by the sheriff to state whether or not that person intends to proceed with the person’s defence or application, under certification that if that person fails to do so the sheriff may grant decree or make such other order or finding as the sheriff thinks fit.
- (9) The diet fixed in the interlocutor under paragraph (8) must not be less than 14 days after the date of the interlocutor unless the sheriff otherwise orders.
- (10) The sheriff must appoint a party to intimate to the person seeking recall a copy of the interlocutor and a notice in Form 11G.
- (11) Where a person on whom a notice and interlocutor has been intimated under paragraph (10) fails to appear or be represented at a diet fixed under paragraph (8) and to state his or her intention as required by that paragraph, the sheriff may grant decree of new or make such other order or finding as the sheriff thinks fit.”.
- (5) In Schedule 1 (forms)—
- (a) omit Forms 6A and 6B(a);
  - (b) in Form 7(b), omit the words “(In actions to which an order under section 2 of the Mortgage Rights (Scotland) Act 2001 may be applied for, state whether Form 6B was sent in accordance with rule 2.7(7A)(b).)”;
  - (c) after Form 11B(c) insert Forms 11C to 11G set out in the Schedule to this Act of Sederunt.
- (6) The Ordinary Cause Rules are amended in accordance with subparagraphs (7) to (11).
- (7) In rule 3.2 (actions relating to heritable property)(d), omit paragraph (3).
- (8) In rule 3.3 (warrants of citation)(e), omit—
- (a) paragraph (1)(d);
  - (b) paragraph (4).

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(a) Forms 6A and 6B were inserted by S.S.I. 2002/7.  
(b) Form 7 was inserted by S.S.I. 2002/7.  
(c) Form 11B was inserted by S.S.I. 2000/387.  
(d) Rule 3.2(3) was inserted by S.S.I. 2002/7.  
(e) Rule 3.3(1)(d) and (4) were inserted by S.S.I. 2002/7.

(9) In rule 5.2 (form of citation and certificate)(a), omit—

- (a) paragraph (1)(d);
- (b) paragraph (2A).

(10) Rule 34.12 (applications under the Mortgage Rights (Scotland) Act 2001)(b) is omitted.

(11) In Appendix 1 (forms)—

- (a) omit Forms O2A and O5A(c);
- (b) in Form O6(d), omit the words “(In actions to which rule 3.2(3) applies, state whether Form O2A was sent in accordance with rule 3.3)”.

(12) The Summary Application Rules and the Ordinary Cause Rules as they applied immediately before 30th September 2010 continue to have effect for the purpose of any matter under a provision referred to in those Rules which continues before the court, or may be brought before the court, in either case by virtue of the Home Owner and Debtor Protection (Scotland) Act 2010 (Transitional and Savings Provisions) Order 2010(e) (the “Transitional and Savings Order”).

(13) Where article 6 of the Transitional and Savings Order applies, Form 11C applies subject to the modification that any required information which has not been provided at any time following the default and before 30th September 2010 must be provided as soon as is reasonably practicable on or after 30th September 2010.

### **Disposal of applications under Part II of the Conveyancing and Feudal Reforms (Scotland) Act 1970 for non-residential purposes**

3.—(1) Subparagraph (2) applies to an application or counter-application under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970(f), except applications under sections 24(1B) or 24D(1) of that Act.

(2) An application or counter-application to which this rule applies must be brought—

- (a) as an ordinary cause, where any other remedy is craved; or
- (b) as a summary application, where no other remedy is craved.

(3) For rule 34.10 (applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970) of the Ordinary Cause Rules, substitute—

#### **“Disposal of applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970 for non-residential purposes**

34.10.—(1) This rule applies to an application or counter-application made by virtue of paragraph 3(2)(a) of the Act of Sederunt (Sheriff Court Rules) (Enforcement of Securities over Heritable Property) 2010(g).

(2) An interlocutor of the sheriff disposing of an application or counter-application is final and not subject to appeal except as to a question of title or as to any other remedy granted.”

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(a) Rules 5.2(1)(d) and (2A) were inserted by S.S.I. 2002/7.  
(b) Rule 34.12 was inserted by S.S.I. 2002/7.  
(c) Forms O2A and O5A were inserted by S.S.I. 2002/7.  
(d) Form O6 was inserted by S.S.I. 2002/7.  
(e) S.S.I. 2010/316.  
(f) 1970 c.35.  
(g) S.S.I. 2010/324.

(4) This paragraph does not affect an application or counter-application made before 30th September 2010.

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

Edinburgh  
9th September 2010

# SCHEDULE

Paragraph 2(5)

## Form 11C

Rule 3.4.3(2)

### Form of certificate of completion of pre-action requirements

Certificate of completion of pre-action requirements in an application under [insert reference to provision or provisions under which application is made] of the property at (*insert address of security subjects*).

in the cause

SHERIFFDOM OF (*insert name of sheriffdom*)

AT (*insert place of sheriff court*)

[A.B.], (*insert designation and address*), Pursuer

against

[C.D.], (*insert designation and address*), Defender

Court ref. no:

(*Insert name of pursuer*), pursuer and creditor in the security with (*insert name of defender*), the defender, in respect of the premises at (*insert address of security subjects*) aver(s) that the pre-action requirements, have been complied with (*tick boxes to confirm*)—

1. As soon as reasonably practicable upon the defender entering into default, the pursuer provided the defender with clear information about — 
  - (a) the terms of the security;
  - (b) the amount due to the pursuer under the security, including any arrears and any charges in respect of late payment, broken down so as to show—
    - (i) the total amount of the arrears;
    - (ii) the total outstanding amount due including any charges already incurred;
  - (c) the nature and the level of any charges that may be incurred by virtue of the contract to which the security relates if the default is not remedied; and
  - (d) any other obligation under the security in respect of which the defender is in default.

Please provide details of (a) the date on which the information mentioned in 1(a) was provided; and (b) how the requirements of 1(b), (c) and (d) were complied with including a copy of the information provided under those paragraphs:

3. The pursuer has made reasonable efforts to agree with the defender proposals in respect of future payments to the pursuer under the security and the fulfilment of any other obligation under the security in respect of which the defender is in default, including—
- (a) making reasonable attempts to contact the defender to discuss the default;
  - (b) providing the defender with details of any proposals made by the pursuer, set out in such a way as to allow the defender to consider the proposal;
  - (c) allowing the defender reasonable time to consider any proposals made by the pursuer;
  - (d) notifying the defender within a reasonable time of any decision taken by the pursuer to accept or reject a proposal made by the defender and, where the pursuer rejects such proposal, the pursuer has provided reasons for rejecting the proposal in writing within 10 working days of notifying the defender it is rejecting the proposal;
  - (e) considering the affordability of any proposal for the defender taking into account, where known to the pursuer, the defender's personal and financial circumstances.

Provide details:

- \*3. Where the defender has failed to comply with a condition of an agreement reached with the pursuer in respect of any proposal and the defender has not previously failed to comply with a condition of the agreement—
- (a) the pursuer has given the defender notice in writing of its decision to make an application under [*insert reference to provision or provisions under which application is made*] and the ground of the proposed application before making the application;
  - (b) the pursuer has not made an application before the expiry of 15 working days\*\*, beginning with the date on which the defender is deemed to have received the notice referred to at paragraph (a);
  - (c) the default by the defender in respect of which the application is intended to be made has not been remedied during that notice period.



Provide details of the defender's failure to comply with a condition of the agreement:

\*Indicate here if not applicable

\*\*In this paragraph, "working day" means a day that is not a Saturday or Sunday, or any day that is a bank holiday under the Banking and Financial Dealings Act 1971(a) in any part of the United Kingdom.

4. The defender has not taken steps that are likely to result in—

- (a) the payment to the pursuer within a reasonable time of any arrears, or the whole amount, due to the pursuer under the security; and
- (b) fulfilment by the defender within a reasonable time of any other obligation under the security in respect of which the defender is in default.

Indicate what (if any) steps have been taken by the defender and why those steps are not considered to be effective:

5. The pursuer has provided the defender with information about sources of advice and assistance in relation to management of debt, including—

- (a) where the security is regulated, any relevant information sheet published by the appropriate regulatory body;
- (b) a local citizens advice bureau or other advice organisation; and
- (c) the housing department of the local authority in whose area the property which is subject to the security is situated.

6. The pursuer has encouraged the defender to contact the local authority in whose area the security subjects are situated.

7. The pursuer has had regard to any guidance issued by the Scottish Ministers.

*(Signed)*

[X.Y.], *(add designation and business address)*  
Pursuer's solicitor

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(a) 1971 c.80.

## Form 11D

Rule 3.4.6

Form of notice to entitled residents in an application for enforcement of security over residential property

Notice to an entitled resident in an application for repossession of the property at *(insert address of security subjects)*.

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)*, Pursuer

against

[C.D.], *(insert designation and address)*, Defender

Court ref. no:

To: *(insert name and address of entitled resident)*

Attached to this notice is a copy of an application by *(insert name of pursuer)* under [insert reference to provision or provisions under which application is made]. **IF THE APPLICATION IS GRANTED, THE PROPERTY AT *(INSERT ADDRESS OF SECURITY SUBJECTS)* MAY BE REPOSSESSED AND YOU WOULD NO LONGER HAVE THE RIGHT TO RESIDE THERE.** A Form 11E application form is also attached.

This Notice—

(a) gives you warning that an application has been made to the sheriff court for an order which may affect your interest as an entitled resident under [*insert reference to relevant provision or provisions*] in the property at *(insert address of security subjects)*; and

(b) informs you that an entitled resident may apply to the court to continue the proceedings or make any other order [*insert reference to relevant provision or provisions*] of that Act.

**IF YOU WISH TO MAKE AN APPLICATION FOR AN ORDER UNDER [INSERT REFERENCE TO RELEVANT PROVISION OR PROVISIONS]** you should complete and lodge Form 11E with the sheriff clerk at *(insert name and address of sheriff court)*.

**IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from an approved lay representative, or any Citizens Advice Bureau or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT** the court will consider the application in the absence of you or your representative.

*(Signed)*  
[P.Q.], Sheriff Officer, or  
[X.Y.] *(add designation and  
business address)* Solicitor

## Form 11E

Rules 3.4.6 and 3.4.7

### Form of application to court by entitled resident

Application to court by an entitled resident in proceedings for repossession of the property at (*insert address of security subjects*).

Sheriff Court: .....

Date:

Court ref. no.

1. This application is made [by/on behalf of] (*delete as appropriate*) (*insert name and address of entitled resident*).
2. The applicant is an entitled resident within the meaning of section 24C(1) of the Conveyancing and Feudal Reform (Scotland) Act 1970 and/or, as the case may be, section 5D of the Heritable Securities (Scotland) Act 1894 because his or her sole or main residence is the security subjects (in whole or in part) at (*insert address of security subjects*) and (*\*tick one box as appropriate*)—
  - (a) *he or she is the proprietor of the security subjects (where the proprietor is not the debtor in the security);*
  - (b) *her or she is the non-entitled spouse of the debtor or the proprietor of security subjects which are (in whole or in part) a matrimonial home;*
  - (c) *he or she is the non-entitled civil partner of the debtor or the proprietor of security subjects which are (in whole or in part) a family home;*
  - (d) *he or she is a person living together with the debtor or the proprietor as husband and wife;*
  - (e) *he or she is a person living together with the debtor or the proprietor in a relationship which has the characteristics of the relationship between civil partners;*
  - (f) *he or she lived together with the debtor or the proprietor in a relationship described in (d) or (e) and—*
    - (i) *the security subjects (in whole or in part) are not the sole or main residence of the debtor or the proprietor;*
    - (ii) *he or she lived together with the debtor or the proprietor throughout the period of 6 months ending with the date on which the security subjects ceased to be the sole or main residence of the debtor or the proprietor; and*
    - (iii) *the security subjects (in whole or in part) are the sole or main residence of a child aged under 16 who is a child of both parties in that relationship.*
3. The applicant believes that the court should consider this application because (*insert relevant details*)—

4. The applicant asks the court to make an order under section 24B(1) of the Conveyancing and Feudal Reform (Scotland) Act 1970 and/or section 5C(1) of the Heritable Securities (Scotland) Act 1894 for *(insert details of what you wish the court to do and why—)*

**WHAT HAPPENS NEXT:** When you lodge this form at the sheriff clerk's office, the sheriff will fix a hearing for all those with an interest to appear and be heard. You are required to serve upon every party and intimate to every entitled resident a copy of this form, together with details of the date, time and place of the hearing.

**IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from an approved lay representative or any Citizens Advice Bureau or other advice agency.

Date *(insert date)*

*(Signed)*  
[P.Q.], (Applicant),  
or [X.Y.], *(add designation and address of Applicant's representative)*

#### **DIET ASSIGNED**

At *(insert place)* on *(insert date)*, the court assigns the *(insert date of hearing)* at *(insert time)* at *(insert name of sheriff court)* as a diet for hearing parties on the Form 11E application.

Date *(insert date)*

*(Signed)*  
Sheriff Clerk

#### **EXECUTION OF CITATION**

At *(insert place)* on *(insert date)*, I hereby certify that upon the *(insert date)*, I duly served upon every party and intimated to every entitled resident a copy of this Form 11E application, together with details of the hearing. This I did by *(insert method of service/intimation)*.

Date *(insert date)*

*(Signed)*  
[P.Q.], Sheriff Officer, or  
[X.Y.] *(add designation and business address)*  
Applicant's Solicitor

Form 11F

Rule 3.4.8(2)

Form of minute for recall of decree

Minute for recall of decree in an application for repossession of the property at (insert address of security subjects).

Sheriff Court: .....

Date:

Court ref. no.

A.B. (pursuer) against C.D. (defender(s))

(Insert name), being (tick one box as appropriate)–

- The Pursuer\*;
- The Defender\*; or

An entitled resident within the meaning of section 24C(1) of the Conveyancing and Feudal Reform (Scotland) Act 1970 and/or, as the case may be, section 5D of the Heritable Securities (Scotland) Act 1894 because my sole or main residence is the security subjects (in whole or in part) at (insert address of security subjects) and—\*

- (a) I am the proprietor of the security subjects (where the proprietor is not the debtor in the security);
- (b) I am the non-entitled spouse of the debtor or the proprietor of security subjects which are (in whole or in part) a matrimonial home;
- (c) I am the non-entitled civil partner of the debtor or the proprietor of security subjects which are (in whole or in part) a family home;
- (d) I am a person living together with the debtor or the proprietor as husband and wife;
- (e) I am a person living together with the debtor or the proprietor in a relationship which has the characteristics of the relationship between civil partners;
- (f) I am a person who lived together with the debtor or the proprietor in a relationship described in (d) or (e) and— 
  - (i) the security subjects (in whole or in part) are not the sole or main residence of the debtor or the proprietor;
  - (ii) I lived together with the debtor or the proprietor throughout the period of 6 months ending with the date on which the security subjects ceased to be the sole or main residence of the debtor or the proprietor; and

- (iii) *the security subjects (in whole or in part) are the sole or main residence of a child aged under 16 who is a child of both parties in that relationship.*

moves the court to recall the decree pronounced on (*insert date*) in this case.

**WHAT HAPPENS NEXT:** When you lodge this form at the sheriff clerk's office, the sheriff clerk will fix a hearing for all those with an interest to appear and be heard. You are required to serve upon every party and intimate to every entitled resident a copy of this form, together with details of the date, time and place of the hearing.

If you wish to proceed with this application for recall of decree **YOU MUST ATTEND OR BE REPRESENTED AT THAT HEARING.**

**YOU ARE STRONGLY ADVISED TO SEEK IMMEDIATE LEGAL ADVICE FROM A SOLICITOR.** You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from an approved lay representative or any Citizens Advice Bureau or other advice agency.

Date (*insert date*)

(*Signed*)  
[P.Q.], (Applicant),  
or [X.Y.], (*add designation  
and address of Applicant's  
representative*)

#### **DIET ASSIGNED**

At (*insert place*) on (*insert date*), the court assigns the (*insert date of hearing*) at (*insert time*) at (*insert name of sheriff court*) as a diet for hearing parties on the Form 11F application.

Date (*insert date*)

(*Signed*)  
Sheriff Clerk

#### **EXECUTION OF CITATION**

At (*insert place*) on (*insert date*), I hereby certify that upon the (*insert date*), I duly served upon every party and intimated to every entitled resident a copy of this Form 11F application, together with details of the hearing. This I did by (*insert method of service/intimation*).

Date (*insert date*)

(*Signed*)  
[P.Q.], Sheriff Officer, or  
[X.Y.] (*add designation and  
business address*)  
Applicant's Solicitor

## Form 11G

Rule 3.4.8(10)

Form of intimation where peremptory diet fixed in a recall of decree application

Intimation of peremptory diet fixed in an application for repossession of the property at *(insert address of security subjects)*.

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)*, Pursuer

against

[C.D.], *(insert designation and address)*, Defender

Court ref. no:

The court noted that you did not appear at the Hearing to consider your application for recall of decree on *(insert date)*. In your absence the decree for repossession of the property at *(insert address of security subjects)* has been recalled. As a result of your non-appearance the sheriff has ordered that you appear or be represented on *(insert date)* at *(insert time)* within *(insert name and address of sheriff court)* in order to ascertain whether you intend to proceed with your defence or your application.

A copy of the order is attached.

When you appear you will be asked by the sheriff to state whether you intend to proceed with your defence or your application.

**IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from an approved lay representative or any Citizens Advice Bureau or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOT APPEAR OR ARE NOT REPRESENTED AT THAT HEARING** the sheriff may regard you as no longer wishing to proceed with your defence or your application and the sheriff may award decree of new against you in your absence and you will not be allowed to make a further application for recall.

Date *(insert date)*

*(Signed)*  
*(add designation and address)*



## EXPLANATORY NOTE

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

This Act of Sederunt amends the rules in relation to proceedings to enforce securities over heritable property.

Paragraph 2 amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (the “1999 Rules”) and the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (the “Ordinary Cause Rules”), in consequence of the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6) (the “2010 Act”).

Paragraphs 2(2) and (3) omit rules 2.7(7A) and 2.22A of the 1999 Rules in consequence of the 2010 Act repealing the relevant provisions of the Mortgage Rights (Scotland) Act 2001 (the “2001 Act”).

Paragraph 2(4) substitutes a new Part IV into Chapter 3 of the 1999 Rules, relating to enforcement of securities over heritable property.

Rule 3.4.2 restricts the right of appeal in respect of applications and counter-applications for non-residential purposes only. This is a restatement of existing rule 3.4.2 of the 1999 Rules, save for restricting its application in line with the provisions of the 2010 Act.

Rule 3.4.3 and Form 11C prescribe the requirements for an application for enforcement of a security over residential property.

Rule 3.4.4 prescribes the process that the sheriff must follow once an application is submitted.

Rule 3.4.5 prescribes that a defender who opposes an application may be required to lodge answers and specify the details of entitled residents to the extent that they are not already specified in the initial writ.

Rule 3.4.6 and Forms 11D and 11E provide for intimation to entitled residents who are specified either in the initial writ or answers.

Rule 3.4.7 prescribes the process for entitled residents to apply to court for a continuation or other order.

Rule 3.4.8 and Forms 11F and 11G prescribe the process in terms of which a party or entitled resident may apply for recall of decree.

Paragraphs 2(6) to (11) amend the Ordinary Cause Rules in consequence of the 2010 Act repealing the relevant provisions of the 2001 Act.

Paragraph 3(1) provides the procedure in terms of which applications or counter-applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970 for non-residential purposes are dealt with. If a remedy is craved other than one provided under Part II, then the application must be brought as an ordinary cause. In other cases the application or counter-application must be brought by summary application. Paragraph 3(3) makes corresponding amendments to rule 34.10 of the Ordinary Cause Rules.

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**2010 No. 324**

**SHERIFF COURT**

Act of Sederunt (Sheriff Court Rules) (Enforcement of  
Securities over Heritable Property) 2010