

2011 No. 386

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules) (Miscellaneous
Amendments) (No. 3) 2011**

Made - - - - *2nd November 2011*
Laid before the Scottish Parliament *4th November 2011*
Coming into force - - *28th November 2011*

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), section 1(3) of the Administration of Justice (Scotland) Act 1972(b), section 48 of the Civil Jurisdiction and Judgments Act 1982(c) and paragraphs 4 and 6 of Schedule 1 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011(d) 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) (Miscellaneous Amendments) (No. 3) 2011 and comes into force on 28th November 2011.

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

(3) In this Act of Sederunt—

“1997 Act of Sederunt” means the Act of Sederunt (Child Care and Maintenance Rules) 1997(e);

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- (a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (the “1985 Act”), 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); the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33; and the Legal Services (Scotland) Act 2010 (asp 16) section 127(a). Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10; and the Children’s Hearings (Scotland) Act 2011 (asp 1), section 185. 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 section 2(4) of the 2000 asp.
- (b) 1972 c.59. Section 1 was amended by the 1985 Act, sections 19, 23, 59 and Schedule 2, paragraph 15; the Civil Jurisdiction and Judgments Act 1982 (c.27), section 28; the Drug Trafficking Offences Act 1986 (c.32), section 21(4); the Criminal Justice (Scotland) Act 1987 (c.41), section 28(4) and the Criminal Justice Act 1988 (c.33), sections 91(4) and 123 and Schedule 8, paragraph 16.
- (c) 1982 c.27. Section 48 was amended by the Civil Jurisdiction and Judgments Act 1991 (c.12) Schedule 2, paragraph 23; S.I. 2001/3929, Schedule 2, paragraph 17; and S.I. 2011/1215, regulation 5. Regulation 7 of S.I. 2011/1215 applies section 48 to authentic instruments and court settlements.
- (d) S.I. 2011/1484.
- (e) S.I. 1997/291. Amended by S.I. 1998/2130; and by S.S.I. 2000/388; 2002/560; 2003/44, 2005/190; 2006/75 and 411; 2007/468; 2009/29, 284 and 449; 2010/137 and 279.

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

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

Actions of division and sale and orders for division and/or sale of property

2.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(2) In rule 33.51 (applications relating to orders for financial provision)(c)—

(a) at the end of paragraph (1)(a)(iv) omit “or”; and

(b) after that paragraph insert—

“(v) section 14(1) (incidental orders), or”.

(3) In rule 33A.48 (applications relating to orders for financial provision)(d)—

(a) at the end of paragraph (1)(a)(iv) omit “or”; and

(b) after that paragraph insert—

“(v) section 14(1) (incidental orders), or”.

(4) After Chapter 46 (Companies Act 2006)(e) insert—

“CHAPTER 47

ACTIONS OF DIVISION AND SALE AND ORDERS FOR DIVISION AND/OR SALE OF PROPERTY

Remit to reporter to examine heritable property

47.1.—(1) In an action of division and sale of heritable property, the sheriff may, in accordance with paragraph (2), remit to a reporter to examine the property and to report to the sheriff—

(a) whether the property is capable of division in a manner equitable to the interests of the *pro indiviso* proprietors and, if so, how such division may be effected; and

(b) in the event that the property is to be sold—

(i) whether the property should be sold as a whole or in lots and, if in lots, what those lots should be;

(ii) whether the property should be exposed for sale by public roup or private bargain;

(iii) whether the sale should be subject to any upset or minimum price and, if so, the amount;

(iv) the manner and extent to which the property should be advertised for sale; and

(a) 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, 279, 324, 340 and 416; and 2011/193 and 289.

(b) 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; 2010/324, 340 and 416; and 2011/193.

(c) Rule 33.51 was last amended by S.S.I. 2011/193.

(d) Rule 33A.48 was last amended by S.S.I. 2011/193.

(e) Chapter 46 was inserted by S.S.I. 2010/279.

- (v) any other matter which the reporter considers pertinent to a sale of the property.
- (2) A remit under paragraph (1) shall be made—
- (a) where the action is undefended, on the motion of the pursuer at any time after the expiry of the period of notice;
 - (b) where the action is defended—
 - (i) at the options hearing, on the motion of any party to the action;
 - (ii) on the sheriff finding, after a debate or proof, that the pursuer is entitled to bring and insist in the action of division and sale; or
 - (iii) at such other time as the sheriff thinks fit.
- (3) On completion of a report made under paragraph (1), the reporter shall send the report, with a copy for each party, to the sheriff clerk.
- (4) On receipt of such report, the sheriff clerk must—
- (a) lodge the report in process; and
 - (b) give written intimation to each party that this has been done and that parties may uplift a copy of the report from the process.
- (5) After the lodging of such a report, any party may apply by motion for further procedure or for approval of the report.
- (6) At the hearing of a motion under paragraph (5), the sheriff may—
- (a) in the event of a challenge to any part of the report, order parties to state their objections to the report and answers to such objections and lodge them within such period as the sheriff thinks fit; or
 - (b) in the absence of such challenge, order that the property be divided or sold, as the case may be, in accordance with the recommendations of the reporter, subject to such modification, if any, as the sheriff thinks fit.
- (7) Where, in accordance with paragraph (6)(a), the lodging of objections and answers has been ordered, the sheriff clerk will fix a date and time for the parties to be heard by the sheriff; and the sheriff may make such order for further procedure as he or she thinks fit.

Division and/or sale of property

47.2.—(1) Where the sheriff orders the division and/or sale of property, heritable or otherwise, the sheriff shall direct that the division and/or sale, as the case may be, shall be conducted under the oversight and direction of the sheriff clerk or any other fit person whom the sheriff may appoint for that purpose.

(2) The sheriff clerk or person appointed under paragraph (1), as the case may be, may report any matter of difficulty arising in the course of the division and/or sale to the sheriff.

(3) At a hearing on a report made under paragraph (2), the sheriff may give such directions as the sheriff thinks fit, including authority to the sheriff clerk to sign, on behalf of any proprietor, a disposition of his or her interest in the property.

(4) On the conclusion of a sale of property—

- (a) the proceeds of the sale, under deduction of the expenses of the sale, shall be consigned into court; and
- (b) the sheriff clerk or the person appointed under paragraph (1), as the case may be, shall lodge in process a report of the sale and a proposed scheme of division of the proceeds of sale.

(5) At the hearing of a motion for approval of a report of the sale of property lodged under paragraph (4) and the proposed scheme of division, the sheriff may—

- (a) approve the report and scheme of division, and direct that payment of the proceeds of sale be made in terms of the report;

- (b) deal with any question as to the expenses of process or of sale; and
- (c) make such other order as the sheriff thinks fit.”.

Ordinary Cause Rules: Reporting restrictions

- 3.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraph.
- (2) After Chapter 47 (actions of division and sale and orders for division and/or sale of property)(a), insert—

“CHAPTER 48

**REPORTING RESTRICTIONS UNDER THE CONTEMPT OF COURT ACT
1981**

Interpretation and application of this Chapter

48.1. In this Chapter “the 1981 Act” means the Contempt of Court Act 1981(b).

Notification of reporting restrictions etc.

48.2.—(1) Paragraph (2) applies where the sheriff makes an order under section 4(2) of the 1981 Act (order postponing publication of report of legal proceedings).

(2) The sheriff clerk shall immediately arrange—

- (a) for a copy of the order to be sent to those persons who have asked to see any such order made by the sheriff and whose names are on the list kept by the Lord President for that purpose;
- (b) for the publication of the making of the order on the website used to provide official information about the Scottish courts.

Applications for variation or revocation

48.3.—(1) A person aggrieved by the terms of an order made under section 4(2) of the 1981 Act may apply to the sheriff for its variation or revocation.

(2) An application shall be made by letter addressed to the sheriff clerk.

(3) On an application being made the sheriff shall—

- (a) appoint the application for a hearing;
- (b) order written intimation of the date and time of the hearing, together with a copy of the application, to the parties to the proceedings.

(4) The hearing shall—

- (a) unless there are exceptional circumstances or a later date is requested by the applicant, take place within 48 hours of receipt of the application by the sheriff clerk;
- (b) so far as reasonably practicable, be before the sheriff who made the order.

(5) The decision of the sheriff is final.”.

(a) Chapter 47 is inserted by paragraph 2 of this Act of Sederunt.
(b) 1981 c.49.

Ordinary cause personal injuries procedure

4.—(1) Part AI of Chapter 36 (special procedure for actions for, or arising from, personal injuries)(a) of the Ordinary Cause Rules is amended in accordance with the following subparagraph.

(2) In rule 36.G1(1A)(b) (allocation of diets and timetables) for “executing” substitute “serving”.

5.—(1) Appendix 3 (schedule of timetable under the personal injuries procedure)(b) to the Ordinary Cause Rules is amended in accordance with the following subparagraph.

(2) In the third row of the timetable, for “executing” substitute “serving”.

Applications under section 1 of the Administration of Justice (Scotland) Act 1972

6.—(1) The Summary Application Rules are amended in accordance with the following subparagraphs.

(2) In rule 3.1.9 (duties of a Commissioner)(c), in paragraph (c), after “legal advice” insert “and to ask the sheriff to vary or recall the order”.

(3) For rule 3.1.12 (right of haver to consult)(d) substitute—

“Right of haver to consult

3.1.12.—(1) The haver may seek legal or other professional advice of his or her choice.

(2) Where the purpose of seeking this advice is to help the haver to decide whether to ask the sheriff to vary or recall the order, the haver may ask the Commissioner to delay starting the search for up to 2 hours or such other longer period as the Commissioner may permit.

(3) Where the haver is seeking advice under this rule, he or she must—

- (a) inform the Commissioner and the applicant’s agent of that fact;
- (b) not disturb or remove any listed items;
- (c) permit the Commissioner to enter the premises, but not to start the search.”.

(4) In Schedule 1, for Form 11A (form of order for recovery of documents etc. under Part I of Chapter 3 of Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999)(e), and Form 11B (notice to accompany order in Form 11A when served by Commissioner)(f), substitute the forms set out in Part 1 of the Schedule to this Act of Sederunt.

Forced Marriage etc. (Protection and Jurisdiction)(Scotland) Act 2011

7.—(1) The Summary Application Rules are amended in accordance with the following subparagraph.

(2) After Part XXXIX of Chapter 3 (Public Health etc. (Scotland) Act 2008)(g), insert—

(a) Part AI of Chapter 36 was inserted by S.S.I. 2009/285 and last amended by S.S.I. 2010/279.
(b) Appendix 3 was inserted by S.S.I. 2009/285 and substituted by S.S.I. 2010/279.
(c) Rule 3.1.9 was inserted by S.S.I. 2000/387.
(d) Rule 3.1.12 was inserted by S.S.I. 2000/387.
(e) Form 11A was inserted by S.S.I. 2000/387.
(f) Form 11B was inserted by S.S.I. 2000/387.
(g) Part XXXIX was inserted by S.S.I. 2009/320.

“PART XL
FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION)
(SCOTLAND) ACT 2011

Interpretation

3.40.1. In this Part (except where the context otherwise requires) references to terms defined in Part 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011(a) have the same meaning here as given there.

Applications for leave for a forced marriage protection order

3.40.2.—(1) This rule applies where leave of the court is required to make an application for a forced marriage protection order.

(2) Leave shall be sought at the time of presenting the initial writ by letter addressed to the sheriff clerk.

(3) The letter shall include a statement of—

- (a) the grounds on which leave is sought;
- (b) whether or not the applicant has applied for legal aid.

(4) Where the applicant has applied for legal aid he or she must also present along with the initial writ written confirmation from the Scottish Legal Aid Board that it has determined, under regulation 7(2)(b) of the Civil Legal Aid (Scotland) Regulations 2002(b), that notification of the application should be dispensed with or postponed.

(5) An application under paragraph (2) shall not be served or intimated unless the sheriff otherwise directs.

(6) The sheriff may hear the pursuer on the application and may grant or refuse it or make such other order in relation to it as the sheriff considers appropriate.

(7) Where leave is granted, a copy of the interlocutor allowing leave must be served upon the defender along with the warrant of citation.

Applications for variation, recall or extension of a forced marriage protection order

3.40.3.—(1) An application for variation, recall or extension of a forced marriage protection order must be made by minute in the process relating to the forced marriage protection order.

(2) Except where the sheriff otherwise directs, any such minute must be lodged in accordance with, and regulated by, Chapter 14 of the Ordinary Cause Rules.

(3) Paragraph (4) applies where leave of the court is required under section 7(1)(d) or 8(3)(d) of the 2011 Act before an application for variation, or recall or extension of a forced marriage protection order may be made.

(4) Leave shall be sought at the time of presenting the minute by letter addressed to the sheriff clerk.

(5) The letter shall include a statement of—

- (a) the grounds on which leave is sought;
- (b) whether or not the applicant has applied for legal aid.

(6) Where the applicant has applied for legal aid he or she must also present along with the minute confirmation from the Scottish Legal Aid Board that it has determined, under

(a) 2011 asp 15.
(b) S.S.I. 2002/494.

regulation 7(2)(b) of the Civil Legal Aid (Scotland) Regulations 2002^(a), that notification of the application should be dispensed with or postponed.

(7) An application under paragraph (4) shall not be served or intimated unless the sheriff otherwise directs.

(8) The sheriff may hear the applicant on the application and may grant or refuse it or make such other order in relation to it as the sheriff considers appropriate.

(9) Where leave is granted, a copy of the interlocutor allowing leave must be intimated along with the minute.”.

Summary Application Rules: Reporting restrictions

8.—(1) The Summary Application Rules are amended in accordance with the following subparagraph.

(2) After Part XL (Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011)^(b), insert—

“CHAPTER XLI

REPORTING RESTRICTIONS UNDER THE CONTEMPT OF COURT ACT 1981

Interpretation and application of this Chapter

3.41.1. In this Chapter “the 1981 Act” means the Contempt of Court Act 1981^(c).

Notification of reporting restrictions etc.

3.41.2.—(1) Paragraph (2) applies where the sheriff makes an order under section 4(2) of the 1981 Act (order postponing publication of report of legal proceedings).

(2) The sheriff clerk shall immediately arrange—

- (a) for a copy of the order to be sent to those persons who have asked to see any such order made by the sheriff and whose names are on the list kept by the Lord President for that purpose;
- (b) for the publication of the making of the order on the website used to provide official information about the Scottish courts.

Applications for variation or revocation

3.41.3.—(1) A person aggrieved by the terms of an order made under section 4(2) of the 1981 Act may apply to the sheriff for its variation or revocation.

(2) An application shall be made by letter addressed to the sheriff clerk.

(3) On an application being made the sheriff shall—

- (a) appoint the application for a hearing;
- (b) order written intimation of the date and time of the hearing, together with a copy of the application, to the parties to the proceedings.

(4) The hearing shall—

(a) S.S.I. 2002/494.

(b) Part XL is inserted by paragraph 7 of this Act of Sederunt.

(c) 1981 c.49.

- (a) unless there are exceptional circumstances or a later date is requested by the applicant, take place within 48 hours of receipt of the application by the sheriff clerk;
 - (b) so far as reasonably practicable, be before the sheriff who made the order.
- (5) The decision of the sheriff is final.”.

Amendment of the 1997 Act of Sederunt

9.—(1) The 1997 Act of Sederunt is amended in accordance with the following subparagraphs.

(2) In rule 5.1 (interpretation)(a)—

(a) insert the following definitions in the appropriate sequential order—

““2011 Regulations” means the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011(b);

“Maintenance Decision” has the meaning given to “decision” by Article 2(1) of the Maintenance Regulation;

“Maintenance Regulation” means Council Regulation (EC) No 4/2009(c) of 18th December 2008 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark(d);

“Maintenance Regulation State” in the application of any provision in relation to the Maintenance Regulation, refers to any of the Member States;”;

(b) omit the definition of “Hague Convention”;

(c) for the definition of “Hague Convention Country” substitute “means a country or territory specified in Schedule 1 to the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993(e)”.

(3) In rule 5.2 (application) after paragraph (5) insert—

“(6) Part VII of this Chapter shall have effect in relation to a Maintenance Decision.

(7) Part VIII of this Chapter shall have effect only in relation to—

(a) a Maintenance Decision made by a court in Denmark; and

(b) a Maintenance Decision to which sections 2 and 3 of Chapter IV of the Maintenance Regulation apply by virtue of Article 75(2)(a) or (b) of that Regulation.”.

(4) In rule 5.3(1)(a) (prescribed officer) for “and the 1982 Act” substitute “the 1982 Act and the 2011 Regulations”.

(5) In rule 5.4 (maintenance orders register)—

(a) in paragraph (1) for “and the 1982 Act” substitute “the 1982 Act and the Maintenance Regulation”;

(b) in paragraph (2) for “the provisions of those Acts” substitute “the relevant provisions”;

(c) in paragraph (3) for “the section of the Act and” substitute “the relevant provision including”.

(6) Omit the following rules—

(a) rule 5.15 (application for transmission of order in the Republic of Ireland);

(a) Rule 5.1 was last amended by S.S.I. 2009/29.

(b) S.I. 2011/1484.

(c) OJ No. L7, 10.1.2009, p1-79.

(d) OJ No. L 299 16.11.2005, p. 62-70.

(e) S.I. 1993/1593. The list of countries in Schedule 1 to that S.I. is amended by paragraph 25 of Schedule 7 to the 2011 Regulations.

- (b) rule 5.34 (intimation of registration of, or of decision not to register, an order made in the Republic of Ireland);
 - (c) rule 5.35 (application to set aside registration of, or to set aside decision not to register, an order made in the Republic of Ireland).
- (7) In rule 5.38(1) (applications under sections 5 or 5A of the 1982 Act)(a)—
- (a) for “sections 5 or 5A” substitute “section 5A”;
 - (b) the heading of that rule becomes “Applications under section 5A of the 1982 Act”.
- (8) After Part VI of Chapter 5 (incoming orders under the 1982 Act), insert—

“PART VII

MAINTENANCE DECISIONS UNDER THE MAINTENANCE REGULATION

Application for transmission of a Maintenance Decision to another Maintenance Regulation State

5.44.—(1) This rule applies to applications under Article 40 of the Maintenance Regulation to enforce a Maintenance Decision of a sheriff in another Maintenance Regulation State.

(2) On receipt of an application in the form of a letter, the sheriff clerk will provide the applicant with a certified copy of the Maintenance Decision and a completed extract from the decision in the form of Annex I or II to the Maintenance Regulation as the case may be.

(3) The letter must be addressed to the sheriff clerk and must include—

- (a) the name and National Insurance number (if known) of the parties to the proceedings;
- (b) the date, or approximate date, of the proceedings in which the Maintenance Decision was made and the nature of those proceedings;
- (c) the Maintenance Regulation State in which the application for recognition or enforcement has been made or is to be made; and
- (d) the postal address of the applicant.

Enforcement of a Maintenance Decision made by a court in a Maintenance Regulation State other than Denmark

5.45. The “enforcing court” under paragraph 4(2) of Schedule 1 to the 2011 Regulations, means the sheriff court having jurisdiction in the matter in accordance with Schedule 8 to the 1982 Act.

(a) Rule 5.38 was amended by S.S.I. 2009/449.

PART VIII

RECOGNITION AND ENFORCEMENT OF MAINTENANCE DECISIONS MADE BY COURTS IN DENMARK ETC.

Recognition and enforcement of a Maintenance Decision made in Denmark etc.

5.46. The “registering court” under paragraph 6(2) of Schedule 1 to the 2011 Regulations, means the sheriff court having jurisdiction in the matter in accordance with Schedule 8 to the 1982 Act.

Intimation of registration of, or refusal to register, a Maintenance Decision made in Denmark etc.

5.47.—(1) Intimation of the registration of a Maintenance Decision in accordance with Article 31 of the Maintenance Regulation shall be given by the sheriff clerk—

- (a) to the payer, by sending an intimation in Form 73A; and
- (b) to the payee, by sending a notice in Form 73B.

(2) Notice of a refusal to register a Maintenance Decision shall be given by the sheriff clerk to the payee, by sending a notice in Form 73C.

Application to set aside registration of, or to set aside decision not to register, a Maintenance Decision made in Denmark etc.

5.48. An application under Article 32 of the Maintenance Regulation shall be by summary application setting out the grounds of the application.

Sist of proceedings

5.49. An application under Article 35 of the Maintenance Regulation shall be made by motion.”.

(9) In Schedule 1 (forms)—

- (a) omit Form 69 (notice of registration for enforcement in Scotland of a maintenance order made in the Republic of Ireland);
- (b) in Form 70 (notice of registration for the purposes of enforcement in Scotland of a maintenance order made in the *Republic of Ireland/a Hague Convention Country)—
 - (i) for “of the Maintenance Orders (Reciprocal Enforcement) Act 1972 Registers” substitute “in the Maintenance Orders Register”;
 - (ii) omit “Republic of Ireland or”;
 - (iii) omit “as the case may be”;
 - (iv) the heading of the Form becomes “Notice of registration for the purposes of enforcement in Scotland of a maintenance order made in a Hague Convention Country”;
- (c) in Form 71 (notice of a decision not to register, for the purposes of the enforcement in Scotland, a maintenance order made in the *Republic of Ireland/a Hague Convention Country)—
 - (i) omit “Republic of Ireland or”;
 - (ii) omit “as the case may be”;
 - (iii) omit “(Reciprocal Enforcement) Act 1972”;
 - (iv) the heading of the Form becomes “Notice of a decision not to register, for the purposes of the enforcement in Scotland, a Maintenance Order made in a Hague Convention Country”;

- (d) in Form 72 (intimation of registration for enforcement in Scotland of a maintenance order made in a Hague Convention Country) omit “(Reciprocal Enforcement) Act 1972”;
- (e) the heading of Form 73 becomes “Notice of determination by sheriff clerk of application under section 5A of the Civil Jurisdiction and Judgements Act 1982”;
- (f) after Form 73 insert Forms 73A, 73B and 73C set out in Part 2 of the Schedule to this Act of Sederunt.

Saving

10. The amendments made to the Ordinary Cause Rules, Summary Application Rules and the 1997 Act of Sederunt by paragraphs 2, 4, 5, 6 and 9 shall have no effect in respect of any action raised but not determined prior to 28th November 2011.

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

Edinburgh
2nd November 2011

SCHEDULE

PART 1

Paragraph 6(4)

Form 11A

Rule 3.1.6

Form of order for recovery of documents etc. under the Administration of Justice (Scotland) Act 1972

SHERIFFDOM OF (*insert name of sheriffdom*)

AT (*insert place of sheriff court*)

in the Summary Application

of

[A.B.] (*designation and address*)

Applicant

against

[C.D.] (*designation and address*)

Respondent

Date: (*date of interlocutor*)

To: (*name and address of party or parties or named third party haver, from whom the documents and other property are sought to be recovered*)

THE SHERIFF having heard the applicant and being satisfied that it is appropriate to make an order under section 1 of the Administration of Justice (Scotland) Act 1972:

ORDERS the Summary Application to be served upon the person(s) named and designed in the application;

APPOINTS (*name and designation of Commissioner*) to be Commissioner of the court;

GRANTS commission and diligence;

ORDERS the Commissioner to explain to the haver on executing the order—

- (1) the meaning and effect of the order;
- (2) that the haver may be entitled to claim that certain of the documents and other property are confidential or privileged;
- (3) that the haver has a right to seek legal or other professional advice of his or her choice and to apply to vary or recall the order;

and to give the haver a copy of the Notice in Form 11B of Schedule 1 to the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999.

GRANTS warrant to and authorises the said Commissioner, whether the haver has allowed entry or not—

- (1) to enter, between the hours of 9am and 5pm on Monday to Friday, (*or where the sheriff has found cause shown under rule 3.1.11(1), otherwise specify the time [and day]*) the premises at (*address of premises*) and any other place in Scotland owned or occupied by the haver at which it appears to the Commissioner that any of the items set out in the statement of facts in the application to the court (the “listed items”) may be located;
- (2) to search for and take all other steps which the Commissioner considers necessary to take possession of or preserve (*specify the listed items*);
- (3) to take possession of and to preserve all or any of the listed items and to consign them with the Sheriff Clerk at (*enter name and address of sheriff court*) to be held by him or her pending the further orders of the sheriff;

and for that purpose,

ORDERS the haver or his/her servants or agents to allow the Commissioner, any person whom the Commissioner considers necessary to assist him/her, and the Applicant’s representatives to enter the premises named in the order and to allow them—

- (1) to search for the listed items and take such other steps as the Commissioner considers it reasonable to take to execute the order;
- (2) to remain in the premises until such time as the search is complete, including allowing them to continue the search on subsequent days if necessary.

FURTHER ORDERS the haver or his/her servants or agents—

- (1) (*if appropriate*) to provide access to information stored on any computer owned or used by him/her by supplying or providing the means to overcome any and all security mechanisms inhibiting access thereto;
- (2) to inform the Commissioner immediately of the whereabouts of the listed items;
- (3) to provide the Commissioner with a list of the names and addresses of everyone to whom he or she has given any of the listed items;

and not to destroy, conceal or tamper with any of the listed items except in accordance with the terms of this order;

FURTHER AUTHORISES (*specify the representatives*) to be the sole representatives of the Applicant to accompany the Commissioner for the purpose of identification of the said documents and other property.

(Signed)

Sheriff

SCHEDULE TO THE ORDER

Undertakings given by the Applicant

The Applicant has given the following undertakings—

1. That he/she will comply with any order of the sheriff as to payment of compensation if it is subsequently discovered that the order, or the implementation of the order, has caused loss to the respondent or, where the respondent is not the haver, to the haver.
2. That he/she will bring within a reasonable time of the execution of the order any proceedings which he/she decides to bring.
3. That he/she will not, without leave of the sheriff, use any information, documents or other property obtained as a result of the order, except for the purpose of any proceedings which he/she decides to bring and to which the order relates.

(or as modified under rule 3.1.4)

Form 11B

Rule 3.1.9(a)

Notice to accompany order in Form 11A when served by Commissioner

IMPORTANT

NOTICE TO PERSON ON WHOM THIS ORDER IS SERVED

1. This order orders you to allow the person appointed and named in the order as Commissioner to enter your premises to search for, examine and remove or copy the items mentioned in the order.
2. It also allows entry to the premises to any person appointed and named in the order as a representative of the person who has been granted the order and to any person accompanying the Commissioner to assist him/her.
3. No-one else is given authority to enter the premises.
4. You should read the order immediately.
5. You have the right to seek legal or other professional advice of your choice and you are advised to do so as soon as possible.
6. Consultation under paragraph 5 will not prevent the Commissioner from entering your premises for the purposes mentioned in paragraph 1 but if the purpose of your seeking advice is to help you to decide if you should ask the sheriff to vary or recall the order you are entitled to ask the Commissioner to delay searching the premises for up to 2 hours or such other longer period as the Commissioner may permit.
7. The Commissioner is obliged to explain the meaning and effect of the order to you.
8. The Commissioner is also obliged to explain to you that you are entitled to claim that the items, or some of them, are protected as confidential or privileged.
9. You are entitled to ask the sheriff to vary or recall the order provided that—
 - (a) you take steps to do so at once; and
 - (b) you allow the Commissioner, any person appointed as a representative of the person who has been granted the order and any person accompanying the Commissioner to assist him/her, to enter the premises meantime.
10. The Commissioner and the persons mentioned as representatives or assistants have a right to enter the premises even if you refuse to allow them to do so, unless—
 - (a) you are female and alone in the premises and there is no female with the Commissioner (where the Commissioner is not herself female), in which case they have no right to enter the premises;

- (b) the Commissioner serves the order before 9am or after 5pm on a weekday or at any time on a Saturday or Sunday (except where the sheriff has specifically allowed this, which will be stated in the order);

in which cases you should refuse to allow entry.

- 11. You are entitled to insist that there is no-one (*or* no-one other than X) present who could gain commercially from anything which might be read or seen on your premises.
- 12. You are required to hand over to the Commissioner any of the items mentioned in the order which are in your possession.
- 13. You may be found liable for contempt of court if you refuse to comply with the order.

Form 73A

Rule 5.47(1)(a)

Intimation of registration for enforcement in Scotland of a Maintenance Decision
made by a Court in Denmark etc.

(Insert place)

(Insert date)

[A.B.], *(Design)*

Intimation is hereby given of the registration in the Maintenance Orders Register kept at *[insert name and address of sheriff court]* of a Maintenance Decision made by *[name and address of Court]* on *[insert date of making order]*.

In terms of the said Maintenance Decision you are required *[narrate terms of order and payee]*.

You may within *[30 days]* or *[where the party against whom enforcement is sought has his/her habitual residence outwith the United Kingdom, 45 days]* from the date of this intimation make an application to *[insert name and address of sheriff court]* to set aside the registration of the order by lodging with the sheriff clerk at *[insert name and address of sheriff court]* a summary application setting out the grounds of the application.

The grounds upon which an application to set aside the registration may be made are:

- (a) the court does not have jurisdiction;
- (b) such registration is manifestly contrary to public policy in any part of the United Kingdom. The test of public policy may not be applied to the rules relating to jurisdiction;
- (c) where the decision was given in default of appearance, if you were not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable you to arrange for your defence, unless you failed to commence proceedings to challenge the decision when it was possible for you to do so;
- (d) if the decision is irreconcilable with a Maintenance Decision given in a dispute between the same parties in Scotland or another part of the United Kingdom;
- (e) if the decision is irreconcilable with an earlier decision given in another Member Regulation State or in a third State in a dispute involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in Scotland or another part of the United Kingdom.

Note: A Maintenance Decision which has the effect of modifying an earlier Maintenance Decision on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of points (d) and (e).

[Signed]
(Sheriff Clerk)

Form 73B

Rule 5.47(1)(b)

Notice of registration for the purposes of enforcement in Scotland of a Maintenance Decision made by a Court in Denmark etc.

(Insert place)

(Insert date)

[A.B.], *(Design)*

Notice is hereby given of the registration in the Maintenance Orders Register kept at *[insert name and address of sheriff court]* of a Maintenance Decision made by *[insert name and address of Court]* on *[insert date of making order]*.

In terms of the said Maintenance Decision CD *[design payer]* is required to pay to you *[narrate terms of order]*.

[Signed]
(Sheriff Clerk)

Form 73C

Rule 5.47(2)

Notice of a decision not to register, for the purposes of the enforcement in Scotland, a Maintenance Decision made by a Court in Denmark etc.

(Insert place)

(Insert date)

[A.B.], *(Design)*

Notice is hereby given that the Maintenance Decision made by *[insert name and address of Court]* on *[insert date of making order]* requiring CD *[design payer]* to pay to you *[narrate terms of order]* has NOT been registered in the Maintenance Orders Register kept at this Sheriff Court.

The Maintenance Decision has not been registered on the grounds that *[narrate grounds]*.

You may within 30 days from the date of this intimation make an application to *[insert name and address of sheriff court]* to set aside the decision not to register the order by lodging with the sheriff clerk at *[insert name and address of sheriff court]* a summary application setting out the grounds of the application.

[Signed]

(Sheriff Clerk)

EXPLANATORY NOTE

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

Paragraph 2 amends the Ordinary Cause Rules to introduce a new procedure in respect of actions for division and sale and orders for the division and/or sale of property.

Paragraphs 3 and 8 amend the Ordinary Cause Rules and the Summary Application Rules to set out a procedure in relation to the notification of orders made by the court which impose reporting restrictions under section 4(2) of the Contempt of Court (Scotland) Act 1981. Rules are also included in relation to variation or revocation of such an order.

Paragraphs 4 and 5 make minor amendments to the Ordinary Cause Rules in relation to actions for, or arising from, personal injuries. The amendments mean that in rule 36.G1 and the associated timetable, reference is now made to a commission for recovery of documents being served rather than executed.

Paragraph 6 amends the Summary Application Rules in respect of searches under the Administration of Justice (Scotland) Act 1972.

Paragraph 7 amends the Summary Application Rules to introduce a new Part in consequence of the Forced Marriages Etc. (Protection and Jurisdiction) (Scotland) Act 2011.

Paragraph 9 amends the Act of Sederunt (Child Care and Maintenance Rules) 1997 in consequence of Council Regulation (EC) No. 4/2009.

Paragraph 10 contains a savings provision.

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