

2014 No. 291

COURT OF SESSION

SHERIFF COURT

**Act of Sederunt (Rules of the Court of Session and Sheriff Court
Rules Amendment No. 2) (Miscellaneous) 2014**

Made - - - - *5th November 2014*

Laid before the Scottish Parliament *7th November 2014*

Coming into force - - *8th December 2014*

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 15K(3)(a) of the Debtors (Scotland) Act 1987(b), section 5 of the Court of Session Act 1988(c) and of all other powers enabling them in that behalf, having approved with such modifications as they think appropriate draft rules submitted to them by the Scottish Civil Justice Council in accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(d), do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session and Sheriff Court Rules Amendment No.2) (Miscellaneous) 2014.

(2) It comes into force on 8th December 2014.

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

(4) In this Act of Sederunt—

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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), 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 (Scotland) Act 2007 (asp 3), section 33 and schedule 5, paragraph 10 (in part); the Legal Services (Scotland) Act 2010 (asp 16), section 127(a); the Children's Hearings (Scotland) Act 2011 (asp 1), section 185; and the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), section 15(2).
- (b) 1987 c.18. Section 15K was inserted by the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3), section 169.
- (c) 1988 c.36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 46(3); and the Legal Services (Scotland) Act 2010 (asp 16), section 126(a).
- (d) 2013 asp 3.

“the Ordinary Cause Rules” means the Ordinary Cause Rules 1993 in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(a);

“the Rules of the Court of Session” means the Rules of the Court of Session 1994 in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(b);

“the Small Claim Rules” means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claims Rules) 2002(c);

“the Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(d).

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session are amended in accordance with the following subparagraphs.

(2) After rule 14A.4(1) (recall etc. of arrestment or inhibition)(e), insert—

“(1A) A motion under paragraph (1) shall—

- (a) specify the name and address of each of the parties;
- (b) where it relates to an inhibition, contain a description of the inhibition including the date of registration in the Register of Inhibitions and Adjudications.”.

(3) For rule 47.9(1A) (withdrawal of action from Commercial Roll)(f), substitute—

“(1A) At any time before or at the preliminary hearing the commercial judge may, on the motion of a party, if he is satisfied that the action is not a commercial action, withdraw it from the Commercial Roll and appoint it to proceed as an ordinary action.”.

(4) After rule 47.9(2), insert—

“(3) At any time the commercial judge may, at his own instance, after hearing the parties to the action, if he is satisfied that it is not appropriate for the action to remain on the Commercial Roll, withdraw it from the Commercial Roll and appoint it to proceed as an ordinary action.”.

(5) After Chapter 104 (Justice and Security Act)(g), insert—

“CHAPTER 105

LAND REGISTRATION ETC.

Interpretation of this Chapter

105.1. In this Chapter—

“the 2012 Act” means the Land Registration etc. (Scotland) Act 2012(h);

“plot of land” has the meaning given by section 3(4) and (5) of the 2012 Act;

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- (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; 2011/193, 289 and 386; 2012/188, 221 and 27; and 2013/91, 135, 139 and 172; 2014/152 and 201.
 - (b) 1994 S.I. 1994/1443, last amended by S.S.I. 2014/201.
 - (c) S.S.I. 2002/133, amended by S.S.I. 2003/26; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 008/223 and 365; 2009/107, 164, 294 and 402; 2010/279, 340 and 416; 2011/193; 2012/271; and 2013/191.
 - (d) S.S.I. 2002/132, amended by S.S.I. 2002/516; 2003/26 and 601; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164 and 294; 2010/279, 340 and 416; 2011/193 and 289; 2012/144, 188 and 271; 2013/135 and 171; and 2014/152.
 - (e) Rule 14A.4 was inserted by S.S.I. 2008/122.
 - (f) Rule 47.9(1A) was inserted by S.S.I. 2000/66.
 - (g) Chapter 104 was inserted by S.S.I. 2013/238.
 - (h) 2012 asp 5, amended by S.I. 2013/1575; 2014 c.14; and S.S.I. 2014/190.

“proprietor” has the meaning given by section 113(1) of the 2012 Act.

Applications under Part 6 of the 2012 Act

105.2.—(1) An application under section 67(2) (warrant to place a caveat) of the 2012 Act shall be made by motion.

(2) The motion shall—

- (a) identify, by reference to section 67(1) of the 2012 Act, the type of civil proceedings constituted by the cause;
- (b) in respect of each plot of land, contain—
 - (i) a description of the registered plot of land;
 - (ii) the title number; and
 - (iii) the name and address of the proprietor;
- (c) where the caveat is to apply only to part of a plot of land, be accompanied by a plan indicating the part so affected.

(3) An application under the following provisions of the 2012 Act shall be made by motion—

- (a) section 69(1) (renewal of caveat);
- (b) section 70(1) (restriction of caveat);
- (c) section 71(1) (recall of caveat).

Form of orders under Part 6 of the 2012 Act

105.3.—(1) An order under section 67(3) or 69(2) of the 2012 Act shall be in Form 105.3-A.

(2) An order under section 70(2) of the 2012 Act shall be in Form 105.3-B.

(3) An order under section 71(2) of the 2012 Act shall be in Form 105.3-C.

Effect of warrant to place or renew caveat

105.4. A certified copy of the order in Form 105.3-A may be registered in the Registers of Inhibitions and Adjudications.

Form of decree of reduction

105.5. Where a deed mentioned in section 46A(2) of the Conveyancing (Scotland) Act 1924(a) is reduced, the decree of reduction shall be in Form 105.5.

Form of order for rectification of a document

105.6. An order for rectification under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985(b) in respect of a document which has been registered in the Land Register of Scotland shall be in Form 105.6.”.

(6) In the Appendix, after Form 97.12 (form of intimation of hearing of application for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008), insert the Forms set out in Schedule 1 to this Act of Sederunt.

(a) 1924 c.27. Section 46A is prospectively inserted (from 8 December 2014) by the Land Registration etc. (Scotland) Act 2012 (asp 5), section 54.

(b) 1985 c.73. Section 8 is prospectively amended (from 8 December 2014) by the Land Registration etc. (Scotland) Act 2012 (asp 5), section 55 and schedule 5, paragraph 30.

Amendment of the Ordinary Cause Rules

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

- (2) In rule 6.A4(1) (recall etc. of arrestment or inhibition)(a)—
- (a) the existing rule becomes paragraph (1);
 - (b) after paragraph (1), insert—
“(2) A motion under paragraph (1) shall—
 - (a) specify the name and address of each of the parties;
 - (b) where it relates to an inhibition, contain a description of the inhibition including the date of registration in the Register of Inhibitions and Adjudications.”.
- (3) After Chapter 50 (lodging audio or audio-visual recordings of children)(b), insert—

“CHAPTER 51

LAND REGISTRATION ETC.

Interpretation of this Chapter

51.1. In this Chapter—

- “the 2012 Act” means the Land Registration etc. (Scotland) Act 2012(c);
- “plot of land” has the meaning given by section 3(4) and (5) of the 2012 Act;
- “proprietor” has the meaning given by section 113(1) of the 2012 Act.

Applications under Part 6 of the 2012 Act

51.2.—(1) An application under section 67(2) (warrant to place a caveat) of the 2012 Act shall be made by motion.

(2) The motion shall—

- (a) identify, by reference to section 67(1) of the 2012 Act, the type of civil proceedings constituted by the action;
- (b) in respect of each plot of land, contain—
 - (i) a description of the registered plot of land;
 - (ii) the title number; and
 - (iii) the name and address of the proprietor;
- (c) where the caveat is to apply only to part of a plot of land, be accompanied by a plan indicating the part so affected.

(3) An application under the following provisions of the 2012 Act shall be made by motion—

- (a) section 69(1) (renewal of caveat);
- (b) section 70(1) (restriction of caveat);
- (c) section 71(1) (recall of caveat).

(a) Rule 6.A4 was inserted by S.S.I. 2008/121.
(b) Chapter 50 was inserted by S.S.I. 2012/271.
(c) 2012 asp 5, amended by S.I. 2013/1575; 2014 c.14; and S.S.I. 2014/190.

Form of orders under Part 6 of the 2012 Act

51.3.—(1) An order under section 67(3) or 69(2) of the 2012 Act shall be in Form 51.3-A.

(2) An order under section 70(2) of the 2012 Act shall be in Form 51.3-B.

(3) An order under section 71(2) of the 2012 Act shall be in Form 51.3-C.

Effect of warrant to place or renew caveat

51.4. A certified copy of an order in Form 51.3-A may be registered in the Register of Inhibitions and Adjudications.

Form of order for rectification of a document

51.5. An order for rectification under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985(a) in respect of a document which has been registered in the Land Register of Scotland shall be in Form 51.5.”.

(4) In Appendix 1, after Form 49.11-H (form of certificate of execution of arrestment of ship or cargo on the dependence), insert the Forms set out in Schedule 2 to this Act of Sederunt.

Amendment of the Summary Cause Rules

4.—(1) The Summary Cause Rules are amended in accordance with subparagraph (2).

(2) After rule 6.A4(1) (recall etc. of arrestment or inhibition)(b), insert—

“(1A) An incidental application under paragraph (1) shall—

(a) specify the name and address of each of the parties;

(b) where it relates to an inhibition, contain a description of the inhibition including the date of registration in the Register of Inhibitions and Adjudications.”.

Amendment of the Small Claim Rules

5.—(1) The Small Claim Rules are amended in accordance with subparagraph (2).

(2) After rule 7.A4(1) (recall etc. of arrestment or inhibition)(c), insert—

“(1A) An incidental application under paragraph (1) shall—

(a) specify the name and address of each of the parties;

(b) where it relates to an inhibition, contain a description of the inhibition including the date of registration in the Register of Inhibitions and Adjudications.”.

BRIAN GILL
Lord President
I.P.D.

Edinburgh
5th November 2014

(a) 1985 c.73. Section 8 is prospectively amended (from 8 December 2014) by the Land Registration etc. (Scotland) Act 2012 (asp 5), section 55 and schedule 5, paragraph 30.

(b) Rule 6.A4 was inserted by S.S.I. 2008/121.

(c) Rule 7.A4 was inserted by S.S.I. 2008/121.

SCHEDULE 1

Paragraph 2(6)

Rule 105.3(1)

Form 105.3-A

**Form of warrant to place [or renew] a caveat under section 67(3) [or 69(2)] of the
Land Registration etc. (Scotland) Act 2012**

Cause reference no. (*insert reference*)

IN THE COURT OF SESSION

WARRANT TO PLACE [*or RENEW*] CAVEAT

in the cause

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

Pursuer

against

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

Defender

Date: (*date of interlocutor*)

To the Keeper of the Registers of Scotland

THE COURT, having considered the application of the pursuer [*or defender*] and being satisfied as to the matters mentioned in section 67(4) [*or 69(3)*] of the Land Registration etc. (Scotland) Act 2012,

GRANTS warrant to place [*or renew*] a caveat on the title sheet of the plot of land—

- (a) at (*state description of the plot(s) of land*);
- (b) registered under title number (*state title number(s)*);
- (c) registered in the name of (*state name and address of proprietor*).

(*Signed*)

NOTE: append a copy of any plan of the plot(s) of land lodged in accordance with rule 105.2(2)(c).

Rule 105.3(2)

Form 105.3-B

Form of order restricting a caveat under section 70(2) of the Land Registration etc. (Scotland) Act 2012

Cause reference no. (*insert reference*)

IN THE COURT OF SESSION
ORDER RESTRICTING A CAVEAT

in the cause

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

Pursuer

against

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

Defender

Date: (*date of interlocutor*)

To the Keeper of the Registers of Scotland

THE COURT, having considered the application of the pursuer [*or* defender], being satisfied—

- (a) as to the matters mentioned in section 70(3) of the Land Registration etc. (Scotland) Act 2012; and
- (b) that it is reasonable in all the circumstances to do so,

ORDERS that the caveat on the title sheet of the plot of land—

- (a) at (*state description of the plot(s) of land*);
- (b) registered under title number (*state title number(s)*);
- (c) registered in the name of (*state name and address of proprietor*),

be restricted as follows:

(*specify nature and extent of restriction*)

(*Signed*)

Rule 105.3(3)

Form 105.3-C

**Form of order recalling a caveat under section 71(2) of the Land Registration
etc. (Scotland) Act 2012**

Cause reference no. (*insert reference*)

IN THE COURT OF SESSION
ORDER RECALLING A CAVEAT

in the cause

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

Pursuer

against

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

Defender

Date: (*date of interlocutor*)

To the Keeper of the Registers of Scotland

THE COURT, having considered the application of the pursuer [*or defender*] and no longer being satisfied as to the matters mentioned in section 71(3) of the Land Registration etc. (Scotland) Act 2012,

ORDERS that the caveat on the title sheet of the plot of land—

- (a) at (*state description of the plot(s) of land*);
- (b) registered under title number (*state title number(s)*);
- (c) registered in the name of (*state name and address of proprietor*),

be recalled.

(*Signed*)

Rule 105.5

Form 105.5

**Form of decree of reduction in terms of section 46A of the Conveyancing
(Scotland) Act 1924**

[*Cause reference no. and name of cause*]

[*Date*]

Lord [*name*]

The Lord Ordinary, on the motion of the pursuer, holds production to be satisfied, [in absence], reduces the [*insert type of deed, parties to the deed and date of registration in the Land Register of Scotland*] registered in the Land Register of Scotland under title number [*insert title number and, if applicable, lease title number*], [recalls the interim interdict dated [*date*]] and decerns; finds the pursuer [*or defender*] liable to the defender [*or pursuer*] in the expenses of the action, remits the account thereof, when lodged, to the Auditor of Court to tax.

Rule 105.6

Form 105.6

Form of order for rectification of a document to which section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 applies

[Cause reference no. and name of cause]

[Date]

Lord *[name]*

The Lord Ordinary, on the motion of the pursuer, orders the rectification of *[insert type of deed, parties to the deed and date of registration in the Land Register of Scotland]* registered in the Land Register of Scotland under title number *[state title number and, if applicable, lease title number]* to the extent of *[insert details of the rectification including, if applicable, a statement in terms of section 8(3A) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (i.e. statement of consent)]*.

(Signed)

SCHEDULE 2

Paragraph 3(4)

Rule 51.3(1)

Form 51.3-A

**Form of warrant to place [or renew] a caveat under section 67(3) [or 69(2)] of the
Land Registration etc. (Scotland) Act 2012**

Court reference no. (*insert reference*)

SHERIFFDOM OF (*insert name of sheriffdom*)

AT (*insert place of sheriff court*)

WARRANT TO PLACE [or RENEW] CAVEAT

in the cause

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

Pursuer

against

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

Defender

Date: (*date of interlocutor*)

To the Keeper of the Registers of Scotland

THE SHERIFF, having considered the application of the pursuer [or defender] and being satisfied as to the matters mentioned in section 67(4) [or 69(3)] of the Land Registration etc. (Scotland) Act 2012,

GRANTS warrant to place [or renew] a caveat on the title sheet of the plot of land—

- (a) at (*state description of the plot(s) of land*);
- (b) registered under title number (*state title number(s)*);
- (c) registered in the name of (*state name and address of proprietor*).

(*Signed*)

NOTE: append a copy of any plan of the plot(s) of land lodged in accordance with rule 51.2(2)(c).

Rule 51.3(2)

Form 51.3-B

**Form of order restricting a caveat under section 70(2) of the Land Registration
etc. (Scotland) Act 2012**

Court reference no. (*insert reference*)

SHERIFFDOM OF (*insert name of sheriffdom*)

AT (*insert place of sheriff court*)

ORDER RESTRICTING A CAVEAT

in the cause

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

Pursuer

against

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

Defender

Date: (*date of interlocutor*)

To the Keeper of the Registers of Scotland

THE SHERIFF, having considered the application of the pursuer [*or* defender], being satisfied—

- (a) as to the matters mentioned in section 70(3) of the Land Registration etc. (Scotland) Act 2012; and
- (b) that it is reasonable in all the circumstances to do so,

ORDERS that the caveat on the title sheet of the plot of land:

- (a) at (*state description of the plot(s) of land*);
- (b) registered under title number (*state title number(s)*);
- (c) registered in the name of (*state name and address of proprietor*),

be restricted as follows:

(*specify nature and extent of restriction*)

(Signed)

Rule 51.3(3)

Form 51.3-C

**Form of order recalling a caveat under section 71(2) of the Land Registration
etc. (Scotland) Act 2012**

Court reference no. (*insert reference*)

SHERIFFDOM OF (*insert name of sheriffdom*)

AT (*insert place of sheriff court*)

ORDER RECALLING A CAVEAT

in the cause

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

Pursuer

against

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

Defender

Date: (*date of interlocutor*)

To the Keeper of the Registers of Scotland

THE SHERIFF, having considered the application of the pursuer [*or* defender] and no longer being satisfied as to the matters mentioned in section 71(3) of the Land Registration etc. (Scotland) Act 2012,

ORDERS that the caveat on the title sheet of the plot of land—

- (a) at (*state description of the plot(s) of land*);
- (b) registered under title number (*state title number(s)*);
- (c) registered in the name of (*state name and address of proprietor*),

be recalled.

(*Signed*)

Rule 51.5

Form 51.5

Form of order for rectification of a document to which section 8A of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 applies

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

ORDER FOR RECTIFICATION OF A DOCUMENT UNDER SECTION 8 OF THE LAW REFORM (MISCELLANEOUS PROVISIONS) (SCOTLAND) ACT 1985

[Date]

The sheriff, on the motion of the pursuer, orders the rectification of [*insert type of deed, parties to the deed and date of registration in the Land Register of Scotland*] registered in the Land Register of Scotland under title number [*state title number and, if applicable, lease title number*] to the extent of [*insert details of the rectification including, if applicable, a statement in terms of section 8(3A) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (i.e. statement of consent)*].

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session, the Ordinary Cause Rules, the Summary Cause Rules and the Small Claim Rules. It makes provision in consequence of the coming into force of the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”). It additionally makes provision about a number of other matters relating to land registration, and amends the Rules of the Court of Session in relation to the withdrawal of actions from the Commercial Roll.

Paragraphs 2(5) and 3(3) insert new Chapters 105 and 51 into the Rules of the Court of Session and the Ordinary Cause Rules respectively. In particular, both new Chapters prescribe the procedure to be followed in relation to applications under Part 6 (caveats) of the 2012 Act. Chapter 105 also prescribes the form of decree of reduction for the purposes of section 46A of the Conveyancing (Scotland) Act 1924 (as inserted by section 54 of the 2012 Act). Both Chapters prescribe the form of an order for rectification under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, if it is an order to which section 8A (as inserted by section 55 of the 2012 Act) applies. Forms to accompany Chapters 105 and 51 are inserted by paragraphs 2(6) and 3(4) respectively.

Paragraphs 2(2), 3(2), 4(2) and 5(2) amend the Rules of the Court of Session, the Ordinary Cause Rules, the Summary Cause Rules and the Small Claim Rules in respect of recalls of inhibitions on the dependence. The amendments provide that certain information about the inhibition must be specified in the motion or incidental application for recall.

Paragraphs 2(3) and (4) amend the procedure for withdrawing an action from the Commercial Roll, giving the commercial judge a new power (rule 47.9(3) of the Rules of the Court of Session) to withdraw an action from the Commercial Roll where the judge is satisfied that it is not appropriate for it remain on that roll. A revised rule 47.9(1A) is also substituted in order to reflect this change to the judge’s powers.

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