

**2016 No. 367**

**SHERIFF COURT**

**Act of Sederunt (Sheriff Court Rules Amendment)  
(Miscellaneous) 2016**

<i>Made</i>	- - - -	<i>10th November 2016</i>
<i>Laid before the Scottish Parliament</i>		<i>14th November 2016</i>
<i>Coming into force</i>	- -	<i>28th November 2016</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by paragraph 2 of schedule 5 of the Bankruptcy (Scotland) Act 1985(b), section 104(1) of the Court Reform (Scotland) Act 2014(c) and all other powers enabling it to do so.

**Citation and commencement, etc.**

**1.**—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2016.

(2) It comes into force on 28th November 2016.

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

**Amendment of the Ordinary Cause Rules 1993**

**2.**—(1) The Ordinary Cause Rules 1993(d) are amended in accordance with this paragraph.

(2) In rule 36A.10(1)(c) (pre-proof timetable)(e), for “reports” substitute “records”.

**Amendment of the Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008**

**3.**—(1) The Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008(f) is amended in accordance with this paragraph.

(2) In rule 2(1) (interpretation)—

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(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).  
(b) 1985 c. 66.  
(c) 2014 asp 18.  
(d) The Ordinary Cause Rules 1993 are in Schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c. 51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2016/242.  
(e) Chapter 36A was inserted by paragraph 8 of S.S.I. 2015/227.  
(f) S.S.I. 2008/435.

- (a) after the definition of “the Ordinary Cause Rules” insert—
  - ““the Simple Procedure Rules” means the Simple Procedure Rules in schedule 1 of the Act of Sederunt (Simple Procedure) 2016(a);” and
- (b) omit the definition of “the Small Claim Rules”.
- (3) In rule 4(3) (transfer to domestic procedure), for “Small Claim Rules” substitute “Simple Procedure Rules”.
- (4) In the schedule—
  - (a) in Form 1 (form of notice that claim presented under European Small Claims Procedure outside scope of Regulation), for “*small claim*” substitute “*simple*”;
  - (b) in Form 2 (form of notice that claim presented under European Small Claims Procedure transferred to domestic procedure), for “*small claim*” substitute “*simple*”.

**Amendment of the Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008**

- 4.**—(1) The Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008(b) is amended in accordance with this paragraph.
- (2) In rule 2(1) (interpretation)—
    - (a) after the definition of “the Ordinary Cause Rules” insert—
      - ““the Simple Procedure Rules” means the Simple Procedure Rules in schedule 1 of the Act of Sederunt (Simple Procedure) 2016;” and
    - (b) omit the definition of “the Small Claim Rules”.
  - (3) In rule 5(2) (opposition to European order for payment), for “Small Claim Rules” substitute “Simple Procedure Rules”.
  - (4) In the schedule, in Form 1 (form of notice of statement of opposition to European order for payment), for “*small claim*” substitute “*simple procedure case*”.

**Amendment of the Act of Sederunt (Simple Procedure) 2016**

- 5.**—(1) The Act of Sederunt (Simple Procedure) 2016 is amended in accordance with this paragraph.
- (2) In paragraph 3(1) (interpretation of the Simple Procedure Rules), after the definition of “trading name” insert—
    - ““trainee solicitor” means a person who is training to be a solicitor and is supervised by a solicitor in accordance with regulations made by the Council of the Law Society of Scotland under section 5 of the Solicitors (Scotland) Act 1980(c);”
  - (3) In schedule 1 (the Simple Procedure Rules)—
    - (a) in rule 2.2(2), after “solicitor” insert “, trainee solicitor”;
    - (b) in rule 15.3—
      - (i) for paragraph (2) substitute—
        - “(2) Before enforcing a decision for payment of a sum of money, the successful party must formally serve a Charge on the other party by sheriff officer using one of the methods of formal service mentioned in rule 18.3.”;
      - (ii) after paragraph (5) insert—

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(a) S.S.I. 2016/200, last amended by S.S.I. 2016/315.

(b) S.S.I. 2008/436.

(c) The Council of the Law Society of Scotland was continued in being by section 3 of the Solicitors (Scotland) Act 1980 (c. 46).

“(6) The requirement to formally serve by sheriff officer is subject to the exceptions in sections 2 and 3 of the Execution of Diligence (Scotland) Act 1926(a).”.

- (c) in rule 15.4(2), after “serve it” insert “by sheriff officer”; and
- (d) after rule 20.8(3), insert—

“(4) The requirement to formally serve by sheriff officer is subject to the exceptions in sections 2 and 3 of the Execution of Diligence (Scotland) Act 1926.”.

#### **Amendment of the Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Bankruptcy (Scotland) Act 2016) 2016**

**6.**—(1) The Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Bankruptcy (Scotland) Act 2016) 2016(b) is amended in accordance with this paragraph.

(2) In paragraph 8 (saving)—

- (a) for subparagraph (1) substitute—

“(1) In this paragraph—

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985;

“trust deed” has the meaning given by section 228(1) of the Bankruptcy (Scotland) Act 2016.”; and

- (b) for subparagraph (4) substitute—

“(4) Paragraph 6 has no effect in relation to—

(a) sequestrations as regards to which the petition is presented, or the debtor application is made before 30th November 2016; or

(b) the application of the provisions mentioned in subparagraph (5) to trust deeds executed before 30th November 2016.

(5) The provisions are, in the schedule of the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008—

(a) rule 1(3), so far as relating to Forms 8 and 9 in appendix 1 of the schedule;

(b) rule 9(2) and (3); and

(c) Forms 8 and 9 in appendix 1 of the schedule.”.

#### **Amendment of the Sheriff Court Bankruptcy Rules 2016**

**7.**—(1) The Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016(c) is amended in accordance with this paragraph.

(2) In schedule 1 (forms), in Form 6.1—A (form of petition for sequestration), in the fourth of the alternative versions of statement of fact 3 (where petitioner is a trustee under a trust deed)—

- (a) in the first of the alternative versions of paragraph (b), for “*respondent*” substitute “*debtor*”; and

- (b) in the second of the alternative versions of paragraph (b), after “interests of” insert “the creditors”.

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(a) 1926 c. 16. Section 2 was last amended by the Postal Services Act 2011 (c. 5), Schedule 12, paragraph 76. Section 3 was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), schedule 5, paragraph 7(3)(b).

(b) S.S.I. 2016/312.

(c) S.S.I. 2016/313.

(3) In schedule 3 (service of documents furth of Scotland), in paragraph 8(2)(a) (consular service) omit “member”.

*CJM SUTHERLAND*  
Lord President  
I.P.D.

Edinburgh  
10th November 2016

## **EXPLANATORY NOTE**

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

This Act of Sederunt makes miscellaneous amendments to various sheriff court rules.

Paragraph 2 amends rule 36A.10(1)(c) of the Ordinary Cause Rules 1993 to correct a drafting error.

Paragraphs 3 and 4 amend the Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008 and the Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008 to introduce references to simple procedure and to remove references relating to domestic small claims.

Paragraph 5 amends the Act of Sederunt (Simple Procedure) 2016. These amendments provide that trainee solicitors may act as legal representatives in simple procedure cases and clarify how a Charge must be formally served before a decision can be enforced.

Paragraph 6 amends paragraph 8 of the Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Bankruptcy (Scotland) Act 2016) 2016. The effect of the amendment is to modify the purposes for which the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008 (“the 2008 Rules”) continue to have effect following their revocation. In particular, the amendment ensures that certain forms prescribed in the 2008 Rules continue to have effect in relation to trust deeds executed before 30th November 2016.

Paragraph 7 amends the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 to correct minor drafting errors.

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