

1988 No. 1978 (S.190)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, and Summary Cause, Rules) 1988

Made - - - - 10th November 1988

Coming into force 30th November 1988

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Court (Scotland) Act 1971(a), section 97 of the Debtors (Scotland) Act 1987(b) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, and Summary Cause, Rules) 1988 and shall come into force on 30th November 1988.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

AMENDMENT OF ORDINARY CAUSE RULES

2. The Ordinary Cause Rules of the Sheriff Court(c) shall be amended in accordance with paragraphs 3 to 18 of this Act of Sederunt.

3. For rule 2 (application of rules to solicitors) substitute the following rule:—

“Representation

2.—(1) Subject to paragraph (2) of this rule, a party to any proceedings arising solely under the provisions of the Debtors (Scotland) Act 1987 shall be entitled to be represented by a person other than a solicitor or an advocate provided that the sheriff is satisfied that such person is a suitable representative and is duly authorised to represent the party.

(2) Paragraph (1) shall not apply to appeals to the sheriff principal.

(3) Where a party to any cause is represented by a solicitor, any reference in the rules to that party shall, where appropriate, be construed as a reference to the solicitor representing that party.”

4.—(1) For paragraph (4) of rule 3 (initial writ), substitute the following paragraph:—

“(4) An article of condescence shall be included in the initial writ stating the ground of jurisdiction of the court.”

(a) 1971 c.58.

(b) 1987 c.18.

(c) 1907 c.51 First Schedule, substituted by S.I. 1983/747; relevant amending instruments are S.I. 1984/255, 921, 1986/1230 and 1946.

(2) In paragraphs (6) and (7) of rule 3(a), for the words "paragraph (2)" wherever they occur substitute the words "paragraph (5)".

5.—(1) In paragraph (1) of rule 5 (warrant of citation)(b), after the words "and of separation" insert the words "or an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender".

(2) In paragraph (3) of rule 5, for the word "in" where it first occurs, substitute the words "subject to paragraph (4), in".

(3) At the end of rule 5, insert the following paragraphs:—

"(4) In a summary application in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, the warrant of citation shall be framed as nearly as may be in accordance with form B3 as set out in the Appendix to this Schedule.

(5) In an ordinary cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, the warrant of citation shall be framed as nearly as may be in accordance with form B4 as set out in the Appendix to this Schedule.

(6) In any cause in which warrant for citation in accordance with forms B3 or B4, as the case may be, is appropriate, there shall be served on the defender (along with the initial writ and warrant) a notice in accordance with form B5 (ordinary action) or B6 (summary application), as the case may be, as set out in the Appendix to this Schedule."

6. In rule 7(1) (period of notice after citation), for sub-paragraphs (a) and (b) substitute the following sub-paragraph:—

"(a) 21 days where the defender is resident or has a place of business within Europe;";

and sub-paragraph (c) shall be relettered as sub-paragraph (b).

7. (1) In paragraph (1) of rule 9 (form of citation and certificate)(c), after the words "or of separation" insert the words "or an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender".

(2) After paragraph (2) of rule 9 insert the following paragraph:—

"(2A) In any ordinary cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be given as nearly as may be in accordance with form C2 as set out in the Appendix to this Schedule which shall be prefixed to a copy of the initial writ and warrant of citation."

8. For rule 13 (days of charge), substitute the following rule:—

"13.—(1) The period for payment specified in any charge following on a decree for payment granted in an ordinary cause shall be 14 days if the person on whom it is served is within the United Kingdom and 28 days if he is outside the United Kingdom or his whereabouts are unknown.

(2) The period in respect of any other form of charge in respect of an ordinary cause decree shall be 14 days."

9. In rule 21(1)(a) (minute for granting of decree without attendance)(d), after the words "minute under rule 34" insert the words "or an application for a time to pay direction under the Debtors (Scotland) Act 1987 or if the defender has lodged such application and the pursuer does not object thereto or to any recall or restriction of an arrestment sought therein."

10. After rule 21A (decree in causes in which the Hague Convention applies)(e), insert the following rules:—

(a) Paragraphs (6) and (7) of rule 3 were amended by S.I. 1986/1230 and 1946.

(b) Paragraph (1) of rule 5 was amended by S.I. 1984/255 and 1986/1230.

(c) Rule 9 was amended by S.I. 1984/255 and 1986/1230.

(d) Rule 21(1) was amended by S.I. 1986/1946.

(e) Rule 21A was inserted by S.I. 1986/1946.

“Applications for time to pay directions in undefended causes

21B.—(1) This rule applies to ordinary causes in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.

(2) A defender in a cause which is otherwise undefended, who wishes to apply for a time to pay direction, and where appropriate, to have an arrestment recalled or restricted, may complete and lodge with the sheriff clerk the relevant part of form B5 before the expiry of the period of notice.

(3) Where the pursuer does not object to the defender’s application, he shall minute accordingly and for decree in accordance with rule 21; and the sheriff may grant decree or other order in terms of the application and minute.

(4) Where the pursuer objects to the defender’s application he shall minute accordingly and for decree in terms of rule 21; and the sheriff clerk shall thereafter enrol the cause for hearing of the defender’s application and intimate the hearing to the defender and pursuer.

(5) The sheriff shall consider the application on the date fixed for hearing or at any continuation thereof and may then or after further consideration grant or refuse it as may seem to him appropriate whether or not any of the parties appear and grant decree accordingly.

Applications for time to pay directions in summary applications

21C.—(1) This rule applies in summary applications in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.

(2) A defender may apply for a time to pay direction and, where appropriate, for recall or restriction of an arrestment—

- (a) by appearing and making the appropriate motion at the diet fixed;
- (b) except where the period of notice has been shortened in accordance with rule 7(2), by completing and returning to the sheriff clerk at least 7 days before the diet fixed for hearing the appropriate portion of form B6; or
- (c) by application to the court at any stage in the proceedings prior to final decree being granted.”.

11. After rule 57 (motions), insert the following rule:—

“Applications for time to pay directions and for recall or restriction of arrestments in defended causes

57A. In any defended cause in which it is competent to do so, the sheriff may, on a motion by the defender at any time before decree is granted, grant a time to pay direction and, where appropriate, an order recalling or restricting an arrestment.”.

12. In rule 64(1)(c) (amendment of pleadings: powers of sheriff), after the words “defences or answers must be lodged” insert the words—

“; provided that in any case in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender a notice in terms of form HH as set out in the Appendix to this Schedule together with form B5 shall be served on such additional or substitute defender in place of form H”.

13. For paragraph (2) of rule 92 (application for leave to appeal and appeal therefrom), substitute the following paragraphs:—

- “(2) Where leave to appeal has been granted, an appeal shall be made—
- (a) where the appeal relates to a time to pay direction or any order connected therewith, within 14 days; or
 - (b) in any other case, within 7 days,
- of the granting of leave.

(3) An application for leave to appeal relating to a time to pay direction or the recall or restriction of an arrestment shall specify the question of law upon which the appeal is to proceed.”.

14. In rule 99 (actions craving payment of rent)–

(a) after “99”, insert “(1)”; and

(b) after paragraph (1), insert the following paragraph:–

“(2) There shall be served on the defender in such actions, along with the initial writ, warrant and citation, a notice in accordance with form H8 as set out in the Appendix to the Schedule.”.

15. In paragraph (11)(a) of rule 130 (intimation)(a), for “14”, substitute “21”.

16.—(1) In paragraph (6) of rule 138 (citation), for sub-paragraphs (a) and (b), substitute the following sub-paragraph:–

“(a) 21 days when the defender is resident or has a place of business within Europe”; and sub-paragraph (c) shall be relettered as sub-paragraph (b).

(2) In paragraph (9)(a) of rule 138(b) for “14” substitute “21”.

17. In paragraph (2) of rule 147 (applications for interim payment of damages), for “14” substitute “21”.

18.—(1) The Appendix to the Ordinary Cause Rules shall be amended in accordance with the following sub-paragraphs.

(2) In forms CC, C1, H1 to H7, S, S1, V1, V2 and SDA7(c), for “14” wherever they occur substitute “21”.

(3) In form D(d) after the word “actions” insert the following words:–

“in which a time to pay direction may be applied for set forth any form sent in accordance with rule 5 and in actions”.

(4) There shall be inserted forms B3, B4, B5, B6, C2, HH and H8 as set out in Schedule 1 to this Act of Sederunt.

AMENDMENT OF SUMMARY CAUSE RULES

19. The Summary Cause Rules of the Sheriff Court(e) shall be amended in accordance with paragraphs 20 to 35 of this Act of Sederunt.

20. Paragraph (4) of rule 2 (statement of claim) shall be omitted.

21. In paragraph (1) of rule 4 (period of notice after citation)(f), for sub-paragraphs (a) and (b) substitute the following sub-paragraph:–

“(a) 21 days when the defender is resident or has a place of business within Europe;” and sub-paragraph (c) shall be relettered as paragraph (b).

22. In rule 15 (return of summons)(g), for the words “rules 51 to 55” substitute the words “rules 50 to 55”.

23. After paragraph (2) of rule 17 (representation), insert the following paragraph:–

“(3) A party to any proceedings under the Debtors (Scotland) Act 1987, other than appeals to the sheriff principal, shall be entitled to be represented at any stage of such proceedings by a person other than a solicitor or an advocate provided that the sheriff

(a) Rule 130 was substituted by S.I. 1986/1230.

(b) Paragraph (9) of rule 138 was substituted by S.I. 1986/1230.

(c) Forms C1 and S1 were inserted by S.I. 1984/255; form CC was inserted by S.I. 1984/921; and forms H1 to H7, V1, V2 and SDA7 were inserted by S.I. 1986/1230.

(d) Form D was amended by S.I. 1986/1230.

(e) S.I. 1976/476; relevant amending instruments are S.I. 1978/1805, 1980/455 and 1986/1946.

(f) Rule 4 was substituted by S.I. 1980/455.

(g) Rule 15 was substituted by S.I. 1980/455.

is satisfied that such person is a suitable representative and is duly authorised to represent the party.”.

24. After rule 17, insert the following rule:—

“Applications for time to pay directions

17A.—(1) This rule applies to summary causes, other than causes regulated by rules 50 to 55, in which a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) under the Debtors (Scotland) Act 1987 may be applied for.

(2) Where a time to pay direction may be applied for by a defender, the pursuer shall serve on the defender a notice in accordance with form Bb together with the summons.

(3) A defender may apply for a time to pay direction, and, where appropriate, for an order recalling or restricting an arrestment, by—

- (a) appearing at the first calling of the cause and making the appropriate motion;
- (b) except when the period of notice has been reduced under rule 4(2), completing and returning to the sheriff clerk to arrive at least 7 days before the first calling the appropriate portion of form Bb; or
- (c) written or oral application to the court at any other stage prior to final decree being granted.”.

25.—(1) In paragraph (1) of rule 18 (first calling), after the word “action” insert the words “or, where competent, to apply for a time to pay direction”.

(2) In paragraph (2) of rule 18, after the word “party” insert the words “or where there has been an application for a time to pay direction which has been objected to”.

(3) In paragraph (3) of rule 18, reletter sub-paragraph (c) as sub-paragraph (d) and insert after sub-paragraph (b) the following sub-paragraph:—

“(c) where a time to pay direction has been applied for by the defender; or”.

26. For rules 50 (actions for payment of money—general) and 50A (service document), substitute the following rules:—

“General

50.—(1) All actions for payment of money (as defined by section 35(1)(a) of the Act of 1971) in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for shall, subject to rule 56, be proceeded with in accordance with rules 51 to 55.

(2) All actions for payment of money (as defined by section 35(1)(a) of the Act of 1971) in which a time to pay direction may not be applied for shall, subject to rule 56, be proceeded with in accordance with rules 51, 53 and 55.

(3) In an action to which paragraph (1) applies, in place of a summons or service copy summons a service document in Form Aa together with form Q shall be served on the defender.

(4) In an action to which paragraph (2) applies, in place of a summons or service copy summons a service document in Form Aa together with form R shall be served on the defender.

(5) Any reference in Part 1 of these rules and in the forms annexed to these rules to a summons or a copy summons being served shall, in relation to actions to which paragraph (1) or (2) applies, be construed as a reference to service of such service documents and forms as are mentioned in paragraph (3) or (4), as the case may be.”.

27. For rules 51 (notice of intention to appear) and 52 (notice of offer to pay) substitute the following rule:—

“Notice of intention to appear

51. Where a defender intends—

- (a) to challenge the jurisdiction of the court;
- (b) to defend the action;

- (c) to dispute the amount of the claim; or
- (d) where he admits the claim, to make an oral application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment),

he shall lodge a notice of intention to appear, in accordance with form Q or R, as the case may be, on or before the return day being the last day specified in such form for the return to the sheriff clerk of the notice of intention to appear.

Applications in writing for time to pay directions etc

52. Where a defender admits the claim and does not intend to appear, he may make an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) by completing the appropriate part of form Q and lodging it on or before the return day referred to in rule 51.”.

28. For paragraph (2) of rule 53 (first calling), substitute the following paragraphs:-

“(2) A first calling of a cause shall be held only where a notice of intention to appear has been lodged or an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) has been lodged and the pursuer has not minuted in terms of rule 54.

(3) The procedure at the first calling under paragraph (2) and any subsequent procedure shall be in accordance with Part I of these rules.

(4) At the first calling or at any continuation thereof the court shall consider any application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) whether or not the defender is present or represented.

(5) In any defended cause in which it is competent to do so, the sheriff may, on a written or oral application by the defender at any time before decree is granted, grant a time to pay direction and, where appropriate, an order recalling or restricting an arrestment.”.

29. For rule 54 (acceptance of written offer to pay by instalments), substitute the following rule:-

“Consent to proposals for payment

54. Where an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) has been lodged in accordance with rule 52, the cause shall not be called in court if before the date specified in the summons for the first calling the pursuer enters a minute in the Book of Summary Causes intimating that he does not object to the application; and thereafter the court may grant decree accordingly.”.

30. In paragraph (1) of rule 55 (no notice by defender)(a) for the words “a notice of offer to pay by instalments” substitute the words “an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment)”.

31. In rule 73(2) (appraisal, inventory and execution of citation), after the word “appraisal” insert the words “and a notice in accordance with form W”.

32. After rule 85, insert the following rule:-

“Appeal in relation to a time to pay direction

85A.—(1) This rule applies to appeals to the sheriff principal or to the Court of Session which relate solely to any application in connection with a time to pay direction.

(2) Rules 81, 81A, 82, 83(2) and 84 shall not apply to appeals under this rule.

(3) An application for leave to appeal against a decision in an application for a time to pay direction or any order connected therewith shall be made in writing, within 7 days

(a) Paragraph (1) of rule 55 was substituted by S.I. 1978/1805 and amended by S.I. 1986/1946.

of that decision, to the sheriff who made the decision and shall specify the question of law upon which the appeal is to proceed.

(4) Where leave to appeal is granted, the appeal shall be lodged and intimated by the appellant to the other party within 14 days of the order granting leave and the sheriff shall state in writing his reasons for his original decision.

(5) An appeal to the sheriff principal shall proceed in accordance with paragraphs (1), (3) and (4) or rule 83.

(6) In an appeal to the Court of Session from the sheriff or the sheriff principal—

(a) there shall be specified in the appeal the name and address of the solicitor in Edinburgh who will be acting for the appellant; and

(b) the sheriff clerk shall transmit within 4 days to the Deputy Principal Clerk of Session—

(i) all documents and productions in the case;

(ii) a certified copy of the final decree;

(iii) the application for leave to appeal and the decision thereon;

(iv) the note of appeal;

(v) the sheriff's statement of reasons and, where appropriate, the sheriff principal's decision,

all of which shall be deemed to be the sheriff court process.

(7) Within the period of 4 days mentioned in paragraph (6)(b), the sheriff clerk shall send written notice of the appeal to the other party and a certificate of intimation of written notice of the appeal shall be appended by him to the note of appeal.”.

33. For rule 91 (charge), substitute the following rule:—

“Charge

91.—(1) The period for payment specified in any charge following on a decree for payment granted in summary cause shall be—

(a) 14 days if the person on whom it is served is within the United Kingdom; and

(b) 28 days if he is outside the United Kingdom or his whereabouts are unknown.

(2) The period in respect of any other form of charge on a summary cause decree shall be 14 days.”.

34. In rule 92 (applications in the same cause for variation, etc, of decree), at the end, insert the following paragraph:—

“(5) This rule shall not apply to any proceedings under the Debtors (Scotland) Act 1987 or to proceedings which may be subject to the provisions of that Act.”.

35.—(1) The Appendix to the Summary Cause Rules shall be amended in accordance with the following sub-paragraphs.

(2) In form A(a)—

(a) for the words “14 days” substitute the words “21 days”; and

(b) after the words “The pursuer is authorised to serve a service document”, insert the words “together with (*insert as appropriate form Q or form R*)”.

(3) In form Aa(b)—

(a) for the words “Form Q” substitute the words “(*insert as appropriate form Q or form R*)”; and

(b) after the words “The pursuer has been authorised by the court to serve this document”, insert the words “together with (*insert as appropriate form Q or form R*)”.

(4) In forms B, G, H and I, after the words “The pursuer is hereby authorised to serve a copy of this summons”, insert the words “(*insert as appropriate—*together with form Bb)”.

(5) The notes (1), (2) and (3) in form J shall be omitted.

(a) Form A was substituted by S.I. 1978/1805.

(b) Form Aa was inserted by S.I. 1978/1805.

- (6) For form Q substitute the form Q as set out in Schedule 2 to this Act of Sederunt.
- (7) For form U2 substitute the forms U2 and U2A as set out in Schedule 2 to this Act of Sederunt.
- (8) There shall be inserted forms Bb, R and W as set out in Schedule 2 to this Act of Sederunt.

MISCELLANEOUS

Consequential amendment

36. In paragraph 5 of the Act of Sederunt (Ordinary Cause Rules, Sheriff Court) 1983(a) for the words "5(2)" substitute "5(3)".

Edinburgh
10th November 1988

Emslie
Lord President, I.P.D.

(a) S.I. 1983/747.

FORM B3

Rule 5(4)

WARRANT OF CITATION—SUMMARY APPLICATION WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR

(Place and date) Grants warrant to cite the defender by serving a copy of the writ and warrant, together with form B6 as set out in the Appendix to the First Schedule to the Sheriff Courts (Scotland) Act 1907, upon a period of notice of _____ days, and appoints him to answer within the Sheriff Court House at _____ (in Room No, _____ or in Chambers, or as the case may be), on the day of _____ at _____ o'clock noon; Appoints the defender if he admits the claim and intends to apply for a time to pay direction (and where appropriate for recall or restriction of an arrestment) either to appear at that diet and make such application or to lodge the appropriate part of form B6 duly completed with the sheriff clerk at *(place)* at least seven days before the diet; [*where appropriate add* meantime sequestrates and grants warrant to inventory and secure *or* grants warrant to arrest on the dependence *or otherwise as the case may be*].

FORM B4

Rule 5(5)

WARRANT OF CITATION WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR

(Place and date) Grants warrant to cite the defender by serving a copy of the writ and warrant, together with form B5 as set out in the Appendix to the First Schedule to the Sheriff Courts (Scotland) Act 1907, upon a period of notice of _____ days and appoints him (a) if he intends to defend to lodge a notice of intention to defend or (b) if he does not intend to defend but admits the claim and intends to apply for a time to pay direction (and where appropriate for recall or restriction of an arrestment) to lodge the appropriate part of form B5 duly completed, with the sheriff clerk at _____ within the period of notice after such service [and grants warrant to arrest on the dependence]. [*Where appropriate add* meantime grants interim interdict *or* warrant to arrest on the dependence *or* sequestrates and grants warrant to inventory *or otherwise, as the case may be* [and to arrest to found jurisdiction.]]

NOTICE TO BE SERVED ON DEFENDER IN ORDINARY ACTION WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR

ACTION RAISED BY

.....
.....
.....
..... PURSUERDEFENDER

AT SHERIFF COURT

Including Address

COURT
REF NUMBER
...../.....

DATE OF EXPIRY OF
PERIOD OF NOTICE
.....

THIS SECTION MUST BE COMPLETED BY PURSUER BEFORE SERVICE

Under the Debtors (Scotland) Act 1987

The Act gives you a right to apply to the court for a "time to pay direction" which is an order saying that you can pay any sum of money you are ordered to pay to the pursuer (which may include interest and court expenses) either by way of instalments or deferred lump sum. A deferred lump means that you must pay all the amount at one time within a specified period set by the court.

In addition when making a "time to pay direction" the court may recall or restrict an arrestment made on your property by the pursuer in connection with the action or debt (for example your bank account may have been frozen).

HOW TO APPLY FOR A TIME TO PAY DIRECTION WHEN CLAIM ADMITTED AND YOU DO NOT WANT TO DEFEND THE ACTION

1. Attached to this Notice at pages 3 and 4 is an application for a "time to pay direction" and recall or restriction of an arrestment, if appropriate. If you want to make an application you should lodge the completed application with the court before the expiry of the period of notice—the date of which is given above. No court fee is payable when lodging the application.

2. Before completing the application please read carefully the notes overleaf on page 2. In the event of difficulty you may contact the court's Civil Department at the address above or any Sheriff Clerk's Office, Citizens Advice Bureau or a solicitor.

NOTE

Where this form is being served on a defender along with form HH (notice to additional defender) the reference to "date of expiry of period of notice" should be amended to "date for lodging of defences or an application for a time to pay direction" and the references to "before the expiry of the period of notice" should be amended to "on or before the date for lodging of defences or an application for a time to pay direction".

HOW TO COMPLETE THE APPLICATION

PLEASE WRITE IN INK USING BLOCK CAPITALS

PART A of the application will have been completed in advance by the pursuer and gives details of the pursuer and you as the defender.

PART B—If you wish to apply to pay by instalments enter the amount and tick the appropriate box at B3(1). If you wish to apply to pay the full sum due in one deferred payment enter the period of deferment you propose at B3(2).

PART C—You should give full details of your financial position in the appropriate boxes.

PART D—If you wish the court when making the “time to pay direction” to recall or restrict an arrestment made in connection with the action then enter the appropriate details about what has been arrested and the place and date of the arrestment at 5, and attach Schedule of Arrestment or copy.

Sign the application where indicated and detach pages 3 and 4. Retain the copy initial writ and pages 1 and 2 of this form as you may need them at a later state. You should ensure that your application arrives at the court before the expiry of the period of notice.

WHAT WILL HAPPEN NEXT

If the pursuer objects to your application a hearing will be fixed and the court will advise you in writing of the date and time.

If the pursuer does not object to your application, then a copy of the court order for payment (called an extract decree) will be served on you by the pursuer’s solicitor advising when payment should commence or be made.

APPLICATION FOR A TIME TO PAY DIRECTION

Under the Debtors (Scotland) Act 1987

PART A*

By

 **DEFENDER**

*(This section must be completed by pursuer before service)

IN AN ACTION RAISED BY

 **PURSUER**

PART B

1. The applicant is a defender in the action brought by the above named pursuer.
2. The defender admits the claim and applies to the court for a "time to pay direction".
3. The defender applies (1) To pay by instalments of £

(Tick one box only)

EACH WEEK FORTNIGHT MONTH

OR

(2) To pay the sum ordered in one payment within WEEKS/MONTHS

PART C

4. The Defender's financial position is:—

(Tick one box only)

| | | | | | | | |
|-------------------|--------------------------|--------------------------|--------------------------|---------------|--------------------------|--------------------------|--------------------------|
| | Weekly | Fortnightly | Monthly | | Weekly | Fortnightly | Monthly |
| My outgoings are: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | My income is: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

| | |
|---------------|---|
| Rent/Mortgage | £ |
| Heating | £ |
| Food | £ |
| HP | £ |
| Other | £ |

| | |
|-----------------|---|
| Wages/Pensions | £ |
| Social security | £ |
| Other | £ |

Total £

Total £

Dependants: Children—how many Dependent relatives—how many

Here list all capital (if any), eg value of house; amount in bank/building society account; shares or other investments:

Here list any outstanding debts:

PART D

5. The defender seeks to recall or restrict an arrestment of which the details are as follows (please state, and attach Schedule of Arrestment or copy):—

6. This application is made under section 1(1) and 2(3) of the Debtors (Scotland) Act 1987.

Therefore the defender asks the court

- | | |
|-----------|---|
| * Delete | *a. to make a "time to pay direction". |
| what does | *b. to recall the above arrestment. |
| not apply | *c. to restrict the above arrestment (in which case state restriction wanted):— |

(signed)
Defender

Date:—

NOTICE TO BE SERVED ON DEFENDER IN SUMMARY APPLICATION WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR

IN SUMMARY APPLICATION BY

.....
.....
.....
..... PURSUER DEFENDER

AT SHERIFF COURT

Including Address

COURT REF NUMBER DATE OF HEARING
...../.....
.....
.....

THIS SECTION MUST BE COMPLETED BY PURSUER BEFORE SERVICE

Under the Debtors (Scotland) Act 1987

The Act gives you the right to apply to the court for a "time to pay direction" which is an order saying that you can pay any sum of money you are ordered to pay to the pursuer (which may include interest and court expenses) either by way of instalments or deferred lump sum. A deferred lump sum means that you must pay all the amount at one time within a specified period set by the court.

In addition when making a "time to pay direction" the court may recall or restrict an arrestment made on your property by the pursuer in connection with the action or debt (for example your bank account may have been frozen).

HOW TO APPLY FOR A TIME TO PAY DIRECTION WHEN CLAIM ADMITTED AND YOU DO NOT WANT TO DEFEND THE ACTION

- 1. You may apply for a "time to pay direction" (and where appropriate for recall or restriction of an arrestment) by either
(a) appearing at the hearing—the date of which is given above and asking the court to make a "time to pay direction" (and where appropriate to recall or restrict an arrestment). If you prefer you may ask a solicitor or someone else to appear for you.

OR

- (b) Completing and returning to the court at least seven days before the hearing, the application form at pages 3 and 4 of this notice. The address of the court is given above. No court fee is payable when lodging the application.

2. Before completing the application please read carefully the notes overleaf on page 2. In the event of difficulty you may contact the court's Civil Department at the address above or any Sheriff Clerk's Office, Citizens Advice Bureau or a Solicitor.

HOW TO COMPLETE THE APPLICATION

PLEASE WRITE IN INK USING BLOCK CAPITALS

PART A of the application will have been completed in advance by the pursuer and gives details of the pursuer and you as the defender.

PART B—If you wish to apply to pay by instalments enter the amount and tick the appropriate box at B3(1). If you wish to apply to pay the full sum due in one deferred payment enter the period of deferment you propose at B3(2).

PART C—You should give full details of your financial position in the appropriate boxes.

PART D—If you wish the court when making the “time to pay direction” to recall or restrict an arrestment made in connection with the action then enter the appropriate details about what has been arrested and the place and date of the arrestment at Part D5, and attach Schedule of Arrestment or copy.

Sign the application where indicated and detach pages 3 and 4. Retain the copy initial writ and pages 1 and 2 of this form as you may need them at a later stage. You should ensure that your application arrives at the court at least seven days before the hearing.

WHAT WILL HAPPEN NEXT

If the court makes a “time to pay direction” a copy of the court order for payment (called an extract decree) will be served on you by the pursuer’s solicitor advising when payment should commence or be made.

If the court does not make a “time to pay direction” and makes an order for payment against you an order to pay (called a charge) may be served on you.

APPLICATION FOR A TIME TO PAY DIRECTION

Under the Debtors (Scotland) Act 1987

PART A*

By

 **DEFENDER**

*(This section must be completed by pursuer before service)

IN A SUMMARY APPLICATION BY

 **PURSUER**

PART B

1. The applicant is a defender in the action brought by the above named pursuer.
2. The defender admits the claim and applies to the court for a "time to pay direction".
3. The defender applies (1). To pay by instalments of £

(Tick one box only)

EACH WEEK FORTNIGHT MONTH

OR

(2) To pay the sum ordered in one payment within WEEKS/MONTHS

PART C

4. The Defender's financial position is:—

(Tick one box only)

My outgoings are: Weekly Fortnightly Monthly

My income is: Weekly Fortnightly Monthly

| | |
|---------------|---|
| Rent/Mortgage | £ |
| Heating | £ |
| Food | £ |
| HP | £ |
| Other | £ |

| | |
|-----------------|---|
| Wages/Pensions | £ |
| Social security | £ |
| Other | £ |

Total £

Total £

Dependants: Children—how many

Dependent relatives—how many

Here list all capital (if any) eg value of house; amount in bank/building society account; shares or other investments:

Here list any outstanding debts:

PART D

5. The defender seeks to recall or restrict an arrestment of which the details are as follows (please state, and attach Schedule of Arrestment or copy):—

6. This application is made under section 1(1) and 2(3) of the Debtors (Scotland) Act 1987.

Therefore the defender asks the court

* Delete
what does
not apply

- *a. to make a "time to pay direction".
- *b. to recall the above arrestment.
- *c. to restrict the above arrestment (in which case state restriction wanted):—

(signed)
Defender

Date:—

CITATION WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR

[A.B.], Pursuer against [C.D.], Defender

Court Ref No

(Place and date) [C.D.], defender. You are hereby served with this copy writ and warrant, together with form B5 and required to answer thereto, conform to the warrant. Form B5 is served on you because it is considered that you may be entitled to apply for a "time to pay direction" (and for the recall or restriction of an arrestment used on the dependence of the action or in security of the debt referred to in the copy writ).

IF YOU WISH TO DEFEND THIS ACTION you must lodge a notice of intention to defend with the sheriff clerk at _____ within the period of notice being _____ days after this date and at the same time present this copy initial writ.

IF YOU ADMIT THE CLAIM AND WISH TO AVOID A COURT ORDER AGAINST YOU, the whole sum claimed including interest and any expenses due should be paid to the pursuer or his solicitor in good time before the expiry of the period of notice.

IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION, you must complete the enclosed form B5 and return it to the sheriff clerk within the period of notice.

IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

(Signed)

[P.Q.], Sheriff Officer,

[or [X.Y.] (*add designation and business address*)

Solicitor for Pursuer]

Date:—

NOTICE TO ADDITIONAL DEFENDER WHERE A TIME TO PAY DIRECTION MAY BE APPLIED FOR

To (*designation and address*)

Court Ref No

Take notice that in the action in which [AB] is the pursuer and [CD] is the Defender, your name has, by order of the court dated _____ been added/substituted as a defender to the action; and the action, originally directed against [CD] is directed against you. Copies of the initial writ and defences [*or closed record*] are [*or is*] enclosed. You are also served with form B5.

Form B5 is served on you because it is considered that you may be entitled to apply for time to pay direction (and for the recall or restriction of an arrestment).

IF YOU WISH TO DEFEND THIS ACTION you must lodge defences thereto with the sheriff clerk at _____

within _____ days from the date of service hereof.

IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION you must complete the enclosed form B5 and return it to the sheriff clerk at _____ within _____ days from the date of service hereof.

IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as admitting the claim made against you and the pursuer may proceed and obtain decree against you in your absence.

(Signed)
[P.Q.], Sheriff Officer,

[*or* [X.Y.] (*add designation and business address*)

Solicitor for Pursuer] [*or* Defender]

Date:—

SEQUESTRATION FOR RENT—NOTICE INFORMING DEFENDER OF RIGHT TO APPLY FOR CERTAIN ORDERS
UNDER THE DEBTORS (SCOTLAND) ACT 1987

Where articles are sequestered for rent you have the right to apply to the sheriff for certain orders under the Debtors (Scotland) Act 1987.

1. You may apply to the sheriff within 14 days from the date articles are sequestered for an order releasing any article on the ground that—

- (a) it is exempt from sequestration for rent. (Articles which are exempt are listed in section 16 of the Debtors (Scotland) Act 1987.); or
- (b) Its inclusion in the sequestration for rent or its subsequent sale is unduly harsh.

2. Where a mobile home, such as a caravan, is your only or principal residence and it has been sequestered for rent you may apply to the sheriff before a warrant to sell is granted for an order that for a specified period no further steps shall be taken in the sequestration.

Any enquiry relating to the above rights should be made to a solicitor, Citizens Advice Bureau or other local advice centre or to the sheriff clerk at (*address*).

SCHEDULE II
SUMMARY CAUSE RULES FORMS

FORM Bb

Rule 17A

**FORM OF NOTICE TO BE SERVED ON DEFENDER WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR
UNDER THE DEBTORS (SCOTLAND) ACT 1987**

1. The Act gives you the right to apply to the court for a "time to pay direction" which is an order saying that you can pay any sum you are ordered to pay to the pursuer either in instalments or by deferred lump sum. A deferred lump sum means that you must pay all the amount at one time within a specified period set by the court.

2. In addition, when making a "time to pay direction" the court may recall or restrict an arrestment made on your property by the pursuer in connection with the action or debt (for example your bank account may have been frozen).

HOW TO APPLY FOR A TIME TO PAY DIRECTION WHEN CLAIM ADMITTED AND YOU DO NOT WANT TO DEFEND THE ACTION

1. You may apply for a "time to pay direction" by EITHER
- (a) attending court on the CALLING DATE and asking the court to make a "time to pay direction".
If you prefer you may ask a solicitor or someone else to appear for you;

OR

- (b) completing page 4 of this form and returning it to the sheriff clerk to arrive at least seven days before the CALLING DATE.

The CALLING DATE is at am.

2. No court fee is payable when making an application for a "time to pay direction" whether you apply by appearing in court or by written application.

3. The court will decide what order is to be made and if a "time to pay direction" is made a copy of the court order (called an extract decree) will be served on you by the pursuer telling you when payment should start or when it is you have to pay the lump sum.

If the Court does not make a "time to pay direction" and makes an order for immediate payment against you, an order to pay (called a charge) may be served on you if you do not pay.

HOW TO COMPLETE THE APPLICATION

1. Section A has been completed already. You should complete section B.
- 2.(a) If you wish to apply to pay by instalments put in the amount you are proposing and tick the appropriate box.
(b) If you wish to apply to pay the full sum due in one deferred payment enter the period of deferment you propose.
3. You should give full details of your financial position in the appropriate boxes.
4. If an arrestment has been made in connection with this action and you wish the court when making a "time to pay direction" to recall or restrict the arrestment enter the appropriate details about what has been arrested and the place and date and attach a schedule of arrestment or a copy.
5. Sign the application where indicated. Keep pages 1 and 2. Return pages 3 and 4 to the court to arrive at least seven days before the CALLING DATE.

Sheriff Court
(including address)

SECTION A
This section must be completed before service

| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Pursuer's full name and address | Defender's full name and address | | | | | | | | | | |

SECTION B
APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION UNDER THE DEBTORS (SCOTLAND) ACT 1987

CLAIM ADMITTED—I admit the claim and make application
(1) To pay by instalments of £.....

(Tick one box only)
EACH WEEK FORTNIGHT MONTH
OR
(2) To pay the sum ordered in one payment within WEEKS/MONTHS

Signature

TO HELP THE COURT PLEASE PROVIDE DETAILS OF YOUR FINANCIAL POSITION IN THE BOXES BELOW

IF NECESSARY ATTACH A SEPARATE SHEET

| | Weekly | Fortnightly | Monthly |
|-------------------|--------------------------|--------------------------|--------------------------|
| My outgoings are: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Rent/Mortgage | £ | | |
| Heating | £ | | |
| Food | £ | | |
| HP | £ | | |
| Other | £ | | |
| | | | |
| | | | |
| Total | £ | | |

| | Weekly | Fortnightly | Monthly |
|-----------------|--------------------------|--------------------------|--------------------------|
| My income is: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Wages/Pensions | £ | | |
| Social Security | £ | | |
| Other | £ | | |
| | | | |
| | | | |
| Total | £ | | |

Dependents: Children—how many Dependent relatives—how many

Here list all capital (if any) for example value of house; amount in bank/building society account, shares or other investments:

APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT

I seek the recall or restriction of the arrestment of which the details are as follows:—

Signature.....

FORM OF REPLY TO BE SERVED WITH FORM A2 WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR

Pursuer must complete before citation where indicated by**

Sheriff Court**
Case No.**

..... Pursuer against Defender**

INSTRUCTIONS FOR DEFENDER

IMPORTANT

IN ORDER TO REPLY TO THE SERVICE DOCUMENT, you must complete box a, b or c and detach this page and return it to the sheriff clerk of the above court to arrive on or **BEFORE THE RETURN DAY** which is

..... 19.....**

(1) **IF YOU ADMIT THE CLAIM** and wish to apply to pay the amount outstanding by instalments or by deferred lump sum you must decide

- (a) whether you want to attend or be represented in court to apply or
- (b) whether to make a written application.

This is called an application for a "time to pay direction" and is explained further on page 4 of this form.

a. I intend to attend or be represented in court

(Signed)

or

b. I do not intend to attend court but admit the claim and wish to make a written application about payment.

I have completed the application form on page 4.

(Signed)

Payments to account must be made direct to the pursuer or his solicitor.

Payments must not be sent to the court.

Note— If the pursuer does not accept your application the summons will call in court without further notice to you, when an order for payment may be made in such manner as the court decides.

NOTE—If you do not want a court order against you, you should pay the whole sum due with interest and expenses to the pursuer or his solicitor, before the return day (see above).

(2) IF YOU DENY THE CLAIM OR ANY PART OF IT OR WISH TO CHALLENGE THE JURISDICTION OF THE COURT complete the next box

c. Claim denied or challenge to jurisdiction—NOTICE OF INTENTION TO APPEAR.

- *1. I intend to defend the action.
- *2. I intend to dispute the amount of the claim.
- *3. I intend to challenge the jurisdiction of the Court.

Signature

*Delete as necessary.

VERY IMPORTANT NOTICE IF YOU ARE INTENDING TO ATTEND COURT

If you have completed box a or c above you must return this form to the court to arrive on or before the RETURN DAY shown above otherwise your case will not call in court. If you have said that you intend to attend court and have duly returned the form by the return day you must attend or be represented at court on the CALLING DATE which is

..... at am**

The address of the court is **

.....

A leaflet "Guide to the Summary Cause in the Sheriff Court" can be obtained from the sheriff clerk. If you wish further advice contact any Citizens Advice Bureau, Consumer Advice Centre, Trading Standards Office or Consumer Protection Department or a solicitor.

Under The Debtors (Scotland) Act 1987

The Act gives you the right to apply to the court for a "time to pay direction" which is an order saying that you can pay any sum you are ordered to pay to the pursuer either in instalments or by deferred lump sum. A deferred lump sum means that you must pay all the amount at one time within a specified period set by the court.

In addition when making a "time to pay direction" the court may recall or restrict an arrestment made on your property by the pursuer in connection with the action or debt (for example your bank account may have been frozen).

If the court makes a "time to pay direction" a copy of the court order (called an extract decree) will be served on you by the pursuer telling you when payment should start or when it is you have to pay the lump sum.

If the court does not make a "time to pay direction" and makes an order for immediate payment against you, an order to pay (called a charge) may be served on you if you do not pay.

APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION

Under the Debtors (Scotland) Act 1987

CLAIM ADMITTED—I admit the claim and make application

(1) To pay by instalments of £.....

(Tick one box only)

EACH WEEK FORTNIGHT MONTH
OR

(2) To pay the sum ordered in one payment within
WEEKS/MONTHS

Signature

**TO HELP THE COURT PLEASE PROVIDE DETAILS OF YOUR
FINANCIAL POSITION IN THE BOXES BELOW**

IF NECESSARY ATTACH A SEPARATE SHEET

| My outgoings are: | Weekly | Fortnightly | Monthly |
|-------------------|----------------------------|----------------------------|----------------------------|
| Rent/Mortgage | £ <input type="checkbox"/> | £ <input type="checkbox"/> | £ <input type="checkbox"/> |
| Heating | £ | | |
| Food | £ | | |
| HP | £ | | |
| Other | £ | | |
| | | | |
| | | | |
| Total | £ | | |

| My income is: | Weekly | Fortnightly | Monthly |
|-----------------|----------------------------|----------------------------|----------------------------|
| Wages/Pensions | £ <input type="checkbox"/> | £ <input type="checkbox"/> | £ <input type="checkbox"/> |
| Social Security | £ | | |
| Other | £ | | |
| | | | |
| | | | |
| Total | £ | | |

Dependents: Children—how many

Dependent relatives—how many

Here list all capital (if any) for example value of house; amount in bank/building society account, shares or other investments:

APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT

I seek the recall or restriction of the arrestment of which the details are as follows:—

Signature

FORM OF REPLY TO BE SERVED WITH FORM AA WHERE TIME TO PAY DIRECTION MAY NOT BE APPLIED FOR

NOTE: Pursuer must complete before citation where indicated by**

Sheriff Court**
Case No.**

..... Pursuer against Defender**

Return Day** Calling Date atam**

INSTRUCTIONS TO DEFENDER

- 1. This is a summons from the pursuer for payment of money by you. The pursuer says you owe him the money claimed on page 1.
- 2. If you admit that the money is due and you do not want a court order against you you should pay the whole sum claimed with any interest and expenses due, to the pursuer or his solicitor, before the return day (see above).
- 3. If you say that the court has no jurisdiction in the matter or if you wish to defend the action or to dispute the amount of the claim you must fill in the box below, return this form to the court to arrive on or before the RETURN DAY and must appear or be represented at court on the CALLING DATE.

| |
|--|
| <p>NOTICE OF INTENTION TO APPEAR</p> <p>Claim denied or challenge to jurisdiction</p> <ul style="list-style-type: none"> *1. I intend to defend the action. *2. I intend to dispute the amount of the claim. *3. I intend to challenge the jurisdiction of the Court. <p>Signature</p> <p>*Delete as necessary.</p> |
|--|

- 4. When you come to court you may do so in person or be represented by a legally qualified person or, at the first calling of the case in court, by some other person having your authority subject to the approval of the court.

PLEASE REMEMBER

- 5. If you have filled in the box above you must return this form to the court to arrive on or before the return day shown above. If you do not the case will not call in court. If you have returned the form in time you must attend court on the calling date shown above.

The address of the court is**
.....

- 6. A leaflet "Guide to the Summary Cause in the Sheriff Court" can be obtained from the sheriff clerk. If you wish further advice contact any Citizens Advice Bureau, Consumer Advice Centre, Trading Standards or Consumer Protection Department or a solicitor.

EXTRACT DECREE FOR PAYMENT—INSTALMENTS

At *(place)*, *(date)*. In this summary cause summons at the instance of the pursuer(s) *(name)* against the defender(s) *(name)*, the Sheriff granted decree against the defender(s) for payment to the pursuer(s) of the sum of £ with interest at the rate of % annually from until payment and £ of expenses; the court under section 1(1) of the Debtors (Scotland) Act 1987 directed that said sums, and interest be payable by instalments of £ per . The first instalment being payable within after intimation of an extract of this decree and continuing thereafter by regular payment of the instalments until the whole of the sums be paid. If the defender allows a sum amounting to not less than the aggregate of 2 instalments to remain unpaid at the date when the next instalment becomes due, or if any sum is outstanding 3 weeks after the date on which the last instalment becomes due, then the right to pay by instalments shall cease; and, in that event, the Sheriff granted warrant for all lawful execution hereon for the whole sums and interest for which decree was granted so far as unpaid.

(Signed)

Sheriff Clerk

(Date of Extract Decree)

EXTRACT DECREE FOR PAYMENT BY LUMP SUM—TIME TO PAY DIRECTION

At (*place*), (*date*). In this summary cause summons at the instance of the pursuer(s) (*name*) against the defender(s) (*name*), the Sheriff granted decree against the defender(s) for payment to the pursuer(s) of the sum of £ with interest at the rate of % annually from until payment and £ of expenses; the court under section 1(1) of the Debtors (Scotland) Act 1987 directed that the sums, and interest, be payable within from the date of intimation of an extract of this decree. If any sum payable remains unpaid 24 hours after the end of the period specified in this extract, the right to pay by a lump sum shall cease to have effect; and in that event, the Sheriff granted warrant for all lawful execution hereon for the whole sums and interest for which decree was granted so far as unpaid.

(Signed)

Sheriff Clerk

(Date of Extract Decree)

SEQUESTRIAN FOR RENT—NOTICE INFORMING DEFENDER OF RIGHT TO APPLY FOR CERTAIN ORDERS UNDER
THE DEBTORS (SCOTLAND) ACT 1987

Where articles are sequestrated for rent you have the right to apply to the sheriff for certain orders under the Debtors (Scotland) Act 1987.

1. You may apply to the sheriff within 14 days from the date articles are sequestrated for an order releasing any article on the ground that:

- (a) it is exempt from sequestration for rent. (Articles which are exempt are listed in section 16 of the Debtors (Scotland) Act 1987.); or
- (b) its inclusion in the sequestration for rent or its subsequent sale is unduly harsh.

2. Where a mobile home, such as a caravan, is your only or principal residence and it has been sequestrated for rent you may apply to the sheriff before a warrant to sell is granted for an order that for a specified period no further steps shall be taken in the sequestration.

Any enquiry relating to the above rights should be made to a solicitor, Citizens Advice Bureau or other local advice centre or to the sheriff clerk at (*address*).

EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause, and Summary Cause, Rules of the sheriff court—

- (a) in relation to the Debtors (Scotland) Act 1987 and in particular to provide procedures in connection with time to pay directions; and
- (b) to remove the requirement for averments of domicile to be included in pleadings and to substitute a period of 21 days as the period of notice where a defender is resident or has a place of business in Europe.