STATUTORY INSTRUMENTS

1980 No. 1732 (S.150)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Maintenance Orders Acts, Rules) 1980

Made - - -	*11 November 1980*
Coming into Operation	*1 January 1981*

The Lords of Council and Session under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(**a**) and by virtue of the provisions of Part II of the Maintenance Orders Act 1950(**b**) and Part I of the Maintenance Orders Act 1958(**c**) as amended by Schedule 3 to the Administration of Justice Act 1977(**d**), and of all other powers enabling them in that behalf, do hereby enact and declare:—

PART I
GENERAL

Citation, commencement, interpretation and revocation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Maintenance Orders Act, Rules) 1980 and shall come into operation on 1 January 1981

(2) In this Act of Sederunt unless the context otherwise requires—
"the 1950 Act" means the Maintenance Orders Act 1950;
"the 1958 Act" means the Maintenance Orders Act 1958;
"affidavit" includes statutory declaration;
"clerk of the court" means the clerk to the magistrates' court in England or Northern Ireland and in relation to a county court in England or Northern Ireland means the registrar of that court;
"clerk of the magistrates' court" means the clerk to the magistrates' court in England or Northern Ireland as the case may be;
"decree" includes extract decree;
"sheriff clerk" includes sheriff clerk depute;
"the Registrar" in relation to the High Court in England means the Senior Registrar of the principal registry of the Family Division of the High Court in England.

(3) Except as expressly provided in paragraph (2), expressions used in this Act of Sederunt and in the 1950 and 1958 Acts have, unless the context otherwise requires, the meaning given to them by those Acts.

(4) Part III of the Act of Sederunt (Maintenance Orders Act, 1950, Rules) 1950(**e**) and Part I of that Act in so far as it relates to Part III, is revoked.

(**a**) 1971 c. 58.
(**b**) 1950 c. 37.
(**c**) 1958 c. 39.
(**d**) 1977 c. 38.
(**e**) S.I. 1950/2144.

Application

2.—(1) Part II of this Act of Sederunt shall have effect in relation to the registration in other parts of the United Kingdom of decrees granted by the Sheriff to which the 1950 and 1958 Acts apply, and such decrees are referred to in this Act of Sederunt as "outgoing orders".

(2) Part III of this Act of Sederunt shall have effect in relation to the registration in the Sheriff Court of orders made by courts in other parts of the United Kingdom to which those Acts apply, and such orders are referred to in this Act of Sederunt as "incoming orders".

Prescribed Officer

3. The Sheriff clerk shall be the prescribed officer for the purpose of the 1950 Act and the 1958 Act.

Maintenance Orders Register

4.—(1) The sheriff clerk shall maintain a Register called "the Maintenance Orders Register" for the purpose of the 1950 and 1958 Acts, Part I of which shall relate to outgoing orders and Part II to incoming orders.

(2) The sheriff clerk shall make appropriate entries in the Maintenance Orders Register in respect of any action taken by him or notified to him in accordance with the provisions of those Acts, and shall keep in such manner as he considers appropriate any documents sent to him in connection with any such action.

Inspection

5.—(1) The sheriff clerk shall, on an application in that behalf by—

(*a*) any person entitled to, or liable to make, payments under an order in respect of which any entry has been made in the Maintenance Orders Register; or

(*b*) a solicitor acting on behalf of that person,

permit that person or his solicitor, as the case may be, to inspect any such entry and any document in his possession relating to that entry and to take copies of any such entry or document.

(2) The sheriff clerk may, on an application in that behalf by any person, and on being satisfied of that person's interest, grant that person permission to inspect or take copies of any such entry or document.

PART II

OUTGOING ORDERS

Commencement of proceedings

6.—(1) Every initial writ by which proceedings are begun in a sheriff court having jurisdiction under or by virtue of Part I of the 1950 Act against a person residing in another part of the United Kingdom, and all minutes and writs (other than productions) lodged in any proceedings taken in a sheriff court under or by virtue of the 1950 Act or the 1958 Act shall be headed "Maintenance Orders Act, 1950" or as the case may be "Maintenance Orders Act, 1958".

(2) The warrant of citation granted upon any writ which by virtue of those Acts is to be served upon a person residing in another part of the United Kingdom shall be in ordinary form and shall proceed upon fourteen days'

induciae, to be reckoned from the date of service, and such warrant of citation may be signed by the sheriff clerk. In connection with the service under section 15 of the 1950 Act of an initial writ from a sheriff court the expression "initial writ" in the said section and in the forms contained in the Second Schedule to that Act shall include the warrant of citation relative to the said writ.

(3) The provisions of Rule 15 of the First Schedule to the Sheriff Courts (Scotland) Act 1907(**a**) (which relate to edictal citation) shall not apply to service made in terms of section 15 of the 1950 Act.

Application for registration

7.—(1) An application for registration in a magistrates' court in England or Northern Ireland of a decree granted by a sheriff court to which the 1950 Act applies shall be made by lodging with the sheriff clerk—

(*a*) a letter of application in that behalf;

(*b*) an affidavit by the applicant;

(*c*) a copy of that affidavit; and

(*d*) a certified copy of the decree.

(2) An affidavit under this rule shall include—

(*a*) the name and address of the person liable to make payments under the decree;

(*b*) the arrears due under the decree, if any, and the date to which they are calculated;

(*c*) the reason for the application; and

(*d*) a statement that the decree is not already registered under the 1950 Act.

Transmission

8.—(1) If it appears that the person liable to make payments under the decree resides in another part of the United Kingdom and that it is convenient that the decree should be enforceable there, the sheriff clerk shall send to the clerk of the magistrates' court—

(*a*) the affidavit of the applicant;

(*b*) the certified copy of the decree; and

(*c*) a letter stating that the application has been granted and requesting registration of the decree.

(2) On so acting the sheriff clerk shall enter in Part I of the Maintenance Orders Register—

(*a*) particulars of the decree; and

(*b*) details of those actings.

(3) On receiving notice from the clerk of the magistrates' court that the decree has been registered, the sheriff clerk shall make an entry to that effect in Part I of the Maintenance Orders Register.

(**a**) 1907 c. 51.

Application to adduce evidence

9.—(1) An application to a sheriff court under section 22(5) of the 1950 Act to adduce evidence in connection with a decree granted by that court and registered in a court in England or Northern Ireland shall be made by initial writ. Any evidence adduced in pursuance of such an application shall be taken and recorded in the manner prescribed by Rule 65 of the First Schedule to the Sheriff Courts (Scotland) Act 1907 and the transcript or summary of the evidence so adduced shall be sent to the clerk of the magistrates' court in which the decree is registered.

(2) The sheriff clerk of the court by which a decree registered in a magistrates' court in England or Northern Ireland was granted shall on receipt of any transcript or summary of evidence adduced in a court in England or Northern Ireland under section 22(5) of the 1950 Act in connection with that decree lodge such transcript or summary in the process of the cause in which the decree was granted.

Re-registration in the High Court

10.—(1) When a decree has been registered in the magistrates' court, an application to the sheriff court for the re-registration of that decree in the High Court in England under the 1958 Act shall be made by lodging with the sheriff clerk—

(a) a letter of application in that behalf;

(b) an affidavit by the applicant; and

(c) a copy of that affidavit;

(2) An affidavit under this rule shall include—

(a) the matters mentioned in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph (2) of rule 7;

(*b*) the date and place of the original registration;

(*c*) where the decree has been re-registered, the date and place of the last re-registration and whether or not that has been cancelled or where any of these facts is not known a statement to that effect; and

(*d*) the steps, if any, taken to enforce the registered order.

Transmission for re-registration

11.—(1) If the application under Rule 10 is granted; the sheriff clerk shall send to the Registrar—

(*a*) the affidavit of the applicant; and

(*b*) a letter stating that the application has been granted and requesting him to take steps to have the order registered in the High Court.

(2) On receiving notice that the order has been so registered, the sheriff clerk shall enter the details of the registration of the order in Part I of the Maintenance Orders Register.

Discharge and variation

12.—(1) Where a decree granted by a sheriff court and registered under the 1950 Act or the 1958 Act in a court in England or Northern Ireland is varied by the court in which it is registered, the sheriff clerk shall, on receipt of a notice of variation enter particulars of that variation in Part I of the Maintenance Orders Register.

(2) If the sheriff court makes an order varying or discharging a decree registered under the 1950 Act or the 1958 Act—

(*a*) the sheriff clerk shall send to the clerk of the magistrates' court, and, where the order is registered in the High Court, to the Registrar—

(i) a certified copy of the interlocutor; and

(ii) a letter requesting the clerk of the magistrates' court and, as the case may be, the Registrar, to take the appropriate action under those Acts, in accordance with the interlocutor, and to notify him of the result;

(*b*) the sheriff clerk shall enter in Part I of the Maintenance Orders Register—

(i) the date and nature of the interlocutor;

(ii) the date of its transmission under sub-paragraph (a); and

(iii) on receiving notice under sub-paragraph (a)(ii), the particulars contained in that notice.

Cancellation

13.—(1) An application under section 24(2) of the 1950 Act in connection with a decree granted by a sheriff court and registered in a court in England or Northern Ireland shall be made by lodging with the sheriff clerk an affidavit by the person liable to make payments under the decree stating the facts on which the application is founded; and if it appears to the sheriff clerk that that person has ceased to reside in England or Northern Ireland, as the case may be, the sheriff clerk shall send notice to that effect to the clerk of the magistrates' court and the Registrar, as the case may be, of any court in which the decree is registered.

(2) Where the registration of a decree made by a sheriff court and registered in a court in England or Northern Ireland is cancelled under section 24(1) or (2) of the 1950 Act the sheriff clerk, on receipt of notice of the cancellation, shall make an entry to that effect in Part I of the Maintenance Orders Register.

PART II

INCOMING ORDERS

Registration

14.—(1) On receiving a certified copy of a maintenance order made by a court in England or Northern Ireland the sheriff clerk shall—

(*a*) make an entry in respect of the order in Part II of the Maintenance Orders Register;

(*b*) retain in the office of the sheriff clerk any certificate or affidavit sent with the certified copy of the order as to the amount of any arrears due under the order;

(*c*) endorse thereon an attestation, signed by himself, of the registration thereof in the form set out in the Schedule to this Act of Sederunt and retain such certified copy of the order and attestation in the office of the sheriff clerk; and

(*d*) notify the clerk of the court which made the order that it has been registered.

(2) The sheriff clerk may make an extract certified by himself of the certified copy of the order with the attestation thereon, and such certified extract shall be of the like force and effect and may be enforced in all respect as if it were an extract decree of the sheriff court in which the certified copy is registered with a warrant for diligence in common form.

Variation of rate payment

15. An application to a sheriff court for variation under section 22(1) of the 1950 Act of the rate of payments under a maintenance order made by a court in England or Northern Ireland and registered in that sheriff court shall be made by initial writ.

Application to adduce evidence

16.—(1) An application to a sheriff court under section 22(5) of the 1950 Act to adduce evidence in connection with a maintenance order made by a court in England or Northern Ireland and registered in that sheriff court shall be made by initial writ. Any evidence adduced in pursuance of such an application shall be taken and recorded in the manner prescribed by Rule 65 of the First Schedule to the Sheriff Courts (Scotland) Act, 1907 and the transcript or summary of the evidence so adduced shall be sent to the clerk of the court by which the order was made.

(2) The sheriff clerk of the court in which a maintenance order was made by a court in England or Northern Ireland is registered shall, on receipt of any transcript or summary of evidence adduced in England or Northern Ireland under section 22(5) of the 1950 Act in connection with that order, lodge such transcript or summary in the process of any proceedings before that sheriff court for the variation of the order.

Discharge and variation

17.—(1) Where a maintenance order made by a court in England or Northern Ireland and registered under the 1950 Act in a sheriff court is varied by that sheriff court, the sheriff clerk shall—

(*a*) enter particulars of the variation in Part II of the Maintenance Orders Register; and

(*b*) shall give notice of the variation to the clerk of the court by which the order was made by sending him a certified copy of the order or interlocutor varying the order.

(2) Where a maintenance order made by a court in England or Northern Ireland and registered in a sheriff court is discharged or varied by any court other than that sheriff court, the sheriff clerk shall on receipt of a certified copy of an order discharging or varying the registered order—

(*a*) make an entry in respect of the order in Part II of the Maintenance Orders Register; and

(*b*) notify the clerk of the court that he has done so.

(3) In the case of an order varying a registered order, sub-paragraphs (b) and (c) of rule 14(1) and paragraph (2) of rule 14 shall apply in relation to that order as they apply in relation to an order under that rule.

Cancellation

18.—(1) An application for the cancellation under section 24(1) of the 1950 Act or section 5(1) of the 1958 Act of the registration of a maintenance order made by a court in England or Northern Ireland and registered in a sheriff court shall be made by lodging with the sheriff clerk—

(*a*) an application for the purpose (which shall state the date of the registration of the order and which shall be signed by or on behalf of the applicant); and

(*b*) a copy of the order the registration of which is sought to be cancelled.

(2) Where under section 24(1) or (2) of the 1950 Act or section 5(1) of the 1958 Act the sheriff clerk cancels the registration of a maintenance order, he shall—

(*a*) make an entry in respect of the cancellation in Part II of the Maintenance Orders Register;

(*b*) notify the clerk of the court by which the order was made; and

(*c*) notify the person liable to make payments under the order.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

Emslie
Lord President
I.P.D.

11 November 1980
Edinburgh

SCHEDULE

Rule 14(2)

FORM OF ATTESTATION

I hereby declare that the foregoing certified copy of a maintenance order has been duly registered by me in Part II of the Maintenance Orders Register kept in this court in terms of the Maintenance Orders Act 1950 and the Maintenance Orders Act, 1958, as amended, and Rule 14(2) of the Act of Sederunt (Maintenance Orders Act, Rules) 1978.

A—B Sheriff Clerk
[Depute]

EXPLANATORY NOTE

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

This Act of Serderunt re-enacts with minor modifications the provisions of the Act of Sederunt (Maintenance Order Act 1950, Rules) 1950 in so far as they relate to the Sheriff Court which provides the detailed machinery for registration of decrees and orders under the Maintenance Orders Act 1950. It also makes new provision under the amendments to the Maintenance Orders Act 1958 made by Schedule 3 to the Administration of Justice Act 1977 in rules 10 & 11 to enable a creditor under a decree of the Sheriff Court which has been registered in a magistrates' court in England to have the decree re-registered and enforced in the High Court in England.

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