1988 No. 2060 (S.196)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of the Court of Session Amendment No.5) (Time to pay directions) 1988

Made - - - -	*24th 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 5 of the Court of Session Act 1988(**a**) 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 (Rules of the Court of Session Amendment No.5) (Time to pay directions) 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 the Rules of the Court of Session

2.—(1) The Rules of the Court of Session(**b**) shall be amended in accordance with the following sub-paragraphs.

(2) After rule 88, insert the following rules:–

"SECTION 2A

TIME TO PAY DIRECTIONS

88A Interpretation and application

(1) In this section, "the Act of 1987" means the Debtors (Scotland) Act 1987(**c**).

(2) Words and expressions used in this section which are also used in the Act of 1987 have the same meaning as in that Act.

88B Notice about time to pay directions

(1) In an action in which a defender may apply for a time to pay direction under section 1 (1) of the Act of 1987, the pursuer shall serve on that defender a notice in form 65 and an application in form 66 at the same time as service of the summons or pleadings as amended by a minute of amendment calling him as a defender.

(2) Before serving a notice and an application under paragraph (1), the pursuer shall insert in form 65 the date by which form 66 must be returned to the court by the defender (being the date on which the *induciae* expire) and shall complete Part A of form 66.

(**a**) 1988 c.36.
(**b**) S. I. 1965/321.
(**c**) 1987 c.18.

88C Applications for time to pay directions in undefended actions

(1) Where a defender does not enter appearance in an action and intends to apply for a time to pay direction and, where appropriate, recall or restriction of an arrestment, he shall complete and return the application in form 66 to the court before the date stated in form 65.

(2) Where the pursuer does not object to the application by a defender for a time to pay direction or the recall of restriction of an arrestment, he may enrol for decree in absence in terms of rule 89 stating that he does not object to the application.

(3) Where the pursuer objects to the application by a defender for a time to pay direction or the recall or restriction of an arrestment, he shall intimate–

(a) the motion for decree in absence in terms of rule 89; and

(b) the grounds of objection to the application by the defender,

in form 67 to the defender on an *induciae* of 7 days.

(4) On enrolling a motion for decree in absence, the pursuer shall lodge a copy of the form 67 intimated to the defender.

(5) The defender need not appear at the hearing of the motion for decree in absence and may send to the Deputy Principal Clerk written representations in response to the note of objections of the pursuer.

(6) A motion for decree in absence to which paragraph (3) applies shall be starred.

88D Applications for time to pay directions where appearance entered but defences not lodged

(1) Where a defender, after entering appearance, does not lodge defences but intends to apply for a time to pay direction and where appropriate, recall or restriction of an arrestment, notwithstanding the date specified in form 65 as the date by which form 66 must be returned, he shall complete and return the application in form 66 to the court not later than the day on which defences would have had to be lodged in process.

(2) Rules 88C(2) to (6) shall apply to an application under this rule as they apply to an application under that rule.

88E Applications for time to pay directions where defences lodged

An application for a time to pay direction under section 1(1) of the Act of 1987 by–

(a) a defender in an action in which defences have been lodged by that defender; or

(b) a pursuer in a counter-claim or a third party,

shall be made by motion.

88F Applications for variation or recall of time to pay directions or arrestments

(1) An application by a creditor or debtor under section 3(1) of the Act of 1987 to vary or recall a time to pay direction or to recall or restrict an arrestment shall be made by motion.

(2) A motion under paragraph (1) shall–

(a) include a brief statement of the reason for the application; and

(b) be intimated to the debtor or creditor, as the case may be, on an *induciae* of 14 days by recorded delivery letter.

(3) On the enrolling of a motion under paragraph (1), there shall be lodged in process–

(a) a copy of the letter of intimation and the certificate of posting; and

(b) any document to be relied on at the hearing of the motion.

88G Appeals

(1) An application for leave to appeal under section 103(3) of the Act of 1987 shall be made within seven days of the date of the interlocutor to be appealed against.

(2) The decision of the Lord Ordinary or vacation judge granting or refusing such leave to appeal shall be final.

(3) Where such leave to appeal has been granted, an appeal under section 103(3) of the Act of 1987 shall be made by motion enrolled in the single bills before a division of the Inner House for review of the Lord Ordinary's interlocutor, within 14 days of the date on which leave was granted.

88H Notice for payment of interest on a decree

Where a creditor wishes to recover interest (other than interest awarded as a specific sum) under a decree containing a time to pay direction, the notice to be served under section 1(7) of the Act of 1987 shall be served on the debtor by the creditor–

(a) in the case of a decree containing a time to pay direction for payment by instalments, not later than 14 days before the date on which the last instalment is due to be paid; and

(b) in the case of a decree containing a time to pay direction for payment by deferred lump sum, not later than 14 days before the date on which the lump sum is to be paid.".

(3) In the Appendix, after form 64, insert forms 65, 66 and 67 in the Schedule to this Act of Sederunt.

Edinburgh
24th November 1988

Emslie
Lord President, I.P.D.

SCHEDULE

FORM 65 Rule 88B(1)

FORM OF NOTICE TO DEBTOR UNDER THE DEBTORS (SCOTLAND) ACT 1987 ABOUT TIME TO PAY DIRECTIONS

(Court Ref No.)

IN THE COURT OF SESSION

in causa

[AB] (*address*)
PURSUER

against

[CD] (*address*)
DEFENDER

To (*insert name of defender to whom notice is directed*)

YOUR RIGHTS UNDER THE DEBTORS (SCOTLAND) ACT 1987

The purpose of this notice is to advise you of your rights under the Debtors (Scotland) Act 1987.

The Act gives you a right to apply to the court for a "time to pay direction" directing that any sum of money you are ordered to pay to the pursuer (which may include interest and court expenses) shall be by way of instalments or deferred lump sum (that is by way of one total payment by a specified date).

In addition, when making a time to pay direction the court may recall or restrict an arrestment made in connection with the action or debt (e.g. your bank account may have been arrested freezing the money in it).

If you admit that the sum claimed by the pursuer is due but you wish to apply for a time to pay direction you should read on. If you do not admit the sum claimed by the pursuer is due you should NOT complete the attached application but should consult a solicitor IMMEDIATELY about defending the action.

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 is an application for a time to pay direction and for recall or restriction of an arrestment, if appropriate. If you want to make an application you should complete and lodge the completed application with the court on or before the date given below. *No court fee is payable when lodging the application.*

2. Before completing the application please read carefully the notes attached to this notice. In the event of difficulty you may contact the General Department in the Office of Court of the Court of Session, 2 Parliament Square, Edinburgh. (Telephone 031–225 2595.)

3. The date by which you must return the application form is

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 offer instalments enter the amount and tick the appropriate box at B3(1).

If you wish to offer to pay the full sum due in one deferred payment enter the date at which you offer to pay 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 D5, and attach the Schedule of Arrestment (i.e. the formal document which told you of the arrestment of your assets) or a copy of it. You should then complete D6 by deleting the words which do not apply.

Sign the application where indicated and send to the court. Retain the copy summons and pages 1 and 2 of this notice as you may need them at a later stage. You should ensure that your application arrives at the court **before** the date specified in paragraph 3 of form 65.

WHAT WILL HAPPEN NEXT

If the pursuer does **not** accept your offer a hearing will be fixed and the pursuer will advise you in writing of the date and time.

If the pursuer **accepts** your offer, then a copy of the court order for payment (called an extract decree) will be served on you by the pursuer advising when payment of instalments should commence or by what date payment is to be made and to whom payments should be sent.

IF YOU ARE NOT SURE WHAT TO DO YOU SHOULD CONSULT A SOLICITOR OR A CITIZENS ADVICE BUREAU IMMEDIATELY.

FORM 66 Rules 88B(1), 88C(1) and 88D(1)

FORM OF APPLICATION FOR A TIME TO PAY DIRECTION

(Court Ref. No.)

IN THE COURT OF SESSION

APPLICATION FOR A TIME TO PAY DIRECTION

Under The Debtors (Scotland) Act 1987

by

PART A*

.....
.....
.....
..... DEFENDER

*This section must be completed by pursuer before service

IN AN ACTION RAISED BY

.....
.....
.....
..... PURSUER(S)

This application must be sent to the court on or before

PART B

1. I am the defender in the action brought by the above named pursuer[s].
2. I admit the claim and apply to the court for a time to pay direction.
3. I offer †(1) To pay by instalments of £ .....

*Tick one box only
†Delete whichever is not applicable
‡Insert date

EACH ..... WEEK ☐ * FORTNIGHT ☐ * MONTH ☐ *

†(2) To pay the sum ordered in one payment by ‡..... 19.....

PART C

4. My financial position is as follows:–

*Tick one box only

My outgoings are:	Weekly*	Fortnightly*	Monthly*
	☐	☐	☐

My income is:	Weekly*	Fortnightly*	Monthly*
	☐	☐	☐

Rent/House purchase loan	£	Wages/Pensions	£
Heating	£	Social Security	£
Food	£	Other (*specify*)	£
HP, etc	£		
Other	£		
Total	£	Total	£

Dependants: children—how many ☐ Dependent relatives—how many ☐

Here list all capital, if any (e.g. value of house, amount in bank/building society accounts, shares or other investments):

Here list any outstanding debts:

PART D

*Delete if not applicable

5. *I seek to have recalled or restricted an arrestment of which the details are as follows (*please state, and attach Schedule of Arrestment or a copy*):–

6. This application is made under the Debtors (Scotland) Act 1987.

Therefore I ask the court:–

(a) to make a time to pay direction; and

*Delete if not applicable
†State the restriction wanted

*(b) to recall the above arrestment; or

*(c) to restrict the above arrestment:– †

Signed.....
Defender

Date ..... 19.....

This application should be sent to the Deputy Principal Clerk of Session, Court of Session, 2 Parliament Square, Edinburgh.

FORM 67 Rule 88C(3) and (4)

FORM OF NOTICE OF APPLICATION FOR DECREE AND OBJECTION TO APPLICATION MADE BY DEFENDER ON FORM 66

(Court Ref No.)

IN THE COURT OF SESSION

in causa

[AB] (*address*)
PURSUER

against

[CD] (*address*)
DEFENDER

To (*insert name of defender to whom notice is directed*)

This notice tells you that the pursuer–

(a) intends to apply for decree against you; and

(b) objects to all or part of the application which you made on form 66.

I, , the solicitor for the pursuer, give you notice:–

(1) That on (*date of proposed enrolment*) I shall enrol the following motion in the above action against you and that this will come before the court on (*date and time*):–

(*insert terms of motion*)

(2) That the pursuer objects to the application which you have made for–

(i) a time to pay direction,*

(ii) recall or restriction of an arrestment made against you,*

and will ask the court not to grant your application for the following reasons–

(*set forth reasons in numbered paragraphs*).

You have the right to attend the hearing on (*insert date motion will come before the court*) and make any further points in answer to the pursuer's objections.

If you do not wish to attend court, you may reply to the pursuer's objections to your application in a letter addressed to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh. This letter must reach him by (*insert the date before the day on which the motion will come before the court*). The court will consider this letter at the hearing of the pursuer's motion and objection.

If you do not attend court and you wish to know the outcome of the hearing before you receive formal notice of the decree you should contact the General Department of the Court of Session, 2 Parliament Square, Edinburgh. (Telephone: 031–225 2595).

IF YOU ARE NOT SURE WHAT TO DO YOU SHOULD CONSULT A SOLICITOR OR A CITIZENS ADVICE BUREAU IMMEDIATELY.

(*signed*)
Solicitor for pursuer

Date 19

*Delete if not applicable.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session to make provision in the rules in relation to time to pay directions under section 1 of the Debtors (Scotland) Act 1987.