1980 No. 455 (S.45)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Summary Cause Rules, Sheriff Court) (Amendment) 1980

Made - - - -	28*th March* 1980
Coming into Operation	21*st April* 1980

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 of all other powers competent to them in that behalf do hereby enact and declare:—

Citation, commencement and interpretation

1.—(1) This Act may be cited as the Act of Sederunt (Summary Cause Rules, Sheriff Court) (Amendment) 1980 and shall come into operation on 21st April 1980.

(2) This Act of Sederunt shall be construed as one with the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976**(b)**.

Amendment of Paragraph 3 (Procedure in summary causes)

2. In paragraph 3(2) of the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976 after "173" insert ",174".

Amendment of Schedule

3. The Schedule to the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976 shall be amended in accordance with the following paragraphs 4 to 34.

New Rule 3A

4. After rule 3, insert the following new rule—

"*Information on Summons*

3A. The name and address of the pursuer's solicitor (if any) shall be entered by the solicitor on the principal summons, and the service document or service copy."

Amendment of Rule 4

5. For rule 4, substitute the following rule—

"*Period of Notice after Citation*

4.—(1) Actions shall proceed after the appropriate period of notice of the summons has been given to the defender, namely

(*a*) 14 days when the defender is resident or has a place of business within the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland;

(a) 1971 c. 58. **(b)** S.I. 1976/476, amended by S.I. 1978/112, S.I. 1978/1805.

(*b*) 28 days when the defender is resident or has a place of business outwith the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland but is resident or has a place of business elsewhere in Europe;

(*c*) 42 days when the defender is resident or has a place of business outwith Europe.

(2) The Sheriff may, on cause shown, shorten or extend the period of notice on such conditions as to the form of service as he may direct, but in any case where the period of notice is reduced at least two days' notice shall be given.

(3) Where a period of notice expires on a Saturday, Sunday, public or local holiday the period of notice shall be deemed to expire on the first following day on which the sheriff clerk's office is open for civil court business."

Amendment of Rule 5

6. In rule 5, for the words "in terms of sub-paragraphs (*c*), (*d*) or (*e*) of rule 6(1)" substitute the words "in accordance with paragraph (2) of rule 6".

Amendment of Rule 6

7. For rule 6, substitute the following rule—

"*Citation and Service within Scotland by Officer of Court*

6.—(1) Any summons, decree, charge, warrant or other order or writ following upon such summons or decree issued in a summary cause may be validly served by an officer of court,

(*a*) by being served personally on the defender, or

(*b*) by being left in the hands of an inmate at the defender's dwelling place or of an employee at the defender's place of business.

(2) Where an officer of court has been unsuccessful in effecting service in accordance with paragraph (1), he may, after making diligent enquiries, serve the said summons, decree, charge, warrant or other order or writ,

(*a*) by depositing it in the defender's dwelling place or place of business by means of a letter box or by other lawful means, or

(*b*) by affixing it to the door of the defender's dwelling place or place of business.

If service is effected in accordance with this paragraph, the officer shall thereafter send by ordinary post to the address at which he thinks it most likely that the defender may be found, a letter containing a copy of any summons, decree, charge, warrant or other order or writ.

(3) In proceedings in or following on a summary cause it shall be necessary for any officer of court to be accompanied by a witness except where service, citation or intimation is to be made by post.

(4) In this rule "officer of court" includes a Sheriff Officer but not a Messenger-At-Arms."

Revocation of Rule 7

8. Rule 7 shall be omitted.

Amendment of Rule 8

9. For Rule 8, substitute the following rule—

"*Citation of or Service on Persons whose Address is Unknown*

8.—(1) When a defender's address is unknown to the pursuer, the sheriff may grant a warrant to cite the defender by the publication in a newspaper circulating in the area of the defender's last known address of an advertisement in form L and such citation shall be deemed to be good and sufficient for every purpose of law.

(2) When citation is to be effected in accordance with paragraph (1)—

(*a*) the period of notice shall be fixed by the sheriff and shall run from the date of publication; and

(*b*) a service copy summons or service document shall be lodged by the pursuer with the sheriff clerk from whom it may be uplifted by the defender.

(3) Where the address of the defender who has been cited in accordance with paragraph (1) becomes known after the cause has commenced, the sheriff may allow the summons to be amended subject to such conditions as to re-service, intimation, expenses, or transfer of the cause as he thinks fit.

(4) In every case where advertisement in a newspaper is required for the purpose of citation or service a copy of the newspaper containing said advertisement shall be lodged with the sheriff clerk."

Amendment of Rule 9

10. For Rule 9, substitute the following rule—

"*Citation of or Service on Persons resident outwith Scotland*

9.—(1) Any summons, decree, charge, warrant or other order or writ following upon such summons or decree issued in a summary cause may be validly served on a defender resident outwith Scotland by—

(*a*) service on a defender whose known residence or place of business is outwith Scotland but within the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland being effected either personally or by posting a copy of the summons, decree, charge, warrant or other order or writ in a registered or recorded delivery letter to the defender at his residence or place of business; or

(*b*) service on a defender whose residence or place of business is outwith the United Kingdom, the Isle of Man, the Channel Islands, and the Republic of Ireland being effected either personally or by posting separately in Scotland and in the country in which the defender is resident or has a place of business a copy of the summons, decree, charge, warrant or other order or writ in a registered or recorded delivery letter or the nearest equivalent thereof which the available postal services permit addressed to the defender at his residence or place of business:

but where the defender resides or has a place of business outwith Europe the summons, decree, charge, warrant or other order or writ posted in Scotland shall be posted by air mail.

(2) Service in accordance with this rule shall be deemed to be good and sufficient service for every purpose of law.

(3) For the purposes of this rule personal service shall include service in accordance with the rules for personal service under the domestic law of that part of the United Kingdom in which the service is to be effected; service by the British Consul or his duly authorised depute or assistant in the country of residence or place of business of the defender; and service in accordance with any convention on service abroad of judicial documents in civil matters to which the United Kingdom and the country of residence or place of business of the defender are signatories.

(4) Posting in Scotland for the purposes of this rule shall be effected by a solicitor or an officer of court. The forms for citation and certificate of citation referred to in rule 5 shall be used for the purposes of this rule but a translation of the citation in a language of the country of the defender's residence or place of business shall be attached if appropriate.

(5) On the face of the envelope used for postal service under this rule to a person resident or having a place of business outwith the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland there shall be written or printed a notice with a translation where appropriate in a language of the country of the defender's residence or place of business, in the same or similar terms as that required in the case of ordinary service in terms of rule 10(3)."

Amendment of Rule 10

11. In Rule 10, for paragraph (3) substitute paragraphs (3) and (4) as follows:—

"(3) On the face of the envelope used for postal service under this rule there shall be written or printed a notice in form Ka or in like form.

(4) The certificate of citation in the case of postal service shall have annexed to it any relevant postal receipts."

Amendment of Rule 11

12. For Rule 11, substitute the following rule:—

"*Endorsation of Summons by Sheriff Clerk of Defender's Residence Not Necessary*

11. Any summons, charge, warrant, arrestment or any order or writ following upon a summons or decree may be served, enforced or otherwise lawfully executed in Scotland without endorsation by a sheriff clerk and, if executed by an officer, may be so executed by an officer of the court which granted the summons, or by an officer of the sheriff court district in which it is to be executed."

Revocation of Rule 14

13. Rule 14 shall be omitted.

Amendment of Rule 15

14. For Rule 15, substitute the following rule—

"*Return of Summons*

15.—(1) In an action for payment of money to which Rules 51 to 55 apply the Summons, together with the relevant certificate of citation shall be returned to the sheriff clerk on or before the return day referred to in rule 51.

(2) In all other actions, the summons together with the relevant certificate of citation shall be returned to the sheriff clerk at least 24 hours before the date of the first calling as defined in Rule 18(1).

(3) Failure to comply with either paragraph (1) or (2) may result in the dismissal of the cause."

Amendment of Rule 16

15. In paragraph (1) of Rule 16, after the word "signed" insert the words "in respect of".

Amendment of Rule 19

16. In Rule 19,

(1) for paragraph (1) substitute the following paragraph—

"(1) (*a*) The pursuer, at any time within 21 days of the grant of decree of absolvitor in terms of rule 18(5), or

(*b*) the defender, at any time not later than 14 days after the execution of the charge or execution of arrestment, whichever first occurs, following on the grant of decree in terms of rule 18(6),

may apply for the recall of such decree by lodging with the sheriff clerk a minute in form M. Each party may apply for recall of a decree in the case on one occasion only."

(2) for paragraph (6) substitute the following paragraphs—

"(6) A minute to recall a decree granted in terms of rule 18(6) when duly lodged and intimated in accordance with the foregoing paragraphs shall operate as a sist of diligence. In actions to which rule 68A applies the lodging and intimating of such a minute shall not operate as a sist of diligence unless the sheriff directs otherwise.

(7) On intimation of the said minute the party in possession of the summons shall return it to the sheriff clerk."

Amendment of Rule 21

17. For Rule 21, substitute the following rule—

"*Counter Claim*

21.—(1) Where a defender intends to plead any counter claim he shall lodge the same at the first calling or any continuation thereof, or, with leave of the court granted at the first calling on cause shown within seven days thereafter, failing which the counter claim, except with the pursuer's consent, shall not be pleaded as such.

(2) Where a pursuer intends to oppose the counter claim he shall lodge answers within seven days of the lodging of the counter claim.

(3) Any party lodging a counter claim or answers thereto shall at the same time intimate a copy thereof to any other party."

Amendment of Rule 24 and insertion of New Rule 24A

18. For Rule 24, substitute the following rules 24 and 24A—

"*Lodging of Productions*

24.—(1) All productions which are intended to be used or put in evidence at a proof shall be lodged together with an inventory thereof

with the sheriff clerk not later than seven days before the diet of proof and notice of the lodging thereof shall at the same time be sent to any other party.

(2) No productions other than those timeously lodged shall be used or put in evidence at the proof unless by consent of parties or by permission of the presiding sheriff on cause shown to his satisfaction and on such terms as to expenses or otherwise as to him seem proper.

Borrowing of Productions

24A.—(1) Any productions borrowed, receipts for which shall be entered in the inventory of productions, which inventory shall be retained by the sheriff clerk, shall be returned not later than noon on the day preceding the date of the proof.

(2) Productions may be borrowed only by a solicitor or by his duly authorised clerk for whom he shall be responsible.

(3) A party litigant shall not borrow productions except by leave of the sheriff and subject to such conditions as the sheriff may impose, but may inspect them and obtain copies, where practicable, from the sheriff clerk."

Amendment of Rule 28

19. For Rule 28, substitute the following rule—

"*Decree by Default and Dismissal*

28.—(1) If in a summary cause after a defence has been stated a party has failed—

(*a*) to appear or be represented at any diet, or

(*b*) to implement an order of court

the cause shall be continued to a diet on the first appropriate summary cause roll occurring not earlier than 14 days from such failure to enable intimation to be given to any such party.

(2) Such intimation of the date of the continued diet shall be made by the sheriff clerk to the party concerned and shall include—

(*a*) a note of the reasons for the continuation, and

(*b*) a note that decree by default or of absolvitor may be granted in any of the following circumstances—

(i) if the party concerned fails to appear to be represented at the said continued diet, or

(ii) if at the said continued diet good cause is not shown for non-appearance at any prior diet, or

(iii) if any prior order of court has not been implemented by the date of the said continued diet.

(3) In any of the circumstances described in paragraph (2) above, or if the party concerned fails to appear or be represented at any further diet, decree by default as craved or decree of absolvitor may be granted.

(4) If all parties fail to appear or be represented at any diet the sheriff, unless sufficient reason appears to the contrary, shall dismiss the cause."

Amendment of Rule 32

20. For rule 32, substitute the following rule—

"*Witnesses failing to Attend*

32. The sheriff may grant warrant to compel the attendance of a witness or haver under pain of arrest and imprisonment until caution can be found as the sheriff may require for his due attendance. The warrant shall be effective in any sheriffdom without endorsation and the expenses thereof may be awarded against the witness or haver."

Amendment of Rule 36

21. In Rule 36,

(*a*) for the words "the sheriff shall thereupon fix" substitute the words "the sheriff clerk, subject to the approval of the sheriff, shall thereupon fix".

(*b*) for the words "and continue the cause" substitute the words "and the cause shall be continued".

Amendment of Rule 39

22. For Rule 39, substitute the following rule—

"*Confidentiality*

39. In any cause in which, either under the optional procedure provided in rule 38 or in the execution of a commission and diligence in normal form, confidentiality is claimed for any of the documents produced or where an order having been made under rule 68(*c*)(i) in the Schedule to the Act of 1907 confidentiality is claimed for any of the documents or other property produced, such documents or property shall be enclosed in a separate sealed packet, which shall not be opened or put in process except by authority of the sheriff obtained on the application of the party serving the order, or executing the commission and diligence, after opportunity has been given to the party, parties or haver, making production, to be heard."

Amendment of the heading to Rule 43

23. For the heading "Notes of Evidence, etc" relating to rule 43 substitute the heading "Noting of Evidence, etc."

Amendment of Rule 46

24. In the proviso to paragraph (1) of rule 46, for the word "may" substitute the word "shall".

Amendment of Rule 58

25. In rule 58, before the word "claimants" insert the words "defenders and".

New Rule 68A

26. After Rule 68, insert the following new rule—

"*Actions against Persons in Possession of Heritable Property without Right or Title*

68A. In an action for recovery of possession of heritable property against a person in possession *vi clam aut precario* and without right or

title to possess or occupy that property, the sheriff may in his discretion and subject to rule 81A, shorten or dispense with any period of time provided anywhere in these rules. An application by a party under this rule to shorten or dispense with any such period may be made verbally and the provisions in rule 93(1) and (2) shall not apply, but the sheriff clerk shall enter details of any such application in the Book of Incidental Applications."

Amendment of Rule 79

27. For Rule 79, substitute the following rule—

"*Recall or Variation of Decree for Aliment*

79.—(1) Applications for the recall or variation of any decree for payment of aliment pronounced in the small debt court under the Small Debt Acts or in a summary cause under the Act of 1971 shall be made by summons.

(2) The court may make such interim orders in relation to such applications or in relation to actions brought under section 3 of the Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963**(a)** as it thinks fit."

Amendment of Rule 81

28. For Rule 81, substitute the following rules 81 and 81A—

"*Appeal to the Sheriff Principal*

81.—(1) To appeal to the sheriff principal the appellant shall lodge with the sheriff clerk not later than 14 days after the date of the final decree, a note of appeal requesting a stated case and at the same time he shall intimate to the other parties the lodging of this note of appeal.

(2) Within 14 days of the lodging of the note of appeal the sheriff shall prepare and issue a draft stated case containing his findings in fact and law and where necessary a narrative of the proceedings before him, and a note stating the reasons for his decisions in law, and when questions of admissibility or sufficiency of evidence have arisen, a description of the evidence led at the proof to which these questions relate. A copy of the draft stated case shall be sent forthwith by the sheriff clerk to each of the parties.

(3) (*a*) Within 14 days of the issue of the draft stated case each of the parties shall lodge with the sheriff clerk a note of the questions of law which he wishes to raise during the appeal, and a note of any adjustments he desires to have made on the draft stated case. At the same time he shall send a copy of the note of questions of law and of the note of adjustments, if any, to the other parties.

(*b*) The questions of law may relate to matters which were not raised during the proof or at the hearing thereafter.

(*c*) The sheriff may on the motion of any party or of his own accord, allow a hearing on adjustments, and may provide for further procedure prior to the hearing of the appeal as he thinks fit.

(4) Except on cause shown and subject to such conditions by way of expenses or otherwise as the sheriff principal thinks fit, a party shall during the hearing of the appeal be allowed to raise only questions of law of which notice has been given.

(a) 1963 c. 22.

(5) Within 14 days after the latest date on which any notes of questions of law or of adjustments (if any) are lodged or in the event of a hearing on adjustments within 14 days of the date of that hearing, the sheriff, after considering these notes and any points made at the hearing, shall state and sign the case which shall include the questions of law stated by each of the parties and such other questions as the sheriff considers appropriate.

(6) The sheriff clerk shall put before the sheriff principal all the documents and productions in the case, and the stated case, send to the parties a copy of the stated case and inform them in writing of the date, time and place of the hearing of the appeal by the sheriff principal.

Provisions for Appeal in Actions for Recovery of Heritable Property to which Rule 68A applies

81A.—(1) In an action to which rule 68A applies it shall not be competent to shorten or dispense with the period for appeal specified in rule 81(1); and in such an action notwithstanding the early issue of an extract decree it shall be competent to appeal within that period for appeal.

(2) In such an action the lodging of a note of appeal shall not operate as a sist of diligence unless the sheriff directs otherwise."

Amendment of Rule 83

29. For Rule 83, substitute the following rule—

"*Hearing of Appeal*

83.—(1) The sheriff principal shall hear the parties or their solicitors orally on all matters connected with the appeal including liability for expenses: but if any party moves that the question of liability for expenses be heard after the sheriff principal has given his decision the sheriff principal may grant that motion.

(2) The sheriff principal may permit a party to amend any question of law or to add any new question in accordance with rule 81(4).

(3) The sheriff principal may—

(*a*) adhere to or vary the decree appealed against; or

(*b*) recall the decree appealed against and substitute another therefor; or

(*c*) remit, if he considers it desirable, to the sheriff, for any reason other than to have further evidence led.

(4) At the conclusion of the hearing the sheriff principal may either pronounce his decision or reserve judgment in which latter case he shall within 28 days thereof give his decision in writing and the sheriff clerk shall forthwith intimate it to the parties."

Amendment of Rule 84

30. In Rule 84(3), for the words "inform the applicant" substitute the words "inform the parties".

Amendment of Rule 87

31. For Rule 87, substitute the following rule—

"*Final Decree*

87. The final decree of the sheriff principal or the sheriff shall be pronounced, where expenses are awarded, only after expenses have been dealt with in accordance with rule 88."

Amendment of Rule 88

32. At the end of Rule 88 add the following paragraphs—

"(6) Failure by any party to comply with any of the foregoing provisions of this rule or failure of the successful party or parties to appear at the hearing on expenses shall be reported by the sheriff clerk to the sheriff principal or the sheriff in open court at a diet which the sheriff clerk has intimated to the parties, and the sheriff principal or sheriff shall, unless sufficient cause be shown pronounce decree on the merits of the cause and find no expenses due to or by any party. Such decree shall be held to be the final decree for the purposes of these rules.

(7) The sheriff principal or sheriff may, if he thinks fit, on the application of the solicitor of any party to whom expenses may be awarded, made at or before the time of the final decree being pronounced grant decree in favour of that solicitor for the expenses of the cause."

Amendment of Rule 89

33. In paragraph (1) of Rule 89, after the words "provided that" insert the words "in actions other than actions to which Rule 68A applies".

Amendment of Forms

34. In the Forms at the end of the Schedule—

(*a*) after form K insert form Ka as set out in the Schedule to this Act of Sederunt;

(*b*) at the end of form N insert the note as so set out;

(*c*) for form T substitute form T as so set out;

(*d*) for form U4 substitute form U4 as so set out.

Transitional

35. Nothing in this Act of Sederunt shall affect any action or proceedings commenced before the date of the coming into operation of this Act of Sederunt, and any such action or proceedings shall proceed according to the law and practice in force immediately before that date.

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

Emslie,
Lord President
IPD

Edinburgh.
28th March 1980.

SCHEDULE

FORM Ka

This letter contains a citation to or intimation from..... Sheriff Court. If delivery of the letter cannot be made it is to be returned immediately to the Sheriff Clerk at.....

(insert address)

FORM N

Note:
Within certain specified limits claims for necessary outlays and loss of earnings will be met. Claims should be made to the person who has cited you to attend court and proof of any loss of earnings should be given to that person.

FORM T

A.B., pursuer, or C.D., defender, in the summary cause at the instance of A.B. against C.D. hereby moves the sheriff principal to certify that the cause is suitable for appeal to the Court of Session.

To be signed by the party or his solicitor

FORM U4

Extract Decree and Warrant to Sell in Sequestration and Sale

(Place, Date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name)..... the Sheriff granted Decree against the defender for payment to the pursuer of £..... and £..... of expenses: and granted Warrant for all lawful execution hereon: and further, the Sheriff granted Warrant to any officer of Court or to A.B. (design)..... to sell, by Public Roup, at..... as much of the Sequestrated Effects as shall satisfy and pay the said sum of rent with the Expenses.

Sheriff Clerk

Date of Extract Decree

EXPLANATORY NOTE

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

This Act of Sederunt further amends the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976. Substantive amendments including new provisions for certain actions for recovery of heritable property (Rule 68A) have been made to the following existing rules and in the following new rules:—

(new)	Rule 3A	Information on Summons
	Rule 8	Citation of or Service on Persons whose Address is Unknown
	Rule 9	Citation of or Service on Persons resident outwith Scotland
	Rule 11	Endorsation of Summons by Sheriff Clerk of Defender's Residence Not Necessary
	Rule 15	Return of Summons
	Rule 19	Recall of Decree
	Rule 21	Counter Claim
	Rule 24	Lodging of Productions
(new)	Rule 24A	Borrowing of Productions
	Rule 28	Decree by Default and Dismissal
	Rule 46	Parties to be Heard at Close of Proof
(new)	Rule 68A	Actions against Persons in Possession of Heritable Property without Right or Title
	Rule 81	Appeal to the Sheriff Principal
(new)	Rule 81A	Provisions for Appeal in Actions for Recovery of Heritable Property to which Rule 68A applies
	Rule 83	Hearing of Appeal
	Rule 87	Final Decree
	Rule 88	Expenses
	Rule 89	Extract of Decree

Minor amendments including those of a consequential or drafting nature have been made to the following existing rules and forms:—

	Rule 4	Period of Notice after Citation
	Rule 5	Form of Citation and Certificate Thereof
	Rule 6	Citation and Service within Scotland by Officer of Court
	Rule 7	Citation of a Minor. This rule is deleted
	Rule 10	Postal Citation
	Rule 14	Evidence of Publication. This rule is deleted
	Rule 16	Book of Summary Causes
	Rule 32	Witnesses failing to Attend
	Rule 36	Abandonment of Cause
	Rule 39	Confidentiality
	Rule 43	Noting of Evidence, etc
	Rule 58	Service of Summons
	Rule 79	Recall or Variation of Decree for Aliment
	Rule 84	Appeal to the Court of Session
(new)	Form Ka	
	Form N	
	Form T	
	Form U4	Extract Decree and Warrant to Sell in Sequestration and Sale.