

2010 No. 340

SHERIFF COURT

Act of Sederunt (Sheriff Court Rules) (Equality Act 2010) 2010

Made - - - - *21st September 2010*

Coming into force - - *1st October 2010*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and section 117 of the Equality Act 2010(b) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules) (Equality Act 2010) 2010.

(2) This Act of Sederunt comes into force on 1st October 2010.

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

(4) In this Act of Sederunt—

“Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(c);

“Small Claim Rules” means the Small Claim Rules in Schedule 1 to the Act of Sederunt (Small Claim Rules) 2002(d);

“Summary Application Rules” means the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(e);

(a) 1971 c.58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12; the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4); the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2); the Adults with Incapacity (Scotland) Act 2000 (asp 4) (the “2000 asp”), schedule 5, paragraph 13; the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2); the Consumer Credit Act 2006 (c.14), section 16(4); and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (the “2007 asp”) section 33. Section 32 is amended prospectively by the 2007 asp, schedule 5, paragraph 10. Section 32 was extended by the Debtors (Scotland) Act 1987 (c.18), section 97; the Child Support Act 1991 (c.48), sections 39(2) and 49; and by section 2(4) of the 2000 asp.

(b) 2010 c.15.

(c) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and amended by S.I. 1996/2167 and 2445; S.S.I. 2000/239 and 408; 2001/8 and 144; 2002/7, 128 and 560; 2003/25, 26 and 601; 2004/197 and 350; 2005/20, 189, 638 and 648; 2006/198, 207, 293, 410 and 509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 284, 285, 294 and 402; 2010/120, 279 and 324.

(d) S.S.I. 2002/133, amended by S.S.I. 2003/26 and 601; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; and 2010/279.

(e) S.I. 1999/929, amended by S.S.I. 2000/148 and 387; 2001/142; 2002/7, 129, 130, 146 and 563; 2003/26, 27, 98, 261, 319, 346 and 556; 2004/197, 222, 334 and 455; 2005/61, 445, 473, 504 and 648; 2006/198, 410, 437 and 509; 2007/6, 233, 339, 440 and 463; 2008/9, 41, 111, 223, 335, 365 and 375; 2009/107, 109, 164, 294, 320 and 402; and 2010/324.

“Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(a).

Amendment of the Ordinary Cause Rules

2.—(1) Chapter 44 (equality enactments)(b) of the Ordinary Cause Rules is amended in accordance with the following subparagraphs.

(2) For Rule 44.1 (application and interpretation) substitute—

“Interpretation and application

44.1.—(1) In this Chapter—

“the Commission” means the Commission for Equality and Human Rights; and

“the 2010 Act” means the Equality Act 2010(c).

(2) This Chapter applies to claims made by virtue of section 114(1) of the 2010 Act including a claim for damages.”.

(3) For rule 44.5 (national security), substitute—

“National security

44.5.—(1) Where, on a motion under paragraph (3) or of the sheriff’s own motion, the sheriff considers it expedient in the interests of national security, the sheriff may—

(a) exclude from all or part of the proceedings—

(i) the pursuer;

(ii) the pursuer’s representatives;

(iii) any assessors;

(b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he or she is excluded;

(c) take steps to keep secret all or part of the reasons for his or her decision in the proceedings.

(2) The sheriff clerk shall, on the making of an order under paragraph (1) excluding the pursuer or the pursuer’s representatives, notify the Advocate General for Scotland of that order.

(3) A party may apply by motion for an order under paragraph (1).

(4) The steps referred to in paragraph (1)(c) may include the following—

(a) directions to the sheriff clerk; and

(b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or the pursuer’s representatives are excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)—

(i) on any matter discussed or referred to;

(ii) with regard to any material disclosed,

during or with reference to any part of the proceedings from which the pursuer or the pursuer’s representatives are excluded.

(a) S.S.I. 2002/132, amended by S.S.I. 2002/516; 2003/26 and 601; 2004/197; 2005/648; 2006/509; 2007/6, 339, 440 and 463; 2008/121, 223 and 365; 2009/107, 164, 294 and 402; and 2010/279.

(b) Chapter 44 was inserted by S.S.I. 2006/509.

(c) 2010 c.15.

(5) Where the sheriff has made an order under paragraph (4)(b), the person appointed to represent the interests of the pursuer may apply by motion for authority to seek instructions from or otherwise communicate with an excluded person.

Transfer to Employment Tribunal

44.6.—(1) On transferring proceedings to an employment tribunal under section 140(2) of the 2010 Act, the sheriff—

- (a) shall state his or her reasons for doing so in the interlocutor; and
- (b) may make the order on such conditions as to expenses or otherwise as he or she thinks fit.

(2) The sheriff clerk must, within 7 days from the date of such order—

- (a) transmit the process to the Secretary of the Employment Tribunals (Scotland);
- (b) notify each party to the proceedings in writing of the transmission under subparagraph (a); and
- (c) certify, by making an appropriate entry on the interlocutor sheet, that he or she has made all notifications required under subparagraph (b).

(3) Transmission of the process under paragraph (2)(a) will be valid notwithstanding any failure by the sheriff clerk to comply with paragraph (2)(b) and (c).

Transfer from Employment Tribunal

44.7.—(1) On receipt of the documentation in proceedings which have been remitted from an employment tribunal under section 140(3) of the 2010 Act, the sheriff clerk must—

- (a) record the date of receipt on the first page of the documentation;
- (b) fix a hearing to determine further procedure not less than 14 days after the date of receipt of the process; and
- (c) forthwith send written notice of the date of the hearing fixed under subparagraph (b) to each party.

(2) At the hearing fixed under paragraph (1)(b) the sheriff may make such order as he or she thinks fit to secure so far as practicable that the cause thereafter proceeds in accordance with these Rules.”.

(4) The title of Chapter 44 becomes “The Equality Act 2010”.

Amendment of the Summary Application Rules

3.—(1) Part XXXIII (equality enactments)(a) of the Summary Application Rules is amended in accordance with the following subparagraphs.

(2) For Rule 3.33.1 (application and interpretation) substitute—

“Interpretation and application

3.33.1.—(1) In this Part—

“the Commission” means the Commission for Equality and Human Rights; and

“the 2010 Act” means the Equality Act 2010.

(2) This Part applies to claims made by virtue of section 114(1) of the 2010 Act not including a claim for damages.”.

(a) Part XXXIII was inserted by S.S.I. 2006/509.

(3) For rule 3.33.5 (national security), substitute—

“National security

3.33.5.—(1) Where, on a motion under paragraph (3) or of the sheriff’s own motion, the sheriff considers it expedient in the interests of national security, the sheriff may—

- (a) exclude from all or part of the proceedings—
 - (i) the pursuer;
 - (ii) the pursuer’s representatives;
 - (iii) any assessors;
- (b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he or she is excluded;
- (c) take steps to keep secret all or part of the reasons for his or her decision in the proceedings.

(2) The sheriff clerk shall, on the making of an order under paragraph (1) excluding the pursuer or the pursuer’s representatives, notify the Advocate General for Scotland of that order.

(3) A party may apply by motion for an order under paragraph (1).

(4) The steps referred to in paragraph (1)(c) may include the following—

- (a) directions to the sheriff clerk; and
- (b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or the pursuer’s representatives are excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)—
 - (i) on any matter discussed or referred to;
 - (ii) with regard to any material disclosed,during or with reference to any part of the proceedings from which the pursuer or the pursuer’s representatives are excluded.

(5) Where the sheriff has made an order under paragraph (4)(b), the person appointed to represent the interests of the pursuer may apply by motion for authority to seek instructions from or otherwise communicate with an excluded person.

Transfer to Employment Tribunal

3.33.6.—(1) On transferring proceedings to an employment tribunal under section 140(2) of the 2010 Act, the sheriff—

- (a) shall state his or her reasons for doing so in the interlocutor; and
- (b) may make the order on such conditions as to expenses or otherwise as he or she thinks fit.

(2) The sheriff clerk must, within 7 days from the date of such order—

- (a) transmit the relevant process to the Secretary of the Employment Tribunals (Scotland);
- (b) notify each party to the proceedings in writing of the transmission under subparagraph (a); and
- (c) certify, by making an appropriate entry on the interlocutor sheet, that he or she has made all notifications required under subparagraph (b).

(3) Transmission of the process under paragraph (2)(a) will be valid notwithstanding any failure by the sheriff clerk to comply with paragraph (2)(b) and (c).

Transfer from Employment Tribunal

3.33.7.—(1) On receipt of the documentation in proceedings which have been remitted from an employment tribunal under section 140(3) of the 2010 Act, the sheriff clerk must—

- (a) record the date of receipt on the first page of the documentation;
- (b) fix a hearing to determine further procedure not less than 14 days after the date of receipt of the process; and
- (c) forthwith send written notice of the date of the hearing fixed under subparagraph (b) to each party.

(2) At the hearing fixed under paragraph (1)(b) the sheriff may make such order as he or she thinks fit to secure so far as practicable that the cause thereafter proceeds in accordance with these Rules.”.

(4) The title of Part XXXIII becomes “The Equality Act 2010”.

Amendment of the Summary Cause Rules

4.—(1) Chapter 36 (equality enactments)(a) of the Summary Cause Rules is amended in accordance with the following subparagraphs.

(2) For Rule 36.1 (application and interpretation) substitute—

“Interpretation and application

36.1.—(1) In this Chapter—

“the Commission” means the Commission for Equality and Human Rights; and

“the 2010 Act” means the Equality Act 2010.

(2) This Chapter applies to claims made by virtue of section 114(1) of the 2010 Act including a claim for damages.”.

(3) For rule 36.5 (national security), substitute—

“National security

36.5.—(1) Where, on an incidental application under paragraph (3) or of the sheriff’s own motion, the sheriff considers it expedient in the interests of national security, the sheriff may—

- (a) exclude from all or part of the proceedings—
 - (i) the pursuer;
 - (ii) the pursuer’s representatives;
 - (iii) any assessors;
- (b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he or she is excluded;
- (c) take steps to keep secret all or part of the reasons for his or her decision in the proceedings.

(a) Chapter 36 was inserted by S.S.I. 2006/509.

(2) The sheriff clerk shall, on the making of an order under paragraph (1) excluding the pursuer or the pursuer's representatives, notify the Advocate General for Scotland of that order.

(3) A party may make an incidental application for an order under paragraph (1).

(4) The steps referred to in paragraph (1)(c) may include the following—

- (a) directions to the sheriff clerk; and
- (b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or the pursuer's representatives are excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)—
 - (i) on any matter discussed or referred to;
 - (ii) with regard to any material disclosed,during or with reference to any part of the proceedings from which the pursuer or the pursuer's representatives are excluded.

(5) Where the sheriff has made an order under paragraph (4)(b), the person appointed to represent the interests of the pursuer may make an incidental application for authority to seek instructions from or otherwise communicate with an excluded person.

(6) The sheriff may, on the application of a party intending to lodge an incidental application in written form, reduce the period of notice of two days specified in rule 9.1(2) or dispense with notice.

(7) An application under paragraph (6) shall be made in the written incidental application, giving reasons for such reduction or dispensation.

Transfer to Employment Tribunal

36.6.—(1) On transferring proceedings to an employment tribunal under section 140(2) of the 2010 Act, the sheriff—

- (a) shall state his or her reasons for doing so in the interlocutor; and
- (b) may make the order on such conditions as to expenses or otherwise as he or she thinks fit.

(2) The sheriff clerk must, within 7 days from the date of such order—

- (a) transmit the relevant process to the Secretary of the Employment Tribunals (Scotland);
- (b) notify each party to the proceedings in writing of the transmission under subparagraph (a); and
- (c) certify, by making an appropriate entry in the Register of Summary Causes, that he or she has made all notifications required under subparagraph (b).

(3) Transmission of the process under paragraph (2)(a) will be valid notwithstanding any failure by the sheriff clerk to comply with paragraph (2)(b) and (c).

Transfer from Employment Tribunal

36.7.—(1) On receipt of the documentation in proceedings which have been remitted from an employment tribunal under section 140(3) of the 2010 Act, the sheriff clerk must—

- (a) record the date of receipt on the first page of the documentation;
- (b) fix a hearing to determine further procedure not less than 14 days after the date of receipt of the process; and
- (c) forthwith send written notice of the date of the hearing fixed under subparagraph (b) to each party.

(2) At the hearing fixed under paragraph (1)(b) the sheriff may make such order as he or she thinks fit to secure so far as practicable that the cause thereafter proceeds in accordance with these Rules.”.

(4) The title of Chapter 36 becomes “The Equality Act 2010”.

Amendment of the Small Claim Rules

5.—(1) Chapter 26 (equality enactments)(a) of the Small Claim Rules is amended in accordance with the following subparagraphs.

(2) For Rule 26.1 (application and interpretation) substitute—

“Interpretation and application

26.1.—(1) In this Chapter—

“the Commission” means the Commission for Equality and Human Rights; and

“the 2010 Act” means the Equality Act 2010.

(2) This Chapter applies to claims made by virtue of section 114(1) of the 2010 Act including a claim for damages.”.

(3) For rule 26.5 (national security), substitute—

“National security

26.5.—(1) Where, on an incidental application under paragraph (3) or of the sheriff’s own motion, the sheriff considers it expedient in the interests of national security, the sheriff may—

(a) exclude from all or part of the proceedings—

(i) the pursuer;

(ii) the pursuer’s representatives;

(iii) any assessors;

(b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he or she is excluded;

(c) take steps to keep secret all or part of the reasons for his or her decision in the proceedings.

(2) The sheriff clerk shall, on the making of an order under paragraph (1) excluding the pursuer or the pursuer’s representatives, notify the Advocate General for Scotland of that order.

(3) A party may make an incidental application for an order under paragraph (1).

(4) The steps referred to in paragraph (1)(c) may include the following—

(a) directions to the sheriff clerk; and

(b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or the pursuer’s representatives are excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)—

(a) Chapter 26 was inserted by S.S.I. 2006/509.

- (i) on any matter discussed or referred to;
 - (ii) with regard to any material disclosed,
- during or with reference to any part of the proceedings from which the pursuer or the pursuer's representatives are excluded.

(5) Where the sheriff has made an order under paragraph (4)(b), the person appointed to represent the interests of the pursuer may make an incidental application for authority to seek instructions from or otherwise communicate with an excluded person.

(6) The sheriff may, on the application of a party intending to lodge an incidental application in written form, reduce the period of notice of two days specified in rule 10.1(2) or dispense with notice.

(7) An application under paragraph (6) shall be made in the written incidental application, giving reasons for such reduction or dispensation.

Transfer to Employment Tribunal

26.6.—(1) On transferring proceedings to an employment tribunal under section 140(2) of the 2010 Act, the sheriff—

- (a) shall state his or her reasons for doing so in the interlocutor; and
- (b) may make the order on such conditions as to expenses or otherwise as he or she thinks fit.

(2) The sheriff clerk must, within 7 days from the date of such order—

- (a) transmit the relevant process to the Secretary of the Employment Tribunals (Scotland);
- (b) notify each party to the proceedings in writing of the transmission under subparagraph (a); and
- (c) certify, by making an appropriate entry in the Register of Small Claims, that he or she has made all notifications required under subparagraph (b).

(3) Transmission of the process under paragraph (2)(a) will be valid notwithstanding any failure by the sheriff clerk to comply with paragraph (2)(b) and (c).

Transfer from Employment Tribunal

26.7.—(1) On receipt of the documentation in proceedings which have been remitted from an employment tribunal under section 140(3) of the 2010 Act, the sheriff clerk must—

- (a) record the date of receipt on the first page of the documentation;
- (b) fix a hearing to determine further procedure not less than 14 days after the date of receipt of the process; and
- (c) forthwith send written notice of the date of the hearing fixed under subparagraph (b) to each party.

(2) At the hearing arranged under paragraph (1)(b), the sheriff may make such order as he or she thinks fit to secure so far as practicable that the cause thereafter proceeds in accordance with these Rules.”.

(4) The title of Chapter 26 becomes “The Equality Act 2010”.

Savings provision

6. The Ordinary Cause Rules, Summary Application Rules, Summary Cause Rules and Small Claim Rules as they applied immediately before 1st October 2010 continue to have effect for the purpose of any matter under a provision referred to in those Rules which continues before the sheriff, or which may be brought before the sheriff, in either case by virtue of a savings provision, transitional provision or transitory provision of the Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010(a).

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
21st September 2010

(a) S.I. 2010/2317.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause Rules, the Summary Application Rules, the Summary Cause Rules and the Small Claim Rules in consequence of the Equality Act 2010. The 2010 Act consolidates and harmonises the legislation referred to in the existing court rules under the term “equality enactments”. The 2010 Act also extends protection from discrimination because of age to the provision of goods, facilities and services and the exercise of public functions. The relevant rules are therefore amended to reflect the changes introduced by the 2010 Act. Paragraph 6 contains a savings provision.

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