
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 152

**COURT OF SESSION
SHERIFF COURT**

**Act of Sederunt (Rules of the Court of Session,
Ordinary Cause Rules and Summary Cause
Rules Amendment) (Miscellaneous) 2014**

<i>Made</i>	- - - -	<i>28th May 2014</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>30th May 2014</i>
<i>Coming into force</i>	- -	<i>7th July 2014</i>

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(1), section 5 of the Court of Session Act 1988(2) and of all other powers enabling them in that behalf, having approved with such modifications as they think appropriate draft rules submitted to them by the Scottish Civil Justice Council in accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(3), do hereby enact and declare:

Citation, commencement and interpretation

1. (1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session, Ordinary Cause Rules and Summary Cause Rules Amendment) (Miscellaneous) 2014.

(2) It comes into force on 7th July 2014.

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

(4) In this Act of Sederunt—

-
- (1) [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 \(asp 4\)](#), 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); the Bankruptcy and Diligence (Scotland) Act [2007 \(asp 3\)](#), section 33 and Schedule 5, paragraph 10 (in part); the Legal Services (Scotland) Act [2010 \(asp 16\)](#), section 127(a); the Children's Hearings (Scotland) Act [2011 \(asp 1\)](#), section 185; and the Scottish Civil Justice Council and Criminal Legal Assistance Act [2013 \(asp 3\)](#), section 15(2).
- (2) [1988 c.36](#). Section 5 was amended by the Civil Evidence (Scotland) Act [1988 \(c.32\)](#), section 2(3); the Children (Scotland) Act [1995 \(c.36\)](#), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act [2004 \(asp 3\)](#), section 14(1); the Judiciary and Courts (Scotland) Act [2008 \(asp 6\)](#), section 46(3)(i) and the Legal Services (Scotland) Act [2010 \(asp 16\)](#), section 126(a).
- (3) [2013 asp 3](#).

“the Ordinary Cause Rules” means the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(4);

“the Rules of the Court of Session” means the Rules of the Court of Session 1994 in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(5);

“the Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(6).

Amendment of the Rules of the Court of Session

2. (1) The Rules of the Court of Session are amended in accordance with the following subparagraphs.

(2) For rule 35.3(1) (optional procedure before executing commission and diligence)(7), substitute—

“(1) Subject to rule 35.3A (optional procedure where there is a party litigant), this rule applies where a party has obtained a commission and diligence for the recovery of a document on an application under rule 35.2(1)(a).”.

(3) In rule 35.3A (optional procedure where there is a party litigant or confidentiality is claimed)(8)—

(a) for paragraph (1), substitute—

“(1) This rule applies where any of the parties to the action is a party litigant.”;

(b) omit paragraph (2).

(4) The heading to rule 35.3A becomes “Optional procedure where there is a party litigant”.

(5) In rule 35.8 (confidentiality), in paragraph (1), after “rule 35.3 (optional procedure before executing commission and diligence)” insert “rule 35.3A (optional procedure where there is a party litigant).”.

(6) In rule 43.6 (allocation of diets and timetables)(9)—

(a) in paragraph (3), omit “other than that referred to in paragraph (7).”;

(b) omit paragraph (7).

(7) In rule 43.8(2)(b) (applications for sist or variation of timetable order), omit “special”.

(8) In rule 58A.5(1)(10), for “rule 58A.3(1)” substitute “rule 58A.4(1)”.

(9) In the Appendix, in Form 35.3A-A (form of order of court and certificate in optional procedure for recovery of documents – party litigant cases), in the words in brackets above the heading “NOTES” omit “business” and “the agent for”.

Amendment of the Ordinary Cause Rules

3. (1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.

(4) 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, 324, 340 and 416; 2011/193, 289 and 386; 2012/188, 221 and 27; and 2013/91, 135 and 139.

(5) 1994 S.I. 1994/1443, last amended by S.S.I. 2014/119.

(6) 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 and 294; 2010/279, 340 and 416; 2011/193 and 289; 2012/144, 188 and 271; and 2013/135 and 171.

(7) Rule 35.3 was substituted by S.S.I. 1996/2168.

(8) Rule 35.3A was inserted by S.I. 1996/2168.

(9) Rule 43.6 was substituted by S.S.I. 2002/570 and last amended by S.S.I. 2011/190.

(10) Rule 58A.5 was inserted by S.S.I. 2013/81.

(2) For rule 28.3 (optional procedure before executing commission and diligence)(11) substitute

“Optional procedure before executing commission and diligence

28.3. (1) Subject to rule 28.3A (optional procedure where there is a party litigant), this rule applies where a party has obtained a commission and diligence for the recovery of a document on an application made under rule 28.2(1)(a).

(2) Such a party may, at any time before executing the commission and diligence against a haver, serve on the haver an order in Form G11 (in this rule referred to as “the order”).

(3) The order and a copy of the specification referred to in rule 28.2(2), as approved by the sheriff, must be served on the haver or his known agent and must be complied with by the haver in the manner and within the period specified in the order.

(4) Not later than the day after the date on which the order, and any document recovered, is received from a haver by the party who obtained the order, that party—

(a) must give written intimation of that fact in Form G11A to the sheriff clerk and every other party; and

(b) must—

(i) if the document has been sent by post, send a written receipt for the document in Form G11B to the haver; or

(ii) if the document has been delivered by hand, give a written receipt in Form G11B to the person delivering the document.

(5) Where the party who has recovered any such document does not lodge it in process within 14 days of receipt of it, that party must—

(a) give written intimation to every party that that party may borrow, inspect or copy the document within 14 days after the date of that intimation; and

(b) in so doing, identify the document.

(6) Where a party who has obtained any document under paragraph (5) wishes to lodge the document in process, that party must—

(a) lodge the document within 14 days after receipt of it; and

(b) at the same time, send a written receipt for the document in Form G11C to the party who obtained the order.

(7) Where—

(a) no party wishes to lodge or borrow any such document under paragraph (5), the document is to be returned to the haver by the party who obtained the order within 14 days after the expiry of the period specified in paragraph (5)(a); or

(b) any such document has been uplifted by another party under paragraph (5) and that party does not wish to lodge it in process, the document shall be returned to the haver by that party within 21 days after the date of receipt of it by him.

(8) Any such document lodged in process is to be returned to the haver by the party lodging it within 14 days after the expiry of any period allowed for appeal or, where an appeal has been marked, from the disposal of any such appeal.

(9) If any party fails to return any such document as provided for in paragraph (7) or (8), the haver may apply by motion (whether or not the cause is in dependence) for an order that the document be returned to him and for the expenses occasioned by that motion.

(10) The party holding any such document (being the party who last issued a receipt for it) is responsible for its safekeeping during the period that the document is in his custody or control.

(11) If the party who served the order is not satisfied that—

(a) full compliance has been made with the order, or

(b) adequate reasons for non-compliance have been given,

he may execute the commission and diligence under rule 28.4.

(12) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the sheriff may, on the motion of the party who served the order, direct that that party may inspect the book and take copies of any entries falling with the specification.

(13) Where any question of confidentiality arises in relation to a book directed to be inspected under paragraph (12), the inspection shall be made, and any copies shall be taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence.

(14) The sheriff may, on cause shown, order the production of any book (not being a banker's book or book of public record) containing entries falling under a specification, notwithstanding the production of a certified extract from that book.

Optional procedure where there is a party litigant

28.3A. (1) This rule applies where any of the parties to the action is a party litigant.

(2) The party who has obtained a commission and diligence for the recovery of a document on an application under rule 28.2(1)(a) may, at any time before executing it against a haver, serve on the haver an order in Form G11D (in this rule referred to as "the order").

(3) The order and a copy of the specification referred to in rule 28.2(2), as approved by the sheriff, must be served on the haver or his known agent and must be complied with by the haver in the manner and within the period specified in the order.

(4) Not later than the day after the date on which the order, and any document recovered, is received from a haver by the sheriff clerk, the sheriff clerk shall give written intimation of that fact to each party.

(5) No party, other than the party who served the order, may uplift any such document until after the expiry of 7 days after the date of intimation under paragraph (4).

(6) Where the party who served the order fails to uplift any such document within 7 days after the date of intimation under paragraph (4), the sheriff clerk must give written intimation of that failure to every other party.

(7) Where no party has uplifted any such document within 14 days after the date of intimation under paragraph (6), the sheriff clerk must return it to the haver.

(8) Where a party who has uplifted any such document does not wish to lodge it, he must return it to the sheriff clerk who must—

(a) give written intimation of the return of the document to every other party; and

(b) if no other party uplifts the document within 14 days after the date of intimation, return it to the haver.

(9) Any such document lodged in process is to be returned to the haver by the party lodging it within 14 days after the expiry of any period allowed for appeal or, where an appeal has been marked, from the disposal of any such appeal.

(10) If any party fails to return any such document as provided for in paragraph (8) or (9), the haver may apply by motion (whether or not the cause is in dependence) for an order that the document be returned to him and for the expenses occasioned by that motion.

(11) The party holding any such document (being the party who last issued a receipt for it) is responsible for its safekeeping during the period that the document is in his custody or control.

(12) If the party who served the order is not satisfied that—

(a) full compliance has been made with the order, or

(b) adequate reasons for non-compliance have been given,

he may execute the commission and diligence under rule 28.4.

(13) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the sheriff may, on the motion of the party who served the order, direct that that party shall be allowed to inspect the book and take copies of any entries falling within the specification.

(14) Where any question of confidentiality arises in relation to a book directed to be inspected under paragraph (13), the inspection shall be made, and any copies shall be taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence.

(15) The sheriff may, on cause shown, order the production of any book (not being a banker's book or book of public record) containing entries falling under a specification, notwithstanding the production of a certified extract from that book.”.

(3) In rule 28.8 (confidentiality)(**12**), for paragraph (1) substitute—

“(1) Where confidentiality is claimed for any evidence sought to be recovered under any of the following rules, such evidence is to be, where practicable, enclosed in a sealed packet—

(a) rule 28.3 (optional procedure before executing commission and diligence),

(b) rule 28.3A (optional procedure where there is a party litigant),

(c) rule 28.4 (execution of commission and diligence for recovery of documents),

(d) rule 28.5 (execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972),

(e) rule 28.7 (execution of orders for preservation etc. of documents or other property under section 1(1) of the Act of 1972).”.

(4) In rule 36.G1 (allocation of diets and timetables)(**13**)—

(a) in paragraph (3), omit “paragraph 8 or”;

(b) omit paragraph (8).

(5) In rule 36.H1(2)(b) (applications for sist or for variation of timetable)(**14**), omit “special”.

(6) In Appendix 1 (forms) for Form G11 substitute Forms G11, G11A, G11B, G11C and G11D in the Schedule to this Act of Sederunt.

Amendment of the Summary Cause Rules

4. (1) The Summary Cause Rules are amended in accordance with the following subparagraphs.

(2) After rule 18.2 (optional procedure before executing commission and diligence), insert—

(12) Rule 28.8 was amended by [S.I. 1996/2445](#).

(13) Rule 36.G1 was inserted by [S.S.I. 2009/285](#) and was last amended by [S.S.I. 2011/386](#).

(14) Rule 36.H1 was inserted by [S.S.I. 2009/285](#) and was last amended by [S.S.I. 2010/279](#).

“Optional procedure before executing commission and diligence – personal injuries actions

18.2A. (1) This rule applies to actions to which Chapter 34 applies (action of damages for, or arising from, personal injuries) but only where each party is legally represented.

(2) Any party who has obtained a commission and diligence for the recovery of documents may, at any time before executing it, serve by first class recorded delivery post on the solicitor or solicitors of the person from whom the documents are sought to be recovered an order with certificate attached in Form 10B.

(3) Documents recovered in response to an order under paragraph (2) must be sent to, and retained by, the party who obtained the order who must, on receiving them, advise the parties that the documents are in his possession and may be examined within his office during normal business hours.

(4) If the party who served the order is not satisfied that full production has been made under the specification, or that adequate reasons for non-production have been given, he may execute the commission and diligence in normal form, notwithstanding his adoption in the first instance of the foregoing procedure by order.

(5) At the commission, the commissioner must—

- (a) administer the appropriate oath or affirmation to any clerk and any shorthand writer appointed for the commission; and
- (b) administer to the haver the oath in Form 20, or where the haver elects to affirm, the affirmation in Form 21.

(6) Documents recovered under this rule may be tendered as evidence at any hearing or proof without further formality, and rules 18.4(2), (3) and (4) shall apply to such documents.”.

(3) In rule 18.4 (confidentiality), in paragraph (1), after “rule 18.2” insert “, rule 18.2A”.

(4) In rule 34.7 (allocation of diets and timetables)(**15**)—

- (a) in paragraph (5), omit “paragraph (10) or”;
- (b) omit paragraph (10).

(5) In rule 34.8(2)(b) (applications for sist or for variation of timetable)(**16**), omit “special”.

(6) In Appendix 1 (forms), in Form 10B (form of order of court for recovery of documents in personal injuries action) after “(*insert address*)”, where it appears for the first time, insert “[*or, as the case may be, the party who obtained the order*].”

Edinburgh
28th May 2014

BRIAN GILL
Lord President
I.P.D.

(15) Rule 34.7 was substituted by S.S.I. 2012/144.

(16) Rule 34.8 was substituted by S.S.I. 2012/144.

SCHEDULE

Paragraph 3(6)

Form G11

Rule 28.3(2)

Form of notice in optional procedure for

Co

SHERIFFDOM OF *(insert name)*

AT *(insert place of sheriff)*

in the cause

[A.B.], *(insert name and address)*

against

[C.D.], *(insert name and address)*

To: *(insert name and address of party or parties or name of party to whom documents are sought to be recovered).*

1. You are hereby required to produce to the agent *(insert name and address of agents)* within seven
(a) this Order which must be produced intact;

NOTES

1. If you claim that any of the documents produced produce such documents but may place them in marked “confidential”. In that event, they should must be hand delivered or sent by registered post service or registered postal packet to the sheriff court).
2. The document will be considered by the parties lodged in the court process. A written receipt recovering the documents, who may thereafter parties. The party in whose possession the documents safekeeping.
3. Parties are obliged by rules of court to return the documents the documents is finished. If they do not do so, under rule 28.3(9) of the Ordinary Cause Rules, they apply for an award of the expenses incurred in documents be obtained from the sheriff clerk’s office at (*insert*

Certificate

I hereby certify with reference to the above order of the the cause (*insert court reference number*) and the enclosure and marked respectively X and Y:—

Form G11A

Rule 28.3(4)(a)

**Form of intimation to the sheriff clerk and other
under optional process**

Co

SHERIFFDOM OF (*insert name*)

AT (*insert place of sheriffdom*)

in the cause

[A.B.], (*insert name and address*)

against

[C.D.], (*insert name and address*)

The undernoted document[s] was [were] recovered from
(*insert date of receipt*) under order of the sheriff at (*insert name of interlocutor authorising commission and diligence*) in
documents No. of Process.

Form G11E

Rule 28.3(4)(b)

Form of receipt to haver for documents recovered

Cor

SHERIFFDOM OF *(insert name)*

AT *(insert place of sheriff)*

in the cause

[A.B.], *(insert name and address)*

against

[C.D.], *(insert name and address)*

The document[s] noted below, being recovered by order of *(insert name of court)* dated *(insert date of interlocutor authorising recovery)* relates to the specification of documents No. *(insert number)* of Proceedings *(insert name of Proceedings)* and address of haver).

Form G110

Rule 28.3(6)(b)

**Form of receipt from party other than party who
under optional process**

Co

SHERIFFDOM OF *(insert name)*

AT *(insert place of sheriff court)*

in the cause

[A.B.], *(insert name and address)*

against

[C.D.], *(insert name and address)*

I acknowledge receipt of the undernoted document[s]
in the order of the sheriff at *(insert name of sheriff court)* dated
(insert date) and in my *(insert name)* *(insert name of sheriff court)*
commission and diligence.

Form G11D

Rule 28.3A(2)

**Form of notice in optional procedure for control of
litigant cases**

Control

SHERIFFDOM OF *(insert name)*

AT *(insert place of sheriff court)*

in the cause

[A.B.], *(insert name and address)*

against

[C.D.], *(insert name and address)*

To: *(insert name and address of party or parties or name of party to whom documents are sought to be recovered).*

1. You are hereby required to produce to the sheriff (or sheriff court) within seven days of the date of service of this notice all documents in your possession, custody or control which are relevant to the proceedings.

NOTES

1. If you claim that any of the documents produced produce such documents but may place them in marked “confidential”.
2. The documents will be considered by the parties lodged in the court process. If they are not so lodged, the sheriff clerk. The party in whose possession the documents are safekeeping.
3. Parties are obliged by rules of court to return the documents when the process is finished. If they do not do so, under rule 28.3A(10) of the Ordinary Cause Rules, a party may apply for an award of the expenses incurred. The documents can be obtained from the sheriff clerk’s office at (

Certificate

I hereby certify with reference to the above order of the court in the cause (*insert court reference number*) and the enclosed documents marked respectively X and Y:—

1. That the documents which are produced and witnessed and signed by me and marked Z, are all documents as specified in the specification.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session, Ordinary Cause Rules and Summary Cause Rules in respect of personal injury actions. Paragraph 2(7) also amends the Rules of the Court of Session in respect of a typographical error in Chapter 58A (protective expenses orders in environmental appeals and judicial reviews).

Paragraph 2 amends the Rules of the Court of Session. In particular rule 35.3, rule 35.3A and Form 35.3A-A are amended in respect of the optional procedure for the recovery of documents. In so doing it makes clear the procedure for the optional procedure for the recovery of evidence where confidentiality is claimed.

Paragraph 3 amends the Ordinary Cause Rules. In so doing it replaces the existing optional procedure for the recovery of evidence in rule 28.3 and introduces two new types of optional procedure for the recovery of evidence. The first, where all of the parties are legally represented, is administered by the solicitors for the parties. The second, where one or more of the parties is a party litigant, is administered by the sheriff clerk.

Paragraph 4 amends the Summary Cause Rules. In so doing it introduces an optional procedure for the recovery of evidence in personal injury actions where each party is legally represented. This procedure is administered by the solicitors for the parties.

In addition, each set of rules is amended to remove a superfluous reference to putting cases out By Order in certain circumstances and to remove the need for special cause to be shown to vary the timetable.