
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 169

SHERIFF COURT

**Act of Sederunt (Sheriff Court Rules Amendment)
(European Small Claims Procedure and
European Order for Payment Procedure) 2017**

| | | |
|--|---------|-----------------------|
| <i>Made</i> | - - - - | <i>30th May 2017</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>31st May 2017</i> |
| <i>Coming into force</i> | - - | <i>14th July 2017</i> |

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(1), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014(2) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (European Small Claims Procedure and European Order for Payment Procedure) 2017.

(2) It comes into force on 14th July 2017.

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

Amendments to the Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008

2.—(1) The Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008(3) is amended in accordance with this paragraph.

(2) In rule 5 (ancillary applications), before paragraph (1) insert—

(1) [2013 asp 3](#). Section 4 was amended by the Courts Reform (Scotland) Act 2014 ([asp 18](#)), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 ([asp 2](#)), schedule 1, paragraph 1(4).
(2) [2014 asp 18](#).
(3) [S.S.I. 2008/435](#), as amended by [S.S.I. 2016/367](#).

“(A1) An application under paragraph 1 of Article 8 (oral hearing by distance communication technology)(4) is to be made by minute in Form 2A, together with the proposed request in Form A or I (as the case may be) in the Annex to Council Regulation (EC) No 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters(5).”.

- (3) In the schedule (forms)—
- (a) after Form 2 (transfer to domestic procedure)(6), insert the Form in the schedule of this Act of Sederunt; and
 - (b) in Form 3 (application for review of judgment)—
 - (i) for “Service was not effected in sufficient time to enable me to arrange for my defence, without any fault on my part” substitute “I was not served with the claim form, or, in the event of an oral hearing, was not summoned to that hearing, in sufficient time and in such a way as to enable me to arrange for my defence”; and
 - (ii) for “objecting to” substitute “contesting”.

Amendments to the Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008

3.—(1) The Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008(7) is amended in accordance with this paragraph.

- (2) In rule 2(1) (interpretation)(8), before the definition of “the Regulation” insert—
- ““European Small Claim” means a claim presented under the procedure established by Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11th July 2007 establishing a European Small Claims Procedure(9), and “European Small Claims Procedure” is interpreted accordingly;”.
- (3) In rule 5 (opposition to European order for payment)—
- (a) in paragraph (2)(10), for “The proceedings” substitute “Subject to paragraph (2A), unless the claimant has explicitly requested that the proceedings not continue as follows, the proceedings”;
 - (b) after paragraph (2) insert—

“(2A) Where the claimant has requested that the European Small Claims Procedure is to apply to the claim and the claim falls within the scope of that procedure, the proceedings shall continue under the European Small Claims Procedure and the sheriff is to make an order containing such provision as the sheriff thinks fit for the purpose of bringing the proceedings into line with an appropriate stage of proceedings under that procedure.”; and
 - (c) in paragraph (3)—
 - (i) after “paragraph (2)” insert “or (2A)”; and

(4) Article 8 of Regulation (EC) 861/2007 of the European Parliament and of the Council of 11th July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p.1) was substituted by Article 1(5) of Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure (OJ L 341, 24.12.2015, p.1).

(5) OJ L 174, 27.6.2001, p.1.

(6) Form 2 was amended by S.S.I. 2016/367.

(7) S.S.I. 2008/436, as amended by S.S.I. 2016/367.

(8) Rule 2(1) was amended by S.S.I. 2016/367.

(9) OJ L 199, 31.7.2007, p.1, as amended by Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16th December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure (OJ L 341, 24.12.2015, p.1).

(10) Rule 5(2) was amended by S.S.I. 2016/367.

- (ii) in sub-paragraph (a), after “the rules” insert “or procedure”; and
- (iii) in sub-paragraph (b), after “those rules” insert “or procedure”.

(4) In the schedule (forms), in Form 1 (statement of opposition)(**11**) after “[*simple procedure case*]” insert “[*a European Small Claim*]”.

Edinburgh
30th May 2017

CJM SUTHERLAND
Lord President
I.P.D.

SCHEDULE

Paragraph 2(3)(a)

Form 2A

Rule 5

Form of minute for oral hearing by distance communication technology under Article 8(1) of Regulation (EC) No 861/2007 of 11th July 2007

EUROPEAN SMALL CLAIMS PROCEDURE

Minute under Article 8(1)
of Regulation (EC) No 861/2007 of 11th July 2007

MINUTE FOR

ORAL HEARING BY DISTANCE COMMUNICATION TECHNOLOGY

UNDER ARTICLE 8(1) OF REGULATION (EC) NO 861/2007

Sheriff Court at [*insert court*]

Court ref:

I, [*insert name and address*], state that the evidence specified in the attached [Form A] [Form of Council Regulation (EC) No 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p.1) is required for the purposes of these proceedings and ask the court to issue this Form to (*specify the applicable court, tribunal, central body or competent authority*) to obtain the evidence specified.

Date (*insert date*)

Signed (*insert designation and address*)

*delete as applicable

EXPLANATORY NOTE

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

This Act of Sederunt amends the Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008 and the Act of Sederunt (Sheriff Court European Order for Payment Procedure Rules) 2008 to take account of amendments made by Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure (OJ L 341, 24/12/2015, p.1), which come into force on 14th July 2017.

Paragraph 2 makes amendments so that applications for the use of distance communication for oral hearings in other Member States are made by minute and new Form 2A. Paragraph 2(3)(b) makes amendments to align the language in Form 3 to reflect the amended terms of Regulation (EC) No 861/2007.

Paragraph 3(3) makes amendments to provide that where the claimant has indicated the contested European order for payment proceedings are to continue as a European Small Claim, and they are within the scope of the European Small Claims Procedure, then they are to continue under that procedure. Power is provided for the sheriff to make such order as the sheriff thinks fit to bring the proceedings under the European Small Claims Procedure. Where the claimant has not indicated which court procedure is to apply, or has elected for European Small Claims Procedure but the claim is outwith the scope of that procedure, then the proceedings continue under the ordinary court rules. Paragraph 3(2) and (4) make amendments in consequence of the availability of European Small Claims Procedure in relation to contested European order for payment proceedings.