
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 176

SHERIFF COURT

**Act of Sederunt (Ordinary Cause Rules Amendment)
(Proving the Tenor and Reduction) 2015**

<i>Made</i>	- - - -	<i>21st April 2015</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>23rd April 2015</i>
<i>Coming into force</i>	- -	<i>25th May 2015</i>

The Lords of Council and Session, under and by virtue of the powers conferred by section 104 of the Courts Reform (Scotland) Act 2014⁽¹⁾ and 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⁽²⁾, do hereby enact and declare:

Citation, commencement etc.

1.—(1) This Act of Sederunt may be cited at the Act of Sederunt (Ordinary Cause Rules Amendment) (Proving the Tenor and Reduction) 2015.

(2) It comes into force on 25th May 2015.

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

Amendment of the Ordinary Cause Rules

2.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907⁽³⁾ are amended in accordance with this paragraph.

(2) In rule 21.3 (objection to document founded on) after paragraph (2), insert—

“(3) An objection may not be stated by exception if the sheriff considers that the objection would be more conveniently disposed of in a separate action of reduction.”.

(3) After Chapter 52 (mutual recognition of protection measures in civil matters), insert—

(1) 2014 asp 18.

(2) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18) schedule 5, paragraph 31(3).

(3) 1907 c. 51. Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2015/85.

“CHAPTER 53 PROVING THE TENOR

Application of this Chapter

53.1. This Chapter applies to an action of proving the tenor.

Parties

53.2.—(1) The pursuer must call as a defender every person who (so far as known to the pursuer) has an interest in the document to be proved.

(2) Where only the pursuer has such an interest, the pursuer must call the Lord Advocate as a defender, as representing the public interest.

Supporting evidence

53.3. When lodging an initial writ, the pursuer must lodge in process supporting documentary evidence of the tenor of the document to be proved, so far as in the possession or control of the pursuer.

Undefended actions

53.4.—(1) This rule applies where no notice of intention to defend has been lodged.

(2) Evidence is to be given by affidavit unless the sheriff otherwise directs.

(3) The pursuer may apply for decree by minute in Form 53.4.

(4) The sheriff may, on consideration of that minute, supporting documentary evidence and affidavits, without requiring appearance—

(a) grant decree in terms of the minute; or

(b) remit the cause for further procedure (including proof by parole evidence).

CHAPTER 54 REDUCTION

Application of this Chapter

54.1. This Chapter applies to an action of reduction.

Craves for suspension and interdict

54.2.—(1) This rule applies to an action that seeks to reduce a document upon which real or personal diligence may proceed.

(2) The pursuer may include in the initial writ, in relation to that diligence, craves for suspension and interdict.

Production: objection by defender

54.3.—(1) This rule applies where a defender objects to satisfying a crave for production of a document sought to be reduced.

- (2) The defender must state in the defences—
 - (a) the grounds of objection; and
 - (b) any defence on the merits of the action.
- (3) The defender is not required to satisfy a crave for production at the time of lodging defences.
- (4) Where the sheriff repels or reserves an objection to satisfying a crave for production, the defender must be ordered to satisfy that crave within such period as the sheriff thinks fit.
- (5) Where the defender, following that order, lodges in process any document, a motion to hold production satisfied (or satisfied in respect of the document lodged) must also be made.
- (6) Where the defender does not comply with that order, the pursuer may make a motion for decree by default.

Production: no objection by defender

54.4.—(1) This rule applies where a defender does not state an objection to satisfying a crave for production of a document sought to be reduced.

- (2) The defender must, when lodging defences—
 - (a) lodge in process any such document in the defender’s possession or control; and
 - (b) make a motion to hold production satisfied (or satisfied in respect of the document lodged).
- (3) If the defender does not do so, the pursuer may make a motion for decree by default.

Production: pursuer to satisfy

54.5.—(1) This rule applies where the pursuer has possession or control of a document in respect of which reduction is craved.

- (2) The pursuer must lodge that document in process with the initial writ.
- (3) The sheriff may, at any stage, order the pursuer to satisfy a crave for production of a document sought to be reduced.
- (4) Where the pursuer does not comply with that order, the defender may make a motion for dismissal.
- (5) When lodging a document under subparagraph (2) or (3), the pursuer must make a motion to hold production satisfied (or satisfied in respect of the document lodged).

Production: joint minute for reduction

54.6.—(1) This rule applies where—

- (a) a crave for production has not been satisfied, and
 - (b) parties enter into a joint minute in terms of which the decree of reduction is to be pronounced.
- (2) The document to be reduced must be lodged in process with the joint minute.
 - (3) The terms of the joint minute must be sufficient to enable the sheriff to hold the crave for production satisfied.

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Production: satisfaction by a copy

54.7. The sheriff may, with the consent of the parties, hold production to be satisfied by a copy of the document sought to be reduced.”

(4) In the appendix, after Form 52.7, insert the Form set out in the Schedule.

Edinburgh
21st April 2015

BRIAN GILL
Lord President
I.P.D.

SCHEDULE

Paragraph 2(4)

Form 53.4

Rule 53.4(3)

SHERIFFDOM OF (*sheriffdom*)

FORM OF MINUTE FOR

in

UNDEFENDED ACTION OF PRO

(*insert name of solicitor for the pursuer*), having considered the affidavits and the other documents as specified in the schedule, and the evidence a motion for decree (in terms of the crave of the motion *as may be appropriate*) may properly be made, moves that

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EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause Rules to make provision for two forms of action newly available in the sheriff court under section 38 of the Courts Reform (Scotland) Act 2014: proving the tenor and reduction.

It inserts new Chapter 53, which is in similar terms to Chapter 52 of the Rules of the Court of Session (“actions of proving the tenor”) and new Chapter 54, which is in similar terms to Chapter 53 of the Rules of the Court of Session (“actions of reduction”).