

2008 No. 435

SHERIFF COURT

**Act of Sederunt (Sheriff Court European Small Claims
Procedure Rules) 2008**

Made - - - - - *19th December 2008*

Coming into force - - - *12th January 2009*

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 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 that Act, do hereby enact and declare:

Citation and commencement, etc

- 1.—(1) This Act of Sederunt—
- (a) may be cited as the Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008; and
 - (b) comes into force on 12th January 2009.
- (2) This Act of Sederunt is to be inserted in the Books of Sederunt.

Interpretation

- 2.—(1) In this Act of Sederunt—
- “the Regulation” means Regulation (EC) No.861/2007 of the European Parliament and the Council of 11th July 2007 creating a European Small Claims Procedure(b);
 - “the Ordinary Cause Rules” means the First Schedule to the Sheriff Courts (Scotland) Act 1907(c);
 - “the Summary Cause Rules” means the Summary Cause Rules in Schedule 1 to the Act of Sederunt (Summary Cause Rules) 2002(d);

(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), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2).

(b) O.J. No. L 199, 31.07.07.

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

(d) S.S.I. 2002/132, amended by S.S.I. 2003/26, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463 and 2008/121, 223 and 365.

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

(2) Expressions used in both the Regulation and this Act of Sederunt have the same meaning here as there.

(3) A form referred to in this Act of Sederunt by number means the form so numbered in the Schedule to this Act of Sederunt or a form to substantially the same effect, with such variation as circumstances may require.

(4) A reference in this Act of Sederunt to a numbered Article is a reference to the Article of the Regulation so numbered.

Communication by the court

3.—(1) This rule applies where—

- (a) under the Regulation or this Act of Sederunt the court requires to send a document to a person; and
- (b) the Regulation does not require otherwise.

(2) The document is to be sent by the sheriff clerk.

(3) The document is to be sent—

- (a) where it is being sent to an address within the United Kingdom, by first class recorded delivery;
- (b) where it is being sent to an address outside the United Kingdom, by registered post.

(4) The sheriff clerk must complete a certificate of posting to which must be attached the relevant postal receipt.

Transfer to domestic procedure

4.—(1) This rule applies where, under paragraph 3 of Article 4 (commencement of the procedure) it is determined that a claim presented under the procedure established by the Regulation is outside the scope of the Regulation.

(2) The sheriff clerk must, within 21 days of the determination, send to the claimant a notice in Form 1.

(3) Where the claimant does not withdraw the claim, the proceedings shall proceed under the Ordinary Cause Rules, the Summary Cause Rules or the Small Claim Rules, as the case may be, 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 those rules.

(4) The provision which may be made in an order under paragraph (2) includes—

- (a) provision dispensing with any provision of the rules concerned; or
- (b) provision deeming any document lodged in the proceedings under the Regulation to constitute a document in proceedings under those rules.

(5) The sheriff clerk must, within 21 days of the making of the order, send to the claimant a notice in Form 2.

Ancillary applications

5.—(1) An application under paragraph 1 of Article 18 (review of judgment) is to be in Form 3.

(2) An application under paragraph 1 of Article 22 (refusal of enforcement) is to be in Form 4.

(3) An application under Article 23 (stay or limitation of enforcement) is to be in Form 5.

(a) S.S.I. 2002/133, amended by S.S.I. 2003/26, 2004/197, 2005/648, 2006/509, 2007/6, 339, 440 and 463 and 2008/121, 223 and 365.

(4) The sheriff may make such order as the sheriff thinks fit for the progress of any such application.

A C HAMILTON
Lord President
I.P.D.

Edinburgh
19th December 2008

SCHEDULE

FORM 1

Rule 4(2)

**Form of notice that claim presented under European Small Claims
Procedure outside scope of Regulation**

EUROPEAN SMALL CLAIMS PROCEDURE

Notice under Article 4(3) of
Regulation (EC) No. 861/2007 of 11th July 2007

NOTICE

THAT CLAIM PRESENTED UNDER EUROPEAN SMALL CLAIMS PROCEDURE
OUTSIDE SCOPE OF REGULATION

UNDER ARTICLE 4(3) OF REGULATION (EC) NO 861/2007

To [A.B.] [*address*]

You are hereby notified that the claim presented by you under the European Small Claims Procedure is outside the scope of the Regulation. Unless you withdraw the claim, it shall now proceed under [*the ordinary cause procedure*] [*the small claim procedure*] [*the summary cause procedure*]*. If you wish to withdraw the claim, you should write to me to this effect to reach me no later than [*insert date of day 21 days after date of posting*].

* *delete as appropriate*

Further advice can be obtained by contacting a Citizen's Advice Bureau or a Solicitor.

(*Signed*)

(*Address*)

Sheriff Clerk [Depute]

(*Place and date*)

FORM 2

Rule 4(5)

**Form of notice that claim presented under European Small Claims
Procedure transferred to domestic procedure**

EUROPEAN SMALL CLAIMS PROCEDURE

Notice under Article 4(3) of
Regulation (EC) No. 861/2007 of 11th July 2007

NOTICE

THAT CLAIM PRESENTED UNDER EUROPEAN SMALL CLAIMS PROCEDURE
TRANSFERRED TO DOMESTIC PROCEDURE

UNDER ARTICLE 4(3) OF REGULATION (EC) NO 861/2007

To [A.B.] [*address*]

You were previously notified that the claim presented by you under the European Small Claims Procedure is outside the scope of the Regulation. There having been no indication that you wish to withdraw the claim, it shall now proceed under [*the ordinary cause procedure*] [*the small claim procedure*] [*the summary cause procedure*]*. Under rule 4(3) of the Act of Sederunt (Sheriff Court European Small Claims Procedure Rules) 2008, the sheriff has made an order for the purpose of bringing the proceedings into line with an appropriate stage of the proceedings under the rules which apply to such a cause or claim. A copy of the sheriff's order is attached.

* *delete as appropriate*

Further advice can be obtained by contacting a Citizen's Advice Bureau or a Solicitor.

(*Signed*)

(*Address*)

Sheriff Clerk [Depute]

(*Place and date*)

FORM 3

Rule 5(1)

**Form of application for review of a judgment given in the European Small Claims
Procedure under Article 18(1) of Regulation (EC) No 861/2007 of 11th July 2007**

EUROPEAN SMALL CLAIMS PROCEDURE

Application under Article 18(1) of
Regulation (EC) No. 861/2007 of 11th July 2007

APPLICATION FOR

REVIEW OF JUDGMENT GIVEN IN THE EUROPEAN SMALL CLAIMS
PROCEDURE

UNDER ARTICLE 18(1) OF REGULATION (EC) NO 861/2007

Sheriff Court at [*insert court*]

Court ref:

I, [*insert name and address*], apply under Article 18(1) of Regulation (EC) No 861/2007 for a review of the judgment given in the European Small Claims Procedure by the court on [*insert date*] in favour of [*name and address of claimant*], for the following reasons:

- Service was not effected in sufficient time to enable me to arrange for my defence, without any fault on my part *
- I was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances, without any fault on my part *

** delete as appropriate*

I ask the court to intimate this application on the claimant.

(Signed)

FORM 4

Rule 5(2)

Form of application for refusal of enforcement of a judgment given in the European Small Claims Procedure under Article 22(1) of Regulation (EC) No 861/2007 of 11th July 2007

EUROPEAN SMALL CLAIMS PROCEDURE

Application under Article 22(1) of
Regulation (EC) No. 861/2007 of 11th July 2007

APPLICATION FOR

REFUSAL OF ENFORCEMENT OF A JUDGMENT GIVEN IN THE EUROPEAN
SMALL CLAIMS PROCEDURE

UNDER ARTICLE 22(1) OF REGULATION (EC) NO 861/2007

Sheriff Court at [*insert court*]

Court ref:

I, [*insert name and address*], apply under Article 22(1) of Regulation (EC) No 861/2007 for the court to make an order refusing enforcement of a judgment given in the European Small Claims Procedure by the court on [*insert date*] in favour of [*name and address of claimant*], as the order is irreconcilable with an earlier judgment given in a Member State or a third country. [*Give details here of decision or order made and in which Member State or third country*], and:

- the earlier judgment involved the same cause of action and the same parties;
- the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the United Kingdom.

I ask the court to intimate this application on the claimant.

(Signed)

FORM 5

Rule 5(3)

Form of application for stay or limitation of enforcement of a judgment given in the European Small Claims Procedure under Article 23(1) of Regulation (EC) No 861/2007 of 11th July 2007

EUROPEAN SMALL CLAIMS PROCEDURE

Application under Article 23(1) of
Regulation (EC) No. 861/2007 of 11th July 2007

APPLICATION FOR

STAY OR LIMITATION OF A JUDGMENT GIVEN IN THE EUROPEAN SMALL
CLAIMS PROCEDURE

UNDER ARTICLE 23(1) OF REGULATION (EC) NO 861/2007

Sheriff Court at [*insert court*]

Court ref:

I, [*insert name and address*], apply under Article 23(1) of Regulation (EC) No 861/2007 for the court to [*limit / stay*]* the enforcement of the judgment given in the European Small Claims Procedure granted by the court on [*insert date*] in favour of [*insert name and address of claimant*].

* *delete as appropriate*

I ask the court to intimate this application on the claimant.

(*Signed*)

EXPLANATORY NOTE

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

Regulation (EC) No.861/2007 of the European Parliament and the Council of 11th July 2007 creates a European Small Claims Procedure. This Act of Sederunt provides rules in connection with proceedings in the sheriff court under that procedure. In particular, it provides:

- (a) rules on communications by the court under the Regulation (see rule 3);
- (b) rules on what happens when an application under that procedure is determined to be outside the scope of the Regulation (see rule 4); and
- (c) rules on the form of certain ancillary applications under the Regulation (see rule 5).

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