

## **SIMPLE PROCEDURE RULES: PROPOSALS FOR AMENDMENTS**

### **Purpose**

1. To invite the Scottish Civil Justice Council ('the Council') to consider and, if content, approve draft rules (**Paper 4.2A**) making amendments to the core Simple Procedure Rules.

### **Background**

2. Since the implementation of the core Simple Procedure Rules, the RRDT has been in regular contact with the Legislation Implementation Team (LIT) of the Scottish Courts and Tribunals Service (SCTS) to identify improvements that may be required to the Rules. As a result of that engagement, rules have been drafted making amendments to the core Simple Procedure Rules.
3. An earlier version of the draft rules at **Paper 4.2A** was considered by the Access to Justice Committee ('the Committee') at its meeting in October 2017. Unfortunately, this meeting was not quorate and accordingly, whilst the Committee members present were supportive of the draft rules, these are considered by the Council without formal approval from the Committee. Earlier versions of the draft rules at **Paper 4.2A** were considered by the Council at meetings on 20 November 2017 and 19 January 2018.
4. A summary of the amendments made to the core Simple Procedure Rules by the draft rules is provided at **Annex A**.

### **Issues raised during policy development stages**

5. When considering earlier versions of the draft rules in November 2017 and January 2018, some Council members raised strong concerns regarding the scope of one of the proposed amendments. The purpose of that amendment was to make it competent for a party to apply for recall of a decision made because of non-compliance with an order.
6. The concerns related to the extent to which recall should be permitted in such a scenario. It was considered that it would not be appropriate to allow recall of a decision made in open court with both parties present. The sheriff will have heard from the parties and made a decision in light of those submissions. Any review of that decision ought to be by way of an appeal to the Sheriff Appeal Court. A question remained as to how to approach recall of a decision made on papers.

7. At the last meeting, the Council asked the RRDT to discuss with Sheriff Principal Abercrombie and Sheriff Hughes the issue regarding recall of decisions due to non-compliance with an order, with particular reference to unless orders.
8. An unless order is an order which states that if a party does not do something or take a step ordered then the sheriff will dismiss the claim or award the claim to the claimant (rule 8.4(1)). If the order is not complied with, the sheriff does not appear to have a discretion and “the decision... must be made” (rule 8.4(2)).
9. During discussions with Sheriff Principal Abercrombie and Sheriff Hughes, it was observed that, by focusing on recall, the draft rules may focus on the wrong issue. The key deficiency may be, where there is an unless order, that the parties are not given an opportunity to address the sheriff before the decision is made.
10. Sheriff Principal Abercrombie, Sheriff Hughes and the RRDT agree that it would be unwise to make an amendment of this nature while the simple procedure review is ongoing. As part of the review, the RRDT and Secretariat has received correspondence regarding the use of unless orders. It was agreed that it would be prudent to consider unless order procedure, along with the correspondence from respondents to the consultation, once the review is concluded. Accordingly, the draft rules at **Paper 4.2A** do not contain any provision regarding unless orders or recall of a decision due to non-compliance with such an order.

### Timing

11. The Secretariat and RRDT will liaise with LIT in order to identify the earliest practicable date for the commencement of the draft rules.

### Consultation

12. There has been no further consultation on the draft rules since they were last considered by the Council in January 2018.

### Compatibility with SCJC guiding principles

Principle	Compatibility
<i>The civil justice system should be fair, accessible and efficient</i>	As with the core Simple Procedure Rules, the draft rules at <b>Paper 4.2A</b> have been designed with party litigants in mind. The Simple Procedure Rules have been drafted to ensure that they are accessible and fair, allowing the lay individual to navigate the

	process independently.
<i>Rules relating to practice and procedure should be as clear and easy to understand as possible</i>	The adoption of an accessible style, in line with the style guide has been incorporated into the draft instrument.
<i>Practice and procedure should, where appropriate, be similar in all civil courts</i>	It would not be appropriate for the draft rules at <b>Paper 4.2A</b> to be provided in similar terms to the practice and procedure across all of the civil courts as it has been specifically designed for use by party litigants in Simple Procedure claims.
<i>Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted</i>	Resolving disputes out with the courts is promoted in the draft rules at <b>Paper 4.2A</b> as these rules will be inserted into the core Simple Procedure Rules. One of the principles of the core Simple Procedure Rules is that <i>'Parties are to be encouraged to settle their disputes by negotiation or alternative dispute resolution, and should be able to do so throughout the progress of a case.'</i>

### Links to other initiatives

13. As the draft Act of Sederunt (Simple Procedure Amendment) (Special Claims) mirrors the core procedure, it is proposed that the amendments proposed will also be mirrored in that instrument, as appropriate.

### Implementation of fixes instrument

14. Implementation will lie with SCTS as to training requirements for operational staff and the Judicial Institute for Scotland as to judicial training requirements. The Secretariat will continue to liaise with the SCTS and the Judicial Institute in this regard.

### Legal advice

15. Legal advice from the RRDT is incorporated in this paper.

**Recommendation**

- 16. The Council is invited to consider and, if content, approve the draft rules at Papers 4.2A amending the Simple Procedure Rules for submission to the Court of Session, subject to stylistic or typographical amendment.**

**SCJC Secretariat/Rules Rewrite Drafting Team  
March 2018**

## **ANNEX A – SUMMARY OF PROPOSED AMENDMENTS TO CORE SIMPLE PROCEDURE RULES**

The draft rules shown at **Paper 4.2A** make the following amendments to the core Simple Procedure Rules:

### *Time to Pay Application as a form of response*

1. One of the initial issues raised as part of SCTS's operational review of Simple Procedure was the competence of a Time to Pay Application as a form of response. Currently, a respondent wanting time to pay must complete a Response Form and a Time to Pay Application (rule 5.3(1)(a)). Completing one without the other is not competent and this has led to courts staff refusing to accept Time to Pay Applications without a Response Form.
2. The RRDT agrees with SCTS that this scenario adds an unnecessary element of bureaucracy to requesting time to pay. The draft rules propose to provide that a Time to Pay Application by itself is a competent form of response and will be taken as an admission by the respondent of the claim against them by the claimant for the payment of a sum of money.

### *Confirmation of Formal Service after serving a Charge*

3. A recurring issue referred to LIT by sheriff clerks has related to the requirement for a sheriff officer to send a Confirmation of Formal Service to the court after service of a charge (rule 18.2(4)) when read with rule 15.3(2)). This is viewed as unnecessary as a charge is a post-decision event and so the court does not necessarily need to see, or record, the confirmation of the charge having been formally served on the unsuccessful party.
4. The RRDT has been advised by LIT that there is little value in the court receiving confirmation of a post-decision event and, accordingly, the draft rules insert a new paragraph into rule 15.3 which clarifies that it is not necessary to send a Confirmation to the court after serving a charge.

### *Recall – case management discussion and discussions in court*

5. When considering the issues raised by Council at its November meeting, the RRDT has noticed a potential gap which requires to be addressed at the earliest opportunity. This gap concerns the competency of recall following a decision made at a case management discussion, or any other discussion in court that may have been ordered.
6. Rule 13.5(1), which covers when an Application to Recall is competent, refers to the non-attendance at "*the hearing*" in subparagraphs (d), (e) and (f). It

does not refer to a case management discussion or discussion in court and so, on a strict reading of this rule, recall is not competent if a decision is made because the respondent did not attend one of these discussions. The term “*the hearing*” was used in summary cause to cover the calling date, continued callings and the proof; however in Simple Procedure it has a specific meaning which does not cover discussions in court.

7. The revised draft rules include an amendment to clarify that it is competent to recall a decision made due to non-attendance at a discussion in court.

*Recall – potential for abuse by using existing procedure to frustrate enforcement*

8. As the Council will recall, in summer 2017 the SCJC Secretariat undertook further stakeholder engagement in relation to the rules for special claims. This engagement has proven invaluable as one response regarding the eviction rules has drawn to our attention a potential gap which could, in theory, be used by an unsuccessful party to frustrate the enforcement of a decision.
9. Rule 14.2(3) provides that “*a party who is sent an Application to Recall must not enforce a decision until the sheriff has decided whether to recall the decision*”. This is different from summary cause in which it is the intimation of the recall hearing (rather than the making of the application) which stops the ability of a successful party to enforce a decision of the sheriff. A recall hearing will only be assigned after a sheriff clerk has checked the competence of the application (i.e. whether it was the first application by that party).
10. As there is no warranting stage in Simple Procedure, there is scope for an unsuccessful party to intimate numerous incompetent applications on the other party solely to frustrate enforcement of the decision. To the RRDT’s knowledge, this issue has not materialised in practice as yet, however, it is considered important to close this loophole before such an issue emerges.
11. The RRDT have discussed revising recall procedure with LIT to identify a workable solution which will close the loophole. Paragraph 2(2)(l) and (m) of the draft rules sets out the resulting proposal from those discussions.
12. The proposed revised recall procedure would require a party seeking to recall a decision to send an Application to Recall to the court (and not the other party). The sheriff clerk will then check the application for any problems (e.g. if it is incompetent as there is no Response Form, or there has already been an application by that party to recall a decision of the sheriff in the case). If there are no problems, a discussion in court must be ordered, at which the sheriff will consider whether to recall the decision. The sheriff clerk sending the order arranging the discussion to the successful party stops their ability to enforce the decision.

13. A revised Application to Recall and a new standard order are proposed for the revised process. The order does four things: (i) arranges the discussion in court; (ii) orders the applicant to intimate their application (and any Response Form) to the other party; (iii) orders parties to bring their copies of the Decision Form with them to court (which, if the sheriff recalls the decision, must be handed to the clerk); and (iv) advises parties that no enforcement action is permitted until the sheriff decides whether to recall the decision.
14. When first considering the draft rules in November 2017, the Council asked the RRDT to consider whether to include an objection period as part of the revised recall procedure. This suggestion was to bring an Application to Recall in line with most other applications under Simple Procedure. This has been considered by the Rules Rewrite Drafting Team, however in light of strong concerns from LIT, no objection period is proposed. LIT was concerned that requiring the sheriff clerk to intimate a copy of the Application to Recall and any Response Form on the other party may exacerbate the administrative difficulties currently being experienced by some courts. It would also increase postage costs and the time spent on carrying out tasks such as copying forms and addressing envelopes. LIT is supportive of replicating, so far as possible, recall procedure in summary cause. This is a process with which practitioners are familiar.
15. As the successful party is unable to enforce a decision while an application is pending, any delay in the determination of the application will inconvenience that party. In many cases, by the stage at which a recall is sought, the successful party may have already initiated enforcement proceedings and incurred expense in doing so. As such, the proposed procedure is designed to ensure an expeditious resolution in line with the ethos of simple procedure.

#### *Time to Pay Notice*

16. The Committee, when considering the draft Act of Sederunt (Simple Procedure Amendment) (Special Claims) in April 2017 recommended an amendment to rectify an error in the introductory section of the Time to Pay Notice. As that instrument has been delayed, it is proposed to include this amendment in the present instrument so that it can be taken forward earlier.
17. Currently, the introduction to the Time to Pay Notice states that if a claimant fails to return that form to the court within 14 days, setting out whether they consent or object to the proposed time to pay, then the claim “will be dismissed”. This is inconsistent with rule 5.7(1), which provides that in such a scenario “*the sheriff must decide the case... and grant or refuse the Time to Pay Application*”.

#### *Typographical errors*

18. The draft rules also correct a number of typographical errors found in the Simple Procedure Rules.

**SCJC Secretariat / Rules Rewrite Drafting Team**  
**March 2018**

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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No.**

**SHERIFF COURT**

**Act of Sederunt (Simple Procedure Amendment)  
(Miscellaneous) 2018**

*Made* - - - - - []  
*Laid before the Scottish Parliament* []  
*Coming into force* - - - []

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

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(b) 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 (Simple Procedure Amendment) (Miscellaneous) 2018.

(2) It comes into force on [].

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

**Amendment of the Act of Sederunt (Simple Procedure) 2016**

**2.**—(1) The Act of Sederunt (Simple Procedure) 2016(c) is amended in accordance with this paragraph.

(2) In schedule 1 (the Simple Procedure Rules)—

- (a) in rule 2.4(1), for “or the Response Form” substitute “, Response Form or Time to Pay Application”;
- (b) for rule 3.12(1), for “send a Response Form to the court and to the claimant” substitute “respond to the claim (see rule 4.2)”;
- (c) for rule 4.2, substitute—

**“4.2 How do you respond to a claim?”**

- (1) The respondent must respond to the claim by the last date for a response.

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(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).  
(b) 2014 asp 18.  
(c) S.S.I. 2016/200, last amended by S.S.I. 2017/154.

- (2) The respondent may respond to a claim in one of two ways:
- (a) by completing a Response Form and sending it to the court and the claimant, or
  - (b) if the respondent wants to admit the claim and ask for time to pay, by completing a Time to Pay Application and sending it to the court.”;
- (d) in rule 4.3(3)—
- (i) omit “Select option C2 on the Response Form.”;
  - (ii) omit “also”;
  - (iii) omit “with the completed Response Form”;
  - (iv) for “C3” substitute “C2”;
- (e) in rule 5.3(1)(a), for “with the completed Response Form” substitute “by the last date for a response”;
- (f) in rule 6.5(1)—
- (i) in subparagraph (c), for “or Response Form” substitute “, Response Form or Time to Pay Application”;
  - (ii) in subparagraph (d), after “that party” insert “or that party’s representative”;
- (g) in rule 6.7(1)—
- (i) in subparagraph (b), for “or Response Form” substitute “, Response Form or Time to Pay Application”;
  - (ii) in subparagraph (c), after “that party” insert “or that party’s representative”;
- (h) in rule 7.1(1), for “is received” substitute “or Time to Pay Application is received by the last date for a response”;
- (i) in rule 7.2(1), for “From” substitute “Form”;
- (j) in rule 7.4—
- (i) in the cross-heading, after “no Response Form” insert “or Time to Pay Application”;
  - (ii) in paragraph (1), after “no Response Form” insert “or Time to Pay Application”;
- (k) for rule 13.5(1), substitute—
- “(1) A party may apply to have a decision of the sheriff recalled in 5 situations:
- (a) where the sheriff dismissed a claim because the claimant did not send the court an Application for a Decision within 2 weeks from the last date for a response,
  - (b) where the sheriff made a decision because the respondent did not send the court a Response Form or Time to Pay Application by the last date for a response,
  - (c) where the sheriff dismissed a claim because the claimant did not attend a discussion or hearing,
  - (d) where the sheriff has made a decision because the respondent did not attend a discussion or hearing, and
  - (e) where the sheriff dismissed a claim because neither party attended a discussion or hearing.”;
- (l) for rule 13.6, substitute—
- “13.6 How can a party apply to have a decision of the sheriff recalled?**
- (1) A party may apply to have a decision of the sheriff recalled by completing an Application to Recall and sending it to the court.

- (2) If the sheriff made a decision following an Application for a Decision, the respondent must include a completed Response Form with the Application to Recall.
  - (3) The sheriff clerk will check the Application to Recall for any problems which mean that it would not be competent (for example, if the party making the application has made an earlier application to recall a decision in the case).
  - (4) If there are no such problems, the sheriff must send the parties an order arranging a discussion in court, at which the sheriff will consider whether to recall the decision.”;
- (m) for rule 15.2(3), substitute—
- “(3) A party who is sent an order arranging a discussion in court at which the sheriff will consider an Application to Recall must not enforce a decision until the sheriff has decided whether to recall the decision.”;
- (n) after rule 15.3(7), insert—
- “(8) Where a Charge is formally served, the sheriff officer is not required to send a Confirmation of Formal Service to the court.”;
- (o) in rule 21.1(1), in the meaning of “last date for a response”, for “send a Response Form to the court and to the claimant” substitute “respond to the claim by sending a Response Form to the court and to the claimant, or by sending a Time to Pay Application to the court”.
- (3) In schedule 2 (forms)—
- (a) in Form 2A (lay representation form), in the introduction, for “or the Response Form” substitute “, Response Form or Time to Pay Application”;
  - (b) in Form 3A (claim form), in section A5—
    - (i) for “responding party” substitute “respondent”;
    - (ii) for “Email” substitute “Online”;
  - (c) in Form 3D (timetable), in section C, for “send a Response Form to the court and to the claimant” substitute “do one of two things: (1) send a Response Form to the court and to the claimant, or (2) if the respondent want to admit the claim and ask for time to pay, send a Time to Pay Application to the court”;
  - (d) in Form 4A (response form)—
    - (i) in the introduction, after “for each part of the form.” insert “If you want to admit the claim against you and **apply for time to pay**, you do not need to complete this Response Form. Instead, you should **complete a Time to Pay Application** and send it to the court by the last date for a response. Only an individual (not a company or organisation) may ask for time to pay.”;
    - (ii) in section A5, for “Email” substitute “Online”;
    - (iii) in section C—
      - (aa) in the introduction—
        - (i) for “Please mark the box next to the option you choose and follow those instructions.” substitute “The flow-chart sets out the options on how you might respond. You should follow the instructions for the option you choose.”;
        - (ii) omit “Select option C2 on the Response Form.”;
        - (iii) omit “also”;
        - (iv) omit “with the completed Response Form”;
        - (v) for “C3” substitute “C2”;
      - (bb) omit section C2;
      - (cc) section C3 is renumbered section C2;

- (e) for Form 5A (time to pay application) substitute Form 5A in schedule 1 of this Act of Sederunt;
  - (f) in Form 5B (time to pay notice)—
    - (i) in the introduction—
      - (aa) for “Application” in the second place it occurs, substitute “Notice”;
      - (bb) for “dismiss your claim” substitute “decide whether to grant the application without hearing from you”;
    - (ii) in section A, for “Date of notice” substitute “Date notice sent”;
  - (g) in Form 6A (notice of claim), in section B—
    - (i) for “, if you want to dispute the claim, you must send a completed Response Form to the court and the claimant” substitute “you must do one of two things: (1) send a Response Form to the court and the claimant, or (2) if you want to admit the claim and ask for time to pay, send a Time to Pay Application to the court”;
    - (ii) after “how to complete the Response Form” insert “or Time to Pay Application,”;
  - (h) in Form 7A (application for a decision)—
    - (i) in the introduction—
      - (aa) for “responding party” substitute “respondent”;
      - (bb) after “a Response Form” insert “or Time to Pay Application”;
    - (ii) in section C, after “Response Form” insert “or Time to Pay Application”;
  - (i) for Form 13B (application to recall) substitute Form 13B as set out in schedule 2 of this Act of Sederunt.
- (4) In schedule 3 (standard orders)—
- (a) in SO1, for “conference” in both places it occurs, substitute “discussion”;
  - (b) after SO12 insert SO13 as set out in schedule 3 of this Act of Sederunt.

### Savings

3. The amendments made by the following paragraphs of this Act of Sederunt do not apply to a decision in a simple procedure case made before [ ] 2018—

- (a) paragraph 2(2)(k), (l) and (m);
- (b) paragraph 2(3)(i);
- (c) paragraph 2(4)(b).

Edinburgh  
[ ] 2018

*CJM Sutherland*  
Lord President  
I.P.D.

## SCHEDULE 1

Paragraph 2(3)(e)



FORM 5A

## The Simple Procedure Time to Pay Application

Sheriff Court

Claimant

Respondent

Case reference number

This is a Time to Pay Application. It is used to ask the sheriff to make an order giving the respondent time to pay (where such an order is available).

If you would like debt advice or financial guidance, you may wish to contact the Citizens Advice Bureau or another advisory or assistance organisation.

**If you complete a Time to Pay Application it means that you are admitting the claim made against you by the claimant for the payment of a sum of money.**

**Only an individual (not a company or organisation) may ask for time to pay.** If you are a company or another type of organisation and accept that the claim against you is correct, you should try to settle the claim with the claimant.

The respondent may ask for time to pay by completing this application and either sending it to court or bringing it to court at any discussion, case management discussion or hearing.

Before completing this form, you should read Part 5 of the Simple Procedure Rules, which is about asking for time to pay.

There are two situations in which the court can make a time to pay order: under the Debtors (Scotland) Act 1987 and under the Consumer Credit Act 1974.

### **Time to pay under the Debtors (Scotland) Act 1987**

The Debtors (Scotland) Act 1987 gives you the right to apply to the court for time to pay. This is an order which allows you to pay any sum which the court orders you to pay either in instalments or by deferred lump sum. A "deferred lump sum" means that you will be ordered by the court to pay the whole amount at one time within a period which the court will specify.

If the court makes an order, it may also recall or restrict any arrestment made on your property by the claimant in connection with the claim or debt (for example, your bank account may have been frozen).

If an order is made, a copy of the Decision Form will be sent to you telling you when payment should start or when it is you have to pay the lump sum.

If an order is not made, and an order for immediate payment is made against you, a Charge may be served on you if you do not pay.

Under the Debtors (Scotland) Act 1987, the court is required to make an order if satisfied that it is reasonable in the circumstances to do so, and having regard in particular to the following matters:

- the nature of and reasons for the debt in relation to which the order is requested,
- any action taken by the creditor to assist the debtor in paying the debt,
- the debtor's financial position,
- the reasonableness of any proposal by the debtor to pay that debt,
- the reasonableness of any refusal or objection by the creditor to any proposal or offer by the debtor to pay the debt.

#### **Time to pay under the Consumer Credit Act 1974**

The Consumer Credit Act 1974 allows you to apply to the court for an order asking the court to give you more time to pay a loan agreement. This order can only be applied for where the claim is about a credit agreement regulated by the Consumer Credit Act 1974. The court has power to make an order in respect of a regulated agreement to reschedule payment of the sum owed. This means that an order can change:

- the amount you have to pay each month,
- how long the loan will last,
- in some cases, the interest rate payable.

A time order can also stop the creditor taking away any item bought by you on hire purchase or conditional sale under the regulated agreement, so long as you continue to pay the instalments agreed.

#### **A. ABOUT YOU**

A1. What is your full name?

Name	<input type="text"/>
Middle name	<input type="text"/>
Surname	<input type="text"/>
Trading name or representative capacity (if any)	<input type="text"/>
Date of application	<input type="text"/>

**A2. What are your contact details?**Address City Postcode Email address **A3. How would you prefer the court and the claimant to contact you?** By post Online**B. ABOUT YOUR REPRESENTATION**

① Set out information about how you will be represented.

**B1. How will you be represented during this case?** I will represent myself I will be represented by a solicitor I will be represented by a non-solicitor (e.g. a family member, friend, or someone from an advice or advocacy organisation)**B2. Who is your representative?**

① If a family member or friend, give their full name. If someone from an advice or advocacy organisation, also give the name of that organisation.

Name Surname Organisation / firm name **B3. What are the contact details of your representative?**

① If your representative works for a solicitors' firm or an advice or advocacy organisation, give the address of that firm or organisation.

Address City Postcode Email address **B4. Would you like us to contact you through your representative?**

① If you select 'yes', then the court will send orders in this case to your representative.

Yes

No

**B5. How would your representative prefer the court to contact them?**

By post

Online

**C. ABOUT YOUR APPLICATION**

① Set out how you think that you are able to pay the claimant the sum of money owed.

**C1. I admit the claim for a sum of money and would like to apply to pay the sum as follows:**

By instalments of: £\_\_\_\_\_ per \_\_\_\_\_ week / fortnight / month

In one lump sum within: \_\_\_\_\_ weeks/ months from today.

**C2. How did you get into this debt?**

① Set out the reasons for you getting into this debt.

**C3. Why should the court give you time to pay?**

① Set out the reasons why the court should give you time to pay.

**C4. Why is the payment offer you have made reasonable?**

① Set out any information which explains why the offer you have made is a reasonable one (i.e. why you can afford that offer but not a higher one).

**C5. Are you applying to have an arrestment recalled or restricted?**

① When making an order the court may recall or restrict an arrestment (i.e. unfreeze your bank account if it has been frozen).

Yes (explain below)

No

① Set out the details of the arrestment, including the date on which it occurred.

**D. ABOUT YOUR FINANCES**

① To help the court decide whether to make an order and what that order should be, please provide some details of your financial situation.

**D1. What is your employment situation?**

Employed

Self-employed

Unemployed

**D2. What are your outgoings?**

① Set out any regular payments you have to make and whether these are made weekly, fortnightly or monthly.

Rent or mortgage	£	<b>each</b>	week / fortnight / month
Council tax	£	<b>each</b>	week / fortnight / month
Utilities (gas, electricity, etc.)	£	<b>each</b>	week / fortnight / month
Food	£	<b>each</b>	week / fortnight / month
Loans and credit agreements	£	<b>each</b>	week / fortnight / month
Phone	£	<b>each</b>	week / fortnight / month
Other	£	<b>each</b>	week / fortnight / month
Total	£	<b>each</b>	week / fortnight / month

**D3. What income do you receive?**

① Set out any regular income and whether it is weekly, fortnightly or monthly.

Wages or pension	£	<b>each</b>	week / fortnight / month
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Benefits	£	<input type="text"/>	each	<input type="text"/>
Tax credits	£	<input type="text"/>	each	<input type="text"/>
Other	£	<input type="text"/>	each	<input type="text"/>
Total	£	<input type="text"/>	each	<input type="text"/>

**D4. Does anyone rely on your income?**

- ① Set out how many people (if any) rely on your income and who they are (e.g. spouse / civil partner / children).

**D5. Do you have any capital?**

- ① Set out any capital which you hold. For example, money in savings accounts, shares, investments or houses owned.

## SCHEDULE 2

Paragraph 2(3)(i)



FORM 13B

## The Simple Procedure Application to Recall

This is an Application to Recall.

Before completing this form, you should read rules 13.5 to 13.7 of the Simple Procedure Rules, which are about recalling a decision.

You can use this Application to ask the sheriff to recall a decision made because of your failure to attend court or take a step in simple procedure.

If the sheriff made a decision because you did not respond to the claim by the last date for a response, and you would now like to dispute the claim, or part of the claim, you must also include a completed Response Form with this Application.

### A. ABOUT THE CASE

Sheriff Court

Claimant

Respondent

Case reference number

### B. ABOUT YOU

B1. What is your full name?

Name

Middle name

Surname

Trading name or representative capacity (if any)

B2. Which party in this case are you?

- Claimant
- Respondent

**C. THE APPLICATION**

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**C1. Why should the decision be recalled?**

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- ① The party making the application must set out why the court should recall the decision and the reason for their failure to take a step or attend court.

**C2. When was this application sent to the court?**

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- ① Set out the date on which the application was sent to the court (i.e. the date on which the application was submitted online or posted).

## SCHEDULE 3

Paragraph 2(4)(b)



SO13

## The Simple Procedure Order of the Sheriff

Application to Recall received: ordering a discussion in court

The Simple Procedure is a speedy, inexpensive and informal court procedure for settling or determining disputes with a value of **less than £5,000**.

This is an order of the sheriff in a case you are a party in. You should **read it and follow it**.

Sheriff Court:

Date of order:

Claimant:

Respondent:

Case reference number:

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The court has received an Application to Recall.

The sheriff has given the following orders:-

### Discussion in court

The sheriff wants to hear from both parties before deciding whether to recall the decision.

Both parties are **ordered** to attend a discussion at [sheriff court] on [date] at [time]. Both parties should arrive in good time at the sheriff court building.

The [party making the application] must send the other party a copy of the Application to Recall [and the Response Form] in time for it to arrive before the date of the discussion.

The parties **must bring with them** the Decision Form in this case. If the sheriff decides to recall the decision, the Decision Form must be given to the sheriff clerk.

The decision **must not be enforced** until the sheriff has decided whether to recall the decision.

At this discussion, the sheriff will expect parties to be prepared to discuss whether the decision should be recalled. Both parties should be aware that the sheriff may decide the application even where they are not fully prepared to discuss it or in the absence of a party.

Signed by:

Sheriff of [sheriffdom] at [sheriff court]

**EXPLANATORY NOTE**

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

This Act of Sederunt amends the Act of Sederunt (Simple Procedure) 2016 to provide for a Time to Pay Application as a form of response and to set out a new procedure to recall a decision.

Paragraph 3 is a saving provision, the effect of which is that the amendments to recall procedure do not apply to a decision made in a simple procedure case before [ ] 2018.