

SIMPLE PROCEDURE RULES: PROPOSALS FOR AMENDMENTS AND TIMESCALES FOR PLANNED REVIEW

Purpose

1. To invite the Scottish Civil Justice Council ('the Council') to consider and, if content, approve:
 - draft rules (**Paper 5.2A**) making amendments to the core Simple Procedure Rules and;
 - proposals to bring forward the planned review of the core Simple Procedure Rules.
2. Both the draft rules at **Paper 5.2A** and the proposals to bring forward the planned review of the core Simple Procedure Rules were considered by the Access to Justice Committee ('the Committee') at its meeting on 09 October 2017. However, this meeting was not quorate and accordingly the draft rules and proposals for review are presented to the Council without formal approval from the Committee.

Background

3. Members may recall that the Simple Procedure Rules were produced as two sets of Rules: the 'core' Simple Procedure Rules and rules for personal injury, eviction, multiplepoinding and aliment actions ('the Special Claims Rules'). The core Simple Procedure Rules came into force in November 2016 and it was initially planned that the Special Claims Rules would come into force in September 2017.
4. In March 2017 the Making Justice Work Board ('MJW Board') sought the Council's views on the most appropriate date for the coming into force of the Special Claims Rules. Given the ongoing work in relation to the Scottish Courts and Tribunal Service (SCTS)'s new case management computer system (ICMS) and the likely late 2017 commencement of Section 16 of the Housing (Scotland) Act 2014, which transfers the functions and jurisdiction of the sheriff in relation to certain private rented housing actions to the First-tier Tribunal, the Council agreed that a delay in the commencement of the Special Claims Rules would be sensible. A planned implementation date of mid-April 2018 was agreed by the MJW Board.
5. The Council was informed in an item by correspondence on 28 August 2017 that, at their meeting on 16 August 2017, the MJW Board had considered a paper

flagging concerns as to the proposed commencement of the Special Claims Rules in April 2018. In particular, this paper flagged that:

- The SCTS Executive Team had recently conducted Summer Tours, visiting sheriff courts throughout Scotland. As a result of feedback obtained during these visits, the SCTS is conducting an operational review of Simple Procedure, including holding workshops with court staff and the judiciary to identify areas in need of improvement and;
 - The ICMS Project Board is planning for the phased implementation of the Civil Online web portal. It is anticipated that litigants will be able to track their Simple Procedure cases online from January 2018 followed by the ability to submit forms online by March 2018. If the Special Claims Rules were commenced in April 2018, this would mean court staff would be faced with a new procedure together with the portal in its infancy.
6. Accordingly, the MJW Board agreed that there was a cogent case for delaying the Special Claims Rules and agreed to a delay of at least 6 months. In doing so, the MJW Board invited the Council to consider bringing forward the post implementation review of the core Simple Procedure Rules, which was scheduled to commence around May 2018.

Discussion

SCTS operational review of core Simple Procedure Rules

7. At its meeting on 9 October 2017, the Committee considered a paper from SCTS providing an update in relation to its ongoing operational review of Simple Procedure. In this paper SCTS reiterated that it was carrying out an operational review of Simple Procedure from the courts perspective and advised that a series of workshops were held in September 2017, which included representation from the judiciary and court staff in order to discuss ongoing issues, share best practice and identify any areas in need of improvement.
8. SCTS advised the Committee that it was still to consider these issues in detail and that it was currently working through the issues identified to reach a view as to whether any changes to Rules, forms or administrative practice are required.
9. SCTS also highlighted in its paper to the Committee that one of the recurring issues it had been considering is the perceived inefficiency in the way in which a respondent can ask for time to pay. It noted that currently a respondent would need to tick box C2 in the Response Form and then also complete a Time to Pay Application. Completing one without the other would mean that the application is

not competent and whilst undertaking initial scoping for the operational review, this point was considered by the Legislative Implementation Team of SCTS (LIT) and the Rules Rewrite Drafting Team (RRDT). All were in agreement that the current process of asking for time to pay in Simple Procedure is inefficient and administratively cumbersome - by requiring respondents to complete two forms, they are being asked to complete an additional 8 pages. SCTS has prioritised this potential amendment and it an amendment to the Rules to require only the Time to Pay Form to be completed has been included in the draft fixes instrument at **Paper 5.2A**. Further information about this proposed change is detailed the accompanying legal advice at **Paper 5.2B**.

Proposal to bring forward the Council's review of core Simple Procedure Rules

10. As noted, at its meeting on 16 August 2017 the MJW Board invited the Council to consider whether to bring forward the post implementation review of the core Simple Procedure Rules, scheduled to commence around May 2018. This would allow any operational issues to be considered in advance of the second stage introduction of the Special Claims Rules.
11. As the SCTS's review focuses solely on the perspective of the court, the Secretariat is mindful that making any significant rule changes without a full post implementation review being carried out may result in the Committee and the Council approving amendments without having the complete picture. On that basis, the Secretariat and the RRDT support the proposal to bring forward the review at this time.
12. If the review is to be brought forward, it is proposed that it will focus primarily on the operation of the Rules with a further review required at a later date to ascertain whether the policy intentions of Simple Procedure have been met. Given the operational difficulties the courts appear to be facing, it would be difficult for a 'policy review' to reach any meaningful conclusions at this stage.
13. If the Council is content with the proposal to bring forward the review, a review methodology will be developed and presented for consideration at a future meeting. The Secretariat is currently considering methods such as a public consultation, focus groups with stakeholders and commissioning research to gain an insight into how accessible and user friendly party litigants find the Simple Procedure Rules.
14. As previously noted, the Committee considered the proposal to bring forward the review at its October 2017 meeting and members present were supportive of the proposal. Unfortunately, the meeting was not quorate and accordingly the proposal is presented to the Council without formal approval from the Committee.

15. **The Council is invited to consider and, if content, approve the proposal to bring forward the planned review of the core Simple Procedure Rules.**
16. **Members are invited to offer any initial views on the methodology for the review.**

Fixes Instrument

17. Since the implementation of the core Simple Procedure Rules, the RRDT has been in contact with LIT 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. Those draft rules can be seen at **Paper 5.2A**. A summary of the background to the amendments along with legal advice to accompany the draft rules is provided by the RRDT at **Paper 5.2B**.
18. The Committee considered the draft rules at its meeting on 9 October 2017 and members present suggested a further small amendment detailed in the footnote on page 1 of **Paper 5.2B**. This amendment has been reflected in the draft rules at **Paper 5.2A**.
19. **The Council is invited to consider the draft rules at Paper 5.2A and, if content, approve the Rules for submission to the Court of Session, subject to stylistic or typographical amendment.**

Timing for fixes instrument

20. The Secretariat and RRDT will continue to liaise with LIT in order to identify the earliest practicable date for the commencement of the proposed draft rules at **Paper 5.2A**.
21. If approved, it is intended that the draft rules be submitted to the Court of Session following the meeting to allow the amendments to be made as soon as possible.

Consultation

22. In drafting the proposed amendments to the core Simple Procedure Rules, the RRDT has informally contacted the Society of Sheriff Officers and Messengers at Arms ('SMASO') to invite its comments on the amendment relating to the confirmation of formal service. This amendment is explained at paragraphs 7 and 8 of **Paper 5.2B**. SMASO has confirmed that it is content with this change.

23. The Secretariat has also contacted the Citizens Advice Bureau ('CAB') in relation to the small amendment explained in the footnote on page 1 of **Paper 5.2B** in order to check with CAB that it is content for the money services it provides to be described as '*debt advice or financial guidance*'. At the time of writing the Secretariat had not received a response.

Issues raised during policy development stages

24. No additional issues have been raised during the development of the amending rules.

Compatibility with SCJC guiding principles

Principle	Compatibility
<i>The civil justice system should be fair, accessible and efficient</i>	As with the core Rules, the draft rules at Paper 5.2A 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 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</i>	Resolving disputes out with the courts is promoted in the draft rules 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</i>

<i>promoted</i>	<i>resolution, and should be able to do so throughout the progress of a case.'</i>
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Links to other initiatives

25. As the draft Special Claims Rules mirror the core procedure, it is proposed that the amendments will also be mirrored in the Special Claims Rules, as appropriate.

Implementation of fixes instrument

26. 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

27. Legal advice accompanying the draft rules has been provided by the RRDT at **Paper 5.2B.**

Recommendation

28. **The Council is invited to approve:**

- **the proposal made by the MJW Board to bring forward the review of the core Simple Procedure Rules; and**
- **the draft rules at Paper 5.2A making amendments to the core Simple Procedure Rules for submission to the Court of Session, subject to stylistic or typographical amendment.**

**SCJC Secretariat
November 2017**

SCOTTISH STATUTORY INSTRUMENTS

2017 No.

SHERIFF COURT

**Act of Sederunt (Simple Procedure Amendment)
(Miscellaneous) 2017**

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) 2017.

(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) in 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?”

(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.

- (1) If the respondent wants to admit the claim and ask for time to pay, the respondent must send a Time to Pay Application to the court by the last date for a response.
 - (2) In any other case, the respondent must send a completed Response Form to the court and the claimant by the last date for a response.”;
- (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”; and
 - (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”; and
 - (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”; and
 - (ii) in subparagraph (c), after “that party” insert “or that party’s representative”;
- (h) in rule 7.1(1), for “no Response Form is received” substitute “the respondent fails to respond to the claim”;
- (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”; and
 - (ii) in paragraph (1), after “no Response Form” insert “or Time to Pay Application”;
- (k) in rule 13.5(1)—
- (i) for “6” substitute “7”;
 - (ii) in subparagraph (b), after “Response Form” insert “or Time to Pay Application”;
 - (iii) omit the word “and” following subparagraph (e); and
 - (iv) after subparagraph (f), insert—
- “, and
- (g) where the sheriff has dismissed a claim or made a decision under Part 8, because the party making the application did not follow an order of the sheriff.”;
- (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) If the sheriff has sent the parties an order arranging a discussion in court at which the sheriff will consider an Application to Recall, a party 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.”; and
- (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 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”; and
- (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: (a) send a Response Form to the court and to the claimant, or (b) 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) omit “Select option C2 on the Response Form”;
- (ii) omit “also”;
- (iii) omit “with the completed Response Form”; and
- (iv) for “C3” substitute “C2”;
- (bb) omit section C2; and
- (cc) section C3 is renumbered C2;
- (e) for Form 5A (time to pay application) substitute Form 5A in schedule 1 of this Act of Sederunt;
- (f) in Form 6A (notice of claim), in section B—
- (i) after “to the court and to the claimant” insert “or, if you want to admit the claim and ask for time to pay, you must send a Time to Pay Application to the court”; and
- (ii) after “how to complete the Response Form” insert “or Time to Pay Application”;
- (g) in Form 7A (application for a decision)—
- (i) in the introduction, for “responding party has not returned a Response Form to the court” substitute “respondent has not responded to the claim”; and
- (ii) in section C, after “Response Form” insert “or Time to Pay Application”; and

- (h) 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), 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 [date of commencement]—

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

CJM Sutherland
Lord President
I.P.D.

Edinburgh
[Date]

SCHEDULE 1

Paragraph 2(2)(e)



FORM 5A

The Simple Procedure Time to Pay Application

Sheriff Court	<input type="text"/>
Claimant	<input type="text"/>
Respondent	<input type="text"/>
Case reference number	<input type="text"/>

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

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/firmname

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	£		each	week / fortnight / month
Council tax	£		each	week / fortnight / month
Utilities (gas, electricity, etc)	£		each	week / fortnight / month
Food	£		each	week / fortnight / month
Loans and credit agreements	£		each	week / fortnight / month
Phone	£		each	week / fortnight / month
Other	£		each	week / fortnight / month
Total	£		each	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	£		each	week / fortnight / month
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Benefits	£__	each	week / fortnight / month
Tax credits	£__	each	week / fortnight / month
Other	£__	each	week / fortnight / month
Total	£__	each	week / fortnight / month

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).

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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.

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SCHEDULE 2

Paragraph 2(2)(h)



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 a hearing or take a step in simple procedure.

If the sheriff made a decision because you did not respond to the claim before 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	<input type="text"/>
Claimant	<input type="text"/>
Respondent	<input type="text"/>
Case reference number	<input type="text"/>

B. ABOUT YOU

B1. 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"/>

B2. Which party in this case are you?

- ☐ Claimant
- ☐ Respondent

C. THE APPLICATION

C1. Why should the decision be recalled?

- 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 a hearing.

C2. When was this application sent to the court?

- 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)



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 which you are a party in. You should **read it and follow it**.

Sheriff Court:	<input type="text"/>
Date of order:	<input type="text"/>
Claimant:	<input type="text"/>
Respondent:	<input type="text"/>
Case reference number:	<input type="text"/>

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 completed Response Form] in time for [it/them] 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 both 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 this or in the absence of a party.

Signed by:	<div>Sheriff of [sheriffdom] at [sheriff court]</div>
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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 [date].

Advice accompanying draft Act of Sederunt (Simple Procedure Amendment) (Miscellaneous) 2017

Introduction

1. Since the Simple Procedure Rules were commenced on 28 November 2016, we have been in regular contact with the Scottish Courts and Tribunal Service's ("SCTS") Legislation Implementation Team to identify improvements that may be required.
2. The purpose of this paper is to provide advice to members on the amendments to the Simple Procedure Rules proposed following that engagement with SCTS.
3. We consider that there is merit to making the amendments set out in the draft instrument at **Paper 5.2A** for the Council to consider and, if content, approve.

Proposed amendments to the Simple Procedure Rules

Time to Pay Application as a form of response

4. One of the initial issues raised as part of their 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. We think this scenario adds an unnecessary element of bureaucracy to requesting time to pay.
5. While a different approach will be required for eviction claims once those actions become subject to simple procedure, we think it seems sensible to amend the core Simple Procedure Rules 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.
6. To provide for this, the draft instrument proposes to amend:
 - Parts 2, 3, 4, 5 and 7 to include references to the Time to Pay Application as a competent form of response without an accompanying Response Form;
 - Form 3C (Timetable) to set out that the last date for a response is the date by which a Response Form or Time to Pay Application must be sent to the court;
 - Form 4A (Response Form) to omit asking for time to pay as an option in section C (signposting to a Time to Pay Application has been added); and
 - Form 5A (Time to Pay Application) is replaced to include sections about the respondent and their representative (previously only found in the Response Form)¹.

¹ When the Access to Justice Committee considered the draft instrument on 09 October 2017, it was suggested that the revised Time to Pay Application should include signposting to the Citizens Advice Bureau and other financial advice organisations. This signposting has been added towards the beginning of the introduction.

Confirmation of Formal Service after serving a Charge

7. One of the most frequent recurring issues referred to the Legislation Implementation Team by sheriff clerks has related to the requirement under the Rules 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 require to see, or keep a record of, the confirmation of the charge having been formally served on the unsuccessful party.
8. From the courts perspective, this requirement is administratively cumbersome as it requires staff to find the relevant process folder and insert the hard copy confirmation. This burden on courts staff may dissipate once the Civil Online portal goes live for document submission. Using Civil Online, sheriff officers could upload the Confirmation and it would be automatically added to the relevant electronic case file. However, there will inevitably be some sheriff officers who would continue to use paper-based processes as a preference. The Rules Rewrite Drafting Team has been advised by the Legislation Implementation Team that there is little value in the court receiving confirmation of a post-decision event. As such, paragraph 2(2)(n) of the draft instrument inserts 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 – competency of an application after an unless order

9. The Legislation Implementation Team received a query regarding the competency of an Application to Recall following a decision which was made due to the respondent's failure to comply with an order of the sheriff. In the case which highlighted this issue, the respondent was ordered to provide additional information to the court within a set period and, as a consequence of their failure to do so, the sheriff made a decision awarding the claim to the claimant pursuant to rule 8.5(1)(b).
10. Rule 13.5(1) covers the situations in which an Application to Recall would be competent. There is no provision for the making of an application where the sheriff has made a decision because a party failed to comply with an order, referred to in other procedures as a decree by default. The effect of this is that the only avenue available to the party wanting to recall would be an appeal to the Sheriff Appeal Court. This is not satisfactory as it could lead to appeals being raised before the sheriff court has had a chance to determine the merits.
11. Paragraph 2(2)(k) of the draft instrument proposes to extend the competency of a recall application to include the circumstances in which there was a failure to comply with an order. A party will still be able to make only one recall application in their case.

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

12. As the Council will recall, this summer 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 in the core Rules which could, in theory, be used by an unsuccessful party to frustrate the enforcement of a decision of the sheriff.

13. Rule 15.2(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 procedure in which the intimation of the recall hearing (rather than the making of the application) 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).
14. As there is no warranting stage in simple procedure, there is scope for an unsuccessful party to lodge numerous incompetent applications solely to frustrate enforcement of the decision. To our knowledge, this issue has not materialised in practice as yet, however, we think it is important to close this loophole before such an issue emerges.
15. We have discussed revising recall procedure with the Legislation Implementation Team to identify a workable solution which will close the loophole. Paragraph 2(2)(l) and (m) of the draft instrument sets out the resulting proposal from those discussions.
16. 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.
17. A revised Application to Recall and a new standard order are proposed to cater 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.

Typographical errors

18. The draft instrument also amends a number of typographical errors found in the Rules.

Conclusion

19. **The Council is invited to consider and, if content, approve the draft instrument subject to any stylistic or typographical amendment.**

Rules Rewrite Drafting Team

November 2017

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