

Act of Sederunt (Child Support Rules) 1993

As amended by Statutory Instrument [2001/143](#) and Scottish Statutory Instruments [2009/365](#).

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971 and of all other powers enabling them in that behalf, having approved, with modifications, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of that Act, do hereby enact and declare:

1.	Citation and commencement
2.	Application for a liability order
3.	Enforcement of non-Scottish liability orders within Scotland
4.	Service of charge following the making of a liability order
5.	Appeal against a deduction from earnings order
5AA.	Deduction from earnings order: exclusion decision appeals
5AB.	Regular deduction order: appeals
5AC.	Lump sum deduction order: appeals
5A.	Application for commitment to prison or disqualification from driving
5B.	Warrant of arrest
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5F.	Renewal of application
6.	Representation
7.	Amendment

1. Citation and commencement

(1) This Act of Sederunt may be cited as the Act of Sederunt (Child Support Rules) 1993 and shall come into force on 5th April 1993.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

(3) In this Act of Sederunt-

"the Act of 1991" means the Child Support Act 1991;

"the Commission" means the Child Maintenance and Enforcement Commission;

"deduction from earnings order" means an order under section 31(2) of the Act of 1991;

"liability order" means an order under section 33(2) of the Act of 1991; and

"liable person" means a person liable to make payments of child support maintenance;

"lump sum deduction order" means an order under section 32F of the Act of 1991; and

"regular deduction order" means an order under section 32A of the Act of 1991.

(4) A reference in rules 1 to 6 of this Act of Sederunt to a numbered form is a reference to the form so numbered in the Schedule to this Act of Sederunt or a form substantially to the same effect, with such modifications as circumstances may require.

2. Application for a liability order

(1) An application by the Commission for a liability order under section 33(2) of the Act of 1991 shall be by summary application in Form 1.

(2) The sheriff clerk shall, on receiving an application under paragraph (1) above, order the application to be served on the liable person with a notice in Form 2; and service of the application and notice shall be by a solicitor or officer of court, who shall complete an execution of service.

(3) Where the liable person wishes to object to the grant of the application he shall do so by completing Form 2 and returning it to the sheriff clerk within 21 days after the date of service of the application.

(4) The sheriff clerk, on receipt of an objection which is in accordance with paragraph (3) above, shall -

(a) put out the cause for hearing; and

(b) intimate the hearing to the parties.

(5) The sheriff may consider the application, and any objection which has been received, on the date fixed for hearing, or at any continuation of it, whether or not any of the parties appear.

(6) Where no objection to the grant of the application in accordance with paragraph (3) above has been received within 21 days after the date of service, the applicant may return the application, together with a duly completed execution of service, to the sheriff clerk requesting the sheriff to make a liability order.

(7) A liability order shall be in Form 3.

(8) An extract of the liability order, or other order of the sheriff, may be issued on the expiry of 14 days from the date of making of the order.

(9) An extract of the liability order shall be in Form 4.

3. Enforcement of non-Scottish liability orders within Scotland

Where a liability order made by a court in England and Wales or any corresponding order made by a court in Northern Ireland is, by virtue of regulations made under section 39(1) of the Act of 1991, to be enforced in Scotland, the liability order or corresponding order shall be registered for enforcement by the sheriff clerk appending to it a docquet in the following terms:-

"(Insert name of sheriff court and date of registration)

This order is registered for enforcement in accordance with the Child Support Act 1991.

Signed (*signature of sheriff clerk*)."

4. Service of charge following the making of a liability order

(1) Where a liability order has been made, a charge for payment under section 38 of the Act of 1991 shall be in Form 5.

(2) The period for payment specified in any charge under this rule shall be -

- (a) 14 days where the person on whom it is served is within the United Kingdom; and
- (b) 28 days where the person on whom it is served is outwith the United Kingdom or his whereabouts are unknown.

5. Appeal against a deduction from earnings order

- (1) An appeal against a deduction from earnings order as provided for in regulations made under section 32(5) of the Act of 1991 shall be by summary application in Form 6.
- (2) The sheriff clerk, on receiving an application under paragraph (1) above, shall -
 - (a) fix a date for the hearing of the appeal; and
 - (b) order service of the application on the Commission.
- (3) The sheriff may order intimation of the application to such persons as appear to the sheriff to have an interest in the application.

5AA. Deduction from earnings order: exclusion decision appeals

- (1) An appeal against a decision by the Commission that, in relation to a deduction from earnings order, the exclusion in section 29(4)(a) of the Act of 1991 does not apply, as provided for in regulations made under section 29(4)(b) of the Act of 1991, shall be by summary application in Form 5AA.
- (2) The sheriff clerk, on receiving an application under paragraph (1) above, shall —
 - (a) fix a date for the hearing of the appeal; and
 - (b) order service of the application on the Commission.
- (3) The sheriff may order intimation of the application to such persons as appear to the sheriff to have an interest in the application.

5AB. Regular deduction order: appeals

- (1) An appeal against a regular deduction order or against any decision made by the Commission on an application for a review of such an order, as provided for in regulations made under section 32C(4) of the Act of 1991, shall be by summary application in Form 5AB.
- (2) The sheriff clerk, on receiving an application under paragraph (1) above, shall —
 - (a) fix a date for the hearing of the appeal; and
 - (b) order service of the application on the Commission.
- (3) The sheriff may order intimation of the application to such persons as appear to the sheriff to have an interest in the application.

5AC. Lump sum deduction order: appeals

- (1) An appeal against the withholding of consent by the Commission in relation to a lump sum deduction order, as provided for in regulations made under section 32I(4) of the Act of 1991, shall be by summary application in Form 5AC.
- (2) An appeal against the making of a lump sum deduction order as provided for in regulations made under section 32J(5) of the Act of 1991 shall be by summary application in Form 5AD.
- (3) The sheriff clerk, on receiving an application under paragraph (1) or (2) above, shall —
 - (a) fix a date for the hearing of the appeal; and
 - (b) order service of the application on the Commission.
- (4) The sheriff may order intimation of the application to such persons as appear to the sheriff to have an interest in the application.

5A. Application for commitment to prison or disqualification from driving

- (1) An application under section 39A(1) of the Act of 1991 shall be made by summary application.
- (2) Citation, where necessary, of a respondent in respect of an application under paragraph (1) shall

be in Form 7.

5B. Warrant of arrest

- (1) The sheriff may issue a warrant for the arrest of the liable person if -
 - (a) he has been cited in terms of rule 5A(2) and fails to appear in person at the hearing; or
 - (b) the sheriff otherwise considers it to be appropriate for the purpose of enabling an inquiry in terms of section 39A(3) of the Act of 1991.
- (2) A warrant issued in terms of paragraph (1) shall be in Form 8.

5C. Evidence of means

In any proceedings following an application made in terms of rule 5A(1), a statement in writing to the effect that wages of any amount have been paid to the liable person during any period, purporting to be signed by or on behalf of his employer, shall be sufficient evidence of the facts there stated.

5D. Warrant of commitment to prison

A warrant for the commitment of a liable person to prison issued in terms of section 40A(1)(a) of the Act of 1991 shall be in Form 9.

5E. Order for disqualification from driving

- (1) A disqualification order made in terms of section 40B(1) of the Act of 1991 shall be in Form 10.
- (2) An application in terms of section 40B(5) of the Act of 1991 for a reduction in a period of disqualification, shall be made by minute.

5F. Renewal of application

If no order is made in respect of an application under section 39A(1) of the Act of 1991 any further application under that section, including the renewal of an application, shall be made of new by summary application in terms of rule 5A(1).

6. Representation

- (1) A party to an application for a liability order or to an appeal against a deduction from earnings order may be represented by -
 - (a) an advocate;
 - (b) a solicitor; or
 - (c) subject to the following paragraphs of this rule, any other person (hereinafter referred to as an "authorised lay representative"), where the sheriff is satisfied that such person is a suitable representative and is duly authorised to represent the party.
- (2) An authorised lay representative shall not represent a party at any diet appointed for the leading of evidence or for debate but may do all other things in the preparation and conduct of a claim as may be done by an individual who conducts his own claim.
- (3) A party who is, or has been, represented by an authorised lay representative, and who would have been found entitled to expenses and outlays if he had been represented by an advocate or a solicitor, may be allowed the expenses and outlays to which a party litigant may be found entitled by virtue of the Litigants in Person (Costs and Expenses) Act 1975 or any enactment made under that Act.

7. Amendment

- (1) The forms in the Schedule to the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988 shall be amended in accordance with the following paragraphs.
- (2) In Form 37 omit the words "to three instalments" and substitute "one instalment".
- (3) In-

- (a) paragraph (2) of the Notes in Form 30;
- (b) paragraph (1) of the Notes for Employer in Form 34; and
- (c) paragraph (1) of the Notes in Form 45,

after the words "section 73 of the Act" insert the words "as amended by the Child Support Act 1991".