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SCHEDULES

^{F1}FIRST SCHEDULE

ORDINARY CAUSE RULES 1993

Textual Amendments

- F1** Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by [S.I. 1993/1956](#), para. 2, [Sch.1](#).
Sch. 1 (except rule 29.10) excluded (1.4.1997) by [S.I. 1997/291](#), [rule 3.24](#), Sch. 3
Sch. 1 extended (14.2.2000) by [S.I. 2000/124](#), [reg. 30\(5\)](#)

[^{F1}INITIATION AND PROGRESS OF CAUSES]

CHAPTER 1

CITATION, INTERPRETATION, REPRESENTATION AND FORMS

Citation

- 1.1. These Rules may be cited as the Ordinary Cause Rules 1993.

Interpretation

- 1.2. (1) In these Rules, unless the context otherwise requires—
“document” has the meaning assigned to it in section 9 of the ^{M1}Civil Evidence (Scotland) Act 1988;
“period of notice” means the period determined under rule 3.6 (period of notice after citation).
- (2) For the purposes of these Rules—
(a) “affidavit” includes an affirmation and a statutory or other declaration; and
(b) an affidavit shall be sworn or affirmed before a notary public or any other competent authority.
- (3) Where a provision in these Rules requires a party to intimate or send a document to another party, it shall be sufficient compliance with that provision if the document is intimated or sent to the solicitor acting in the cause for that party.
- (4) Unless the context otherwise requires, anything done or required to be done under a provision in these Rules by a party may be done by the agent for that party acting on his behalf.
- (5) Unless the context otherwise requires, a reference to a specified Chapter, Part, rule or form, is a reference to the Chapter, Part, rule or form in Appendix 1, so specified

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in these Rules; and a reference to a specified paragraph, sub-paragraph or head is a reference to that paragraph of the rule or form, that sub-paragraph of that paragraph or that head of that sub-paragraph, in which the reference occurs.

Marginal Citations

M1 1988 c.32.

Representation

- 1.3. (1) Subject to paragraph (2), a party to any proceedings arising solely under the provisions of the ^{M2}Debtors (Scotland) Act 1987 shall be entitled to be represented by a person other than a solicitor or an advocate provided that the sheriff is satisfied that such person is a suitable representative and is duly authorised to represent that party.
- (2) Paragraph (1) shall not apply to an appeal to the sheriff principal.

Marginal Citations

M2 1987 c.18.

Forms

- 1.4. Where there is a reference to the use of a form in these Rules, that form in Appendix 1 or Appendix 2, as the case may be, to these Rules, or a form substantially to the same effect, shall be used with such variation as circumstances may require.

CHAPTER 2

RELIEF FROM COMPLIANCE WITH RULES

Relief from failure to comply with rules

- 2.1. (1) The sheriff may relieve a party from the consequences of failure to comply with a provision in these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as he thinks fit.
- (2) Where the sheriff relieves a party from the consequences of a failure to comply with a provision in these Rules under paragraph (1), he may make such order as he thinks fit to enable the cause to proceed as if the failure to comply with the provision had not occurred.

CHAPTER 3

COMMENCEMENT OF CAUSES

Form of initial writ

- 3.1. ^{F2}(1) A cause shall be commenced—

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- (a) in the case of an ordinary cause, by initial writ in Form G1; or
 - (b) in the case of a commercial action within the meaning of Chapter 40, by initial writ in Form G1A.]
- (2) The initial writ shall be written, typed or printed on A4 size paper of durable quality and shall not be backed or folded.
- (3) Where the pursuer has reason to believe that an [F3agreement] exists prorogating jurisdiction over the subject-matter of the cause to another court, the [F4initial] writ shall contain details of that agreement.
- (4) Where the pursuer has reason to believe that proceedings are pending before another court involving the same cause of action and between the same parties as those named in the instance of the initial writ, the [F4initial] writ shall contain details of those proceedings.
- (5) An article of condescendence shall be included in the [F4initial] writ averring—
 - (a) the ground of jurisdiction; and
 - (b) the facts upon which the ground of jurisdiction is based.
- (6) Where the residence, registered office or place of business, as the case may be, of the defender is not known and cannot reasonably be ascertained, the pursuer shall set out in the instance that the whereabouts of the defender are not known and aver in the condescendence what steps have been taken to ascertain his present whereabouts.
- (7) The initial writ shall be signed by the pursuer or his solicitor (if any) and the name and address of that solicitor shall be stated on the back of every service copy of that writ.

Textual Amendments

- F2** Rule 3.1(1)(a)(b) substituted for rule 3.1(1) (1.3.2001) by S.S.I. 2001/8, para. 2(1)(2)
- F3** Word in rule 3.1(3) substituted (1.1.1996) by S.I. 1996/2445, para. 3(2)(a)(i)
- F4** Word in rule 3.1(3)-(5) substituted (1.11.1996) by S.I. 1996/2445, para. 3(2)(a)(ii)(b)(c)

Actions relating to heritable property

- 3.2. (1) In an action relating to heritable property, it shall not be necessary to call as a defender any person by reason only of any interest he may have as the holder of a heritable security over the heritable property.
- (2) Intimation of such an action shall be made to the holder of the heritable security referred to in paragraph (1)—
- (a) where the action relates to any heritable right or title; and
 - (b) in any other case, where the sheriff so orders.
- [F5(3) In an action falling within section 1(1)(b) or (c) of the Mortgage Rights (Scotland) Act 2001^{M3}, the initial writ shall include averments about those persons who appear to the pursuer to be entitled to apply for an order under section 2 of that Act and such persons shall, so far as known to the pursuer, be called as defenders for their interest.]

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Textual Amendments

F5 Rule 3.2(3) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(2)}

Marginal Citations

M3 2001 asp 11.

Warrants of citation

- 3.3. (1) The warrant of citation in any cause other than—
- (a) a family action within the meaning of rule 33.1(1),
 - (b) an action of multiplepinding,
 - (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender,
 - [^{F6}(d) an action to which rule 3.2(3) applies,]
- shall be in [^{F7}Form O1].
- (2) In a cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for the defender, the warrant of citation shall be in [^{F7}Form O2].
- (3) In a cause in which a warrant of citation in accordance with [^{F7}Form O2] is appropriate, there shall be served on the defender (with the initial writ and warrant) a notice in [^{F7}Form O3].
- [^{F8}(4) In an action to which rule 3.2(3) applies, the warrant of citation shall be in Form O2A.]

Textual Amendments

F6 Rule 3.3(1)(d) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(3)(a)}

F7 Words in rule 3.3 substituted (1.11.1996) by S.I. 1996/2445, para. 3(3)

F8 Rule 3.3(4) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(3)(b)}

Warrants for arrestment to found jurisdiction

- 3.4. (1) Where an application for a warrant for arrestment to found jurisdiction may be made, it shall be made in the crave of the [^{F9}initial] writ.
- (2) Averments to justify the granting of such a warrant shall be included in the condescendence.

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Textual Amendments

F9 Word in rule 3.4(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(4)

Warrants and precepts for arrestment on dependence

3.5. (1) A copy of—

- (a) an initial writ with warrant to cite which includes a warrant to arrest on the dependence,
- (b) defences which include, or a minute of amendment which includes, a counterclaim with warrant granted to arrest on the dependence endorsed on that writ,

certified as a true copy by the pursuer or defender, as the case may be, or his solicitor, shall be sufficient warrant to arrest on the dependence if it is otherwise competent to do so.

(2) A precept of arrestment may be issued by the sheriff^{F10} . . . on production to him of—

- (a) an initial writ containing a crave for payment of money on which a warrant of citation has been issued;
- (b) defences which include, or a minute of amendment which includes, a counterclaim containing a crave for payment of money; or
- (c) a document of liquid debt.

[^{F11}(3) Averments to justify the granting of a warrant to arrest on the dependence, or a precept of arrestment, shall be included in the condescendence of an initial writ or the statement of claim in a counterclaim.]

Textual Amendments

F10 Word in Sch. 1 rule 3.5(2) omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(2)(a)

F11 Sch. 1 rule 3.5(3) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(2)(b)

Period of notice after citation

3.6. (1) Subject to rule 5.6(1) (service where address of person is not known) and to paragraph (2) of this rule, a cause shall proceed after one of the following periods of notice has been given to the defender:—

- (a) where the defender is resident or has a place of business within Europe, 21 days after the date of execution of service; or
- (b) where the defender is resident or has a place of business outside Europe, 42 days after the date of execution of service.

(2) Subject to paragraph (3), the sheriff may, on cause shown, shorten or extend the period of notice on such conditions as to the method or manner of service as he thinks fit.

(3) A period of notice may not be reduced to a period of less than 2 days.

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- (4) Where a period of notice expires on a Saturday, Sunday, or public or court holiday, the period of notice shall be deemed to expire on the next day on which the sheriff clerk's office is open for civil court business.

CHAPTER 4

CAVEATS

Orders against which caveats may be lodged

- 4.1. A person may lodge a caveat against—
- (a) an interim interdict sought in an action before he has lodged a notice of intention to defend; or
 - (b) an interim order (other than an order under section 1 of the ^{M4}Administration of Justice (Scotland) Act 1972 (orders for inspection of documents and other property, etc.)) sought before the expiry of the period within which he could lodge a notice of intention to defend.

Marginal Citations

M4 1972 c.59.

Form lodging and renewal of caveats

- 4.2. (1) A caveat shall be in Form G2 and shall be lodged with the sheriff clerk.
- (2) A caveat shall remain in force for a period of one year from the date on which it was lodged and may be renewed on its expiry for a further period of one year and yearly thereafter.
- (3) Where a caveat has been lodged and has not expired, no order in respect of which the caveat was lodged may be pronounced unless the sheriff is satisfied that all reasonable steps have been taken to afford the person lodging the caveat an opportunity of being heard; and the sheriff may continue the hearing on such an order until he is satisfied that such steps have been taken.

CHAPTER 5

CITATION, SERVICE AND INTIMATION

Signature of warrants

- 5.1. (1) Subject to paragraph (2), a warrant for citation [^{F12} or intimation] may be signed by the sheriff or sheriff clerk.
- (2) The following warrants shall be signed by the sheriff:—
- (a) a warrant containing an order shortening or extending the period of notice or any other order other than a warrant which the sheriff clerk may sign;
 - ^{F13}(b) a warrant for arrestment to found jurisdiction;

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- (ba) a warrant for arrestment on the dependence;]
 - (c) a warrant for intimation ordered under rule 33.8 (intimation where improper association).
- (3) Where the sheriff clerk refuses to sign a warrant which he may sign, the party presenting the initial writ may apply to the sheriff for the warrant.

Textual Amendments

- F12** Words in Sch. 1 rule 5.1(1) substituted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(3)(a)
- F13** Sch. 1 rule 5.1(2)(b)(ba) substituted (21.5.2004) for Sch. 1 rule 5.1(2)(b) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(3)(b)

Form of citation and certificate

- 5.2. (1) Subject to rule 5.6 (service where address of person is not known), in any cause other than—
- (a) a family action within the meaning of rule 33.1(1),
 - (b) an action of multiplepounding, ^{F14} . . .
 - (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, ^{F15} or
 - ^{F16}(d) an action to which rule 3.2(3) applies,]
- ^{F17}citation of] any person shall be in Form O4 which shall be attached to a copy of the ^{F18}initial] writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.
- (2) In a cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be in Form O5 which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.
- ^{F19}(2A) In an action to which rule 3.2(3) applies, citation shall be in Form O5A which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.]
- (3) The certificate of citation in any cause other than a family action within the meaning of rule 33.1(1) or an action of multiplepounding shall be in Form O6 which shall be attached to the initial writ.
- (4) Where citation is by a sheriff officer, one witness shall be sufficient for the execution of citation.
- (5) Where citation is by a sheriff officer, the certificate of citation shall be signed by the sheriff officer and the witness and shall state—
- (a) the method of citation; and
 - (b) where the method of citation was other than personal or postal citation, the full name and designation of any person to whom the citation was delivered.

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- (6) Where citation is executed under paragraph 3 of rule 5.4 (depositing or affixing by sheriff officer), the certificate shall include a statement—
- (a) of the method of service previously attempted;
 - (b) of the circumstances which prevented such service being executed; and
 - (c) that a copy was sent in accordance with the provisions of paragraph (4) of that rule.

Textual Amendments

- F14** Word in rule 5.2(1)(b) omitted (17.1.2002) by virtue of Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(4)(a)};
- F15** Word in rule 5.2(1)(c) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(4)(b)};
- F16** Rule 5.2(1)(d) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(4)(c)};
- F17** Words in rule 5.2(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(5)(a)
- F18** Word in rule 5.2(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(5)(b)
- F19** Rule 5.2(2A) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(4)(d)};

Postal service or intimation

- 5.3. (1) In any cause in which service or intimation of any document or citation of any person may be by recorded delivery, such service, intimation or citation shall be by the first class recorded delivery service.
- (2) Notwithstanding the terms of section 4(2) of the ^{M5}Citation Amendment (Scotland) Act 1882 (time from which period of notice reckoned), where service or intimation is by post, the period of notice shall run from the beginning of the day after the date of posting.
- (3) On the face of the envelope used for postal service or intimation under this rule there shall be written or printed the following notice:—
- “This envelope contains a citation to or intimation from (*specify the court*). If delivery cannot be made at the address shown it is to be returned immediately to:- The Sheriff Clerk (*insert address of sheriff clerk’s office*).”

Marginal Citations

- M5** 1882 c.77.

Service within Scotland by sheriff officer

- 5.4. (1) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served by a sheriff officer on any person shall be served—
- (a) personally; or

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- (b) by being left in the hands of a resident at the person's dwelling place or an employee at his place of business.
- (2) Where service is executed under paragraph (1)(b), the certificate of citation or service shall contain the full name and designation of any person in whose hands the initial writ, decree, charge, warrant or other order or writ, as the case may be, was left.
- (3) Where a sheriff officer has been unsuccessful in executing service in accordance with paragraph (1), he may, after making diligent enquiries, serve the document in question—
- (a) by depositing it in that person's dwelling place or place of business; or
 - (b) by affixing it to the door of that person's dwelling place or place of business.
- (4) Subject to rule 6.1 (service of schedule of arrestment), where service is executed under paragraph (3), the sheriff officer shall, as soon as possible after such service, send a letter containing a copy of the document by ordinary first class post to the address at which he thinks it most likely that the person on whom service has been executed may be found.
- [^{F20}(5) Where the firm which employs the sheriff officer has in its possession—
- (a) the document or a copy of it certified as correct by the pursuer's solicitor, the sheriff officer may serve the document upon the defender without having the document or certified copy in his possession, in which case he shall if required to do so by the person on whom service is executed and within a reasonable time of being so required, show the document or certified copy to the person; or
 - (b) a certified copy of the interlocutor pronounced allowing service of the document, the sheriff officer may serve the document without having in his possession the certified copy interlocutor if he has in his possession a facsimile copy of the certified copy interlocutor (which he shall show, if required, to the person on whom service is executed).]

Textual Amendments

F20 Sch. 1 rule 5.4(5) inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), para. 2(3)

Service on persons furth of Scotland

- 5.5. (1) Subject to the following provisions of this rule, an initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served on a person furth of Scotland shall be served—
- (a) at a known residence or place of business in England, Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—
 - (i) in accordance with the rules for personal service under the domestic law of the place in which service is to be executed; or
 - (ii) by posting in Scotland a copy of the document in question in a registered letter addressed to the person at his residence or place of business;

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- (b) in a country which is a party to the ^{M6}Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965 or the Convention in Schedule 1 or 3C to the ^{M7}Civil Jurisdiction and Judgments Act 1982—
- (i) by a method prescribed by the internal law of the country where service is to be executed for the service of documents in domestic actions upon persons who are within its territory;
 - (ii) by or through the central, or other appropriate, authority in the country where service is to be executed at the request of the [^{F21}Secretary of State for Foreign and Commonwealth Affairs];
 - (iii) by or through a British Consular Office in the country where service is to be executed at the request of the [^{F21}Secretary of State for Foreign and Commonwealth Affairs];
 - (iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered letter addressed to the person at his residence; or
 - (v) where the law of the country in which service is to be executed permits, service by an huissier, other judicial officer or competent official of the country where service is to be executed; ^{F22} . . . [^{F23} or]
- (c) in a country with which the United Kingdom has a convention on the service of writs in that country other than the conventions mentioned in subparagraph (b), by one of the methods approved in the relevant convention. [^{F24} ; or
- (d) ^{F25}]

[^{F26}(1A) In a country to which the Council Regulation applies, service—

- (a) may be effected by the methods prescribed in paragraph (1)(b)(ii) and (iii) only in exceptional circumstances; and
 - (b) is effected only if the receiving agency has informed the person that acceptance of service may be refused on the ground that the document has not been translated in accordance with paragraph (6).]
- (2) Any document which requires to be posted in Scotland for the purposes of this rule shall be posted by a solicitor or a sheriff officer; and on the face of the envelope there shall be written or printed the notice set out in rule 5.3(3).
- (3) In the case of service by a method referred to in paragraph (1)(b)(ii) and (iii), the pursuer shall—
- (a) send a copy of the writ and warrant of service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and
 - (b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.
- (4) In the case of service by a method referred to in paragraph (1)(b)(v), the pursuer or the sheriff officer, shall—
- (a) send a copy of the writ and warrant for service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the official in the country in which service is to be executed; and

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- (b) lodge in process a certificate of the official who executed service stating that it has been, and the manner in which it was, served.
- (5) Where service is executed in accordance with paragraph (1)(a)(i) or (1)(b)(i) other than on another party in the United Kingdom, the Isle of Man or the Channel Islands, the party executing service shall lodge a certificate by a person who is conversant with the law of the country concerned and who practises or has practised law in that country or is a duly accredited representative of the Government of that country, stating that the method of service employed is in accordance with the law of the place where service was executed.
- (6) Every writ, document, citation or notice on the face of the envelope mentioned in rule 5.3(3) shall be accompanied by a translation in an official language of the country in which service is to be executed unless English is ^{F27} . . .
- [^{F28}(a) an official language of the country in which service is to be executed; or
(b) in a country to which the Council Regulation applies, a language of the member state of transmission that is understood by the person on whom service is being executed.]
- (7) A translation referred to in paragraph (6) shall be certified as correct by the person making it; and the certificate shall—
- (a) include his full name, address and qualifications; and
(b) be lodged with the execution of citation or service.
- [^{F29}(8) In this rule “the Council Regulation” means Council Regulation (EC) No. 1348/2000^{F30} on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.]

Textual Amendments

- F21** Words in rule 5.5(1)(b)(ii)(iii) substituted (1.11.1996) by S.I. 1996/2445, para. 3(6)
- F22** Word in Sch. 1 rule 5.5 omitted (24.1.2003) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(4)(a)
- F23** Word in Sch. 1 rule 5.5(1)(b)(v) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(4)(a)(i)
- F24** Sch. 1 rule 5.5(1)(d) and word inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(4)(b)
- F25** Sch. 1 rule 5.5(1)(d) omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(4)(a)(ii)
- F26** Sch. 1 rule 5.5(1A) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(4)(b)
- F27** Words in Sch. 1 rule 5.5(6) omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(4)(c)
- F28** Sch. 1 rule 5.5(6)(a)(b) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(4)(c)

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F29 Sch. 1 rule 5.5(8) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), **art. 2(4)(d)**

F30 O.J. No. L 160, 30.06.00, p.37.

Marginal Citations

M6 Cmnd. 3986 (1969).

M7 1982 c.27; Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c.12), **section 1(3)**.

Service where address of person is not known

- 5.6. (1) Where the address of a person to be cited or served with a document is not known and cannot reasonably be ascertained, the sheriff shall grant warrant for citation or service upon that person—
- (a) by the publication of an advertisement in Form G3 in a specified newspaper circulating in the area of the last known address of that person, or
 - (b) by displaying on the walls of court a copy of the instance and crave of the initial writ, the warrant of citation and a notice in Form G4;
- and the period of notice fixed by the sheriff shall run from the date of publication of the advertisement or display on the walls of court, as the case may be.
- (2) Where service requires to be executed under paragraph (1), the pursuer shall lodge a service copy of the initial writ and a copy of any warrant of citation with the sheriff clerk from whom they may be uplifted by the person for whom they are intended.
- (3) Where a person has been cited or served in accordance with paragraph (1) and, after the cause has commenced, his address becomes known, the sheriff may allow the initial writ to be amended subject to such conditions as to re-service, intimation, expenses or transfer of the cause as he thinks fit.
- (4) Where advertisement in a newspaper is required for the purpose of citation or service under this rule, a copy of the newspaper containing the advertisement shall be lodged with the sheriff clerk by the pursuer.
- (5) Where display on the walls of court is required under paragraph (1)(b), the pursuer shall supply to the sheriff clerk for that purpose a certified copy of the instance and crave of the initial writ and any warrant of citation.

Persons carrying on business under trading or descriptive name

- 5.7. (1) A person carrying on a business under a trading or descriptive name may sue or be sued in such trading or descriptive name alone; and an extract—
- (a) of a decree pronounced in the sheriff court, or
 - (b) of a decree proceeding upon any deed, decree arbitral, bond, protest of a bill, promissory note or banker's note or upon any other obligation or document on which execution may proceed, recorded in the sheriff court books^{F31} . . . ,
- [^{F32}against such person under such trading or descriptive name shall be a valid] warrant for diligence against such person.

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- (2) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree in a cause in which a person carrying on business under a trading or descriptive name sues or is sued in that name shall be served—
- (a) at any place of business or office at which such business is carried on within the sheriffdom of the sheriff court in which the cause is brought; or
 - (b) where there is no place of business within that sheriffdom, at any place where such business is carried on (including the place of business or office of the clerk or secretary of any company, corporation or association or firm).

Textual Amendments

- F31** Words in rule 5.7(1)(b) omitted (1.11.1996) by S.I. 1996/2445, para. 3(7)(a)
F32 Words in rule 5.7(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(7)(b)

Endorsation unnecessary

- 5.8. An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree may be served, enforced or otherwise lawfully executed anywhere in Scotland without endorsation by a sheriff clerk; and, if executed by a sheriff officer, may be so executed by a sheriff officer of the court which granted it or by a sheriff officer of the sheriff court district in which it is to be executed.

Re-service

- 5.9. Where it appears to the sheriff that there has been any failure or irregularity in citation or service on a person, he may order the pursuer to re-serve the initial writ on such conditions as he thinks fit.

No objection to regularity of citation, service or intimation

- 5.10. (1) A person who appears in a cause shall not be entitled to state any objection to the regularity of the execution of citation, service or intimation on him; and his appearance shall remedy any defect in such citation, service or intimation.
- (2) Nothing in paragraph (1) shall preclude a party from pleading that the court has no jurisdiction.

CHAPTER 6

ARRESTMENT

Service of schedule of arrestment

- 6.1. If a schedule of arrestment has not been personally served on an arrestee, the arrestment shall have effect only if a copy of the schedule is also sent by registered post or the first class recorded delivery service to—
- (a) the last known place of residence of the arrestee, or
 - (b) if such place of residence is not known, or if the arrestee is a firm or corporation, to the arrestee's principal place of business if known, or, if not known, to any known place of business of the arrestee;

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and the sheriff officer shall, on the certificate of execution, certify that this has been done and specify the address to which the copy of the schedule was sent.

Arrestment on dependence before service

- 6.2 (1) An arrestment on the dependence of a cause used before service shall cease to have effect unless—
- (a) the initial writ is served within 20 days from the date of arrestment; and
 - (b) in the case of an undefended cause, decree in absence has been pronounced within 20 days after the expiry of the period of notice.
- (2) After such an arrestment has been executed, the party who executed it shall forthwith report the execution to the sheriff clerk.

Movement of arrested property

- 6.3 (1) Any person having an interest may apply by motion for a warrant authorising the movement of a vessel or cargo which is the subject of an arrestment to found jurisdiction or on the dependence of a cause.
- (2) Where the court grants a warrant sought under paragraph (1), it may make such further order as it thinks fit to give effect to that warrant.

CHAPTER 7

UNDEFENDED CAUSES

Application of this Chapter

- 7.1. This Chapter applies to any cause other than an action in which the sheriff may not grant decree without evidence.

Minute for granting of decree without attendance

- 7.2. (1) Subject to the following paragraphs, where the defender—
- (a) does not lodge a notice of intention to defend,
 - (b) does not lodge an application for a time to pay direction under the ^{M8}Debtors (Scotland) Act 1987,
 - (c) has lodged such an application for a time to pay direction and the pursuer does not object to the application or to any recall or restriction of an arrestment sought in the application,

the sheriff may, on the pursuer endorsing a minute for decree on the initial writ, at any time after the expiry of the period for lodging that notice or application, grant decree in absence or other order in terms of the minute so endorsed without requiring the attendance of the pursuer in court.

- (2) The sheriff shall not grant decree under paragraph (1)—
- (a) unless it appears ex facie of the initial writ that a ground of jurisdiction exists under the ^{M9}Civil Jurisdiction and Judgments Act 1982 where that Act applies; and
 - (b) the cause is not a cause—

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- (i) in which decree may not be granted without evidence;
 - (ii) to which paragraph (4) applies; or
 - (iii) to which rule 33.31 (procedure in undefended family action for [F33a section 11 order]) applies.
- (3) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the initial writ in sufficient time to arrange for his defence or that all necessary steps have been taken to that end; and for the purposes of this paragraph—
- (a) the question whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982;
 - (b) the question whether a person is domiciled in another Contracting State shall be determined in accordance with Article 52 of [F34the Convention in]Schedule 1 or 3C to that Act; and
 - (c) the term “Contracting State” has the meaning assigned in section 1 of that Act.
- (4) Where an initial writ has been served in a country to which the M10Hague Convention on the Service Abroad of Judicial and Exta-Judicial Documents in [F35Civil or Commercial] Matters dated 15th November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of Article 15 of that Convention have been complied with.

Textual Amendments

F33 Words in rule 7.2(2)(b)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 1

F34 Words in rule 7.2(3)(b) inserted (1.11.1996) by S.I. 1996/2445, para. 3(8)(a)

F35 Words in rule 7.2(4) substituted (1.11.1996) by S.I. 1996/2445, para. 3(8)(b)

Marginal Citations

M8 1987 c.18.

M9 1982 c.27.

M10 Cmnd. 3986 (1969).

Applications for time to pay directions in undefended causes

- 7.3. (1) This rule applies to a cause in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.
- (2) A defender in a cause which is otherwise undefended, who wishes to apply for a time to pay direction, and where appropriate, to have an arrestment recalled or restricted, shall complete and lodge with the sheriff clerk the appropriate part of Form O3 before the expiry of the period of notice.
- (3) Where the pursuer does not object to the application of the defender made in accordance with paragraph (2), he shall minute for decree in accordance with rule 7.2; and the sheriff may grant decree or other order in terms of the application and minute.

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- (4) Where the pursuer objects to the application of the defender made in accordance with paragraph (2), he shall minute for decree in accordance with rule 7.2; and the sheriff clerk shall thereafter fix a hearing on the application of the defender and intimate the hearing to the pursuer and defender.
- (5) The sheriff may determine an application in which a hearing has been fixed under paragraph (4) whether or not any of the parties appear.

Decree for expenses

- 7.4. On granting decree in abence or thereafter, the sheriff may grant decree for expenses.

Finality of decree in absence

- 7.5. Subject to section 9(7) of the ^{M11}Land Tenure Reform (Scotland) Act 1974 (decree in action of removing for breach of condition of long lease to be final when extract recorded in Register of Sasines), a decree in absence which has not been recalled or brought under review by suspension or by reduction shall become final and shall have effect as a decree in foro contentioso—
 - (a) on the expiry of six months from the date of the decree or from the date of a charge made under it, [^{F36}as the case may be,] where the service of the initial writ or of the charge has been personal; and
 - (b) in any event, on the expiry of 20 years from the date of the decree.

Textual Amendments

F36 Words in rule 7.5(a) inserted (1.11.1996) by S.I. 1996/2445, para. 3(9)

Marginal Citations

M11 1974 c.38.

Amendment of initial writ

- 7.6. (1) In an undefended cause, the sheriff may—
 - (a) allow the pursuer to amend the initial writ in any way permitted by rule 18.2 (powers of sheriff to allow amendment); and
 - (b) order the amended [^{F37}initial] writ to be re-served on the defender on such period of notice as he thinks fit.
- (2) The defender shall not be liable for the expense occasioned by any such amendment unless the sheriff so orders.
- (3) Where an amendment has been allowed under paragraph (1), the amendment—
 - (a) shall not validate diligence used on the dependence of a cause so as to prejudice the rights of [^{F38}creditors of] the party against whom the diligence has been executed, who are interested in defeating such diligence; and
 - (b) shall preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.

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Textual Amendments

- F37** Word in rule 7.6(1)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(10)(a)
F38 Words in rule 7.6(3)(a) substituted (1.11.1996) by S.I. 1996/2445, para. 3(10)(b)

Disapplication of certain rules

- [^{F39}7.7. The following rules in Chapter 15 (motions) shall not apply to an action in which no notice of intention to defend has been lodged or to any action in so far as it proceeds as undefended:–
- rule 15.2 (intimation of motions),
 - rule 15.3 (opposition to motions),
 - rule 15.5 (hearing of motions).]

Textual Amendments

- F39** Rule 7.7 inserted (1.11.1996) by S.I. 1996/2445, para. 3(11)

CHAPTER 8

REPONING

Reponing

- 8.1. (1) In any cause other than—
- (a) a cause mentioned in rule 33.1(1)(a) to (h) (certain family actions), or
 - (b) a cause to which Chapter 37 (causes under the Presumption of death (Scotland) Act 1977) applies,
- the defender [^{F40}or any party with a statutory title or interest] may apply to be reponed by lodging with the sheriff clerk, before implement in full of a decree in absence, a reponing note setting out his proposed defence [^{F41}or the proposed order or direction,] and explaining his failure to appear.
- (2) A copy of the note lodged under paragraph (1) shall be served on the pursuer [^{F42}and any other party].
- (3) The sheriff may, on considering the reponing note, recall the decree so far as not implemented subject to such order as to expenses as he thinks fit; and the cause shall thereafter proceed as if [^{F43} –
- (a)] the defender had lodged a notice of intention to defend and the period of notice had expired on the date on which the decree in absence was recalled.[^{F44} ; or
 - (b) the party seeking the order or direction had lodged the appropriate application on the date when the decree was recalled]
- (4) A reponing note, when duly lodged with the sheriff clerk and served upon the pursuer [^{F45}and any other party], shall have effect to sist diligence.

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- [^{F46}(4A) Where an initial writ has been served on a defender furth of the United Kingdom under rule 5.5(1)(b) (service on persons furth of Scotland) and decree in absence has been pronounced against him as a result of his failure to enter appearance, the court may, on the defender applying to be reponed in accordance with paragraph (1) above, recall the decree and allow defences to be received if—
- (a) without fault on his part, he did not have knowledge of the initial writ in sufficient time to defend;
 - (b) he has disclosed *prima facie* defence to the action on the merits; and
 - (c) the reponing note is lodged within a reasonable time after he had knowledge of the decree or in any event before the expiry of one year from the date of decree.]
- (5) Any interlocutor or order recalling, or incidental to the recall of, a decree in absence shall be final and not subject to appeal.

Textual Amendments

- F40** Words in Sch. 1 rule 8.1(1) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), **art. 2(5)(a)(i)**
- F41** Words in Sch. 1 rule 8.1(1) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), **art. 2(5)(a)(ii)**
- F42** Words in Sch. 1 rule 8.1(2) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), **art. 2(5)(b)**
- F43** Word in Sch. 1 rule 8.1(3) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), **art. 2(5)(c)(i)**
- F44** Sch. 1 rule 8.1(3)(b) and word inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), **art. 2(5)(c)(ii)**
- F45** Words in Sch. 1 rule 8.1(4) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), **art. 2(5)(d)**
- F46** Sch. 1 rule 8.1(4A) inserted (2.10.2000) by S.S.I. 2000/239, **para. 3(1)(2)**

CHAPTER 9

STANDARD PROCEDURE IN DEFENDED CAUSES

Notice of intention to defend

- 9.1. (1) Subject to rules 33.34 (notice of intention to defend and defences in family action) and 35.8 (lodging of notice of appearance in action of multiplepounding), where the defender intends to—
- (a) challenge the jurisdiction of the court,
 - (b) state a defence, or
 - (c) make a counterclaim,

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he shall, before the expiry of the period of notice, lodge with the sheriff clerk a notice of intention to defend in Form O7 ^{F47}and, at the same time, send a copy to the pursuer].

(2) The lodging of a notice of intention to defend shall not imply acceptance of the jurisdiction of the court.

^{F48}(3) This Chapter shall not apply to a commercial action within the meaning of Chapter 40.]

Textual Amendments

F47 Words in rule 9.1(1) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 2

F48 Rule 9.1(3) inserted (1.3.2001) by S.S.I. 2001/8, para. 2(1)(3)

Fixing date for Options Hearing

9.2. (1) ^{F49}Subject to paragraph (1A),] On the lodging of a notice of intention to defend, the sheriff clerk shall fix a date and time for an Options Hearing which date shall be on the first suitable court day occurring not sooner than 10 weeks after the expiry of the period of notice.

^{F50}(1A) Where in a family action—

(i) the only matters in dispute are an order in terms of section 11 of the ^{M12}Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.); or

(ii) the matters in dispute include an order in terms of section 11 of that Act, there shall be no requirement to fix an Options Hearing in terms of paragraph (1) above insofar as the matters in dispute relate to an order in terms of section 11(2) of the Children (Scotland) Act 1995.

^{F50}(1B) In paragraph (1A) above, “family action” has the meaning given to it in rule 33.1(1).]

(2) On fixing the date for the Options Hearing, the sheriff clerk shall—

(a) forthwith intimate to the parties in Form G5—

(i) the last date for lodging defences;

(ii) the last date for adjustment; and

(iii) the date of the Options hearing; and

(b) prepare and sign an interlocutor recording those dates.

(3) The fixing of the date for the Options Hearing shall not affect the right of ^{F51}a party] to make any incidental application to the court.

Textual Amendments

F49 Words in Sch. 1 rule 9.2(1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(3)(a)

F50 Sch. 1 rule 9.2(1A)(1B) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(3)(b)

F51 Words in rule 9.2(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(12)

Marginal Citations

M12 1995 c.36.

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Second or subsequent Options Hearing

- [^{F529.2A}(1) Where for any reason a second or subsequent Options Hearing requires to be fixed and an Options Hearing has already been fixed but has not yet taken place, the sheriff shall fix a second or subsequent Options Hearing and discharge that earlier hearing.
- (2) The sheriff clerk shall forthwith intimate to all parties—
- (a) that the original Options Hearing has been discharged;
 - (b) the last date for lodging defences, if appropriate;
 - (c) the last date for adjustment; and
 - (d) the date and time fixed for the second or subsequent Options Hearing.
- (3) Any reference in these Rules to an Options Hearing or a continuation of it shall include a reference to a second or subsequent Options Hearing ordered under this rule.]

Textual Amendments

F52 Rule 9.2A inserted (1.11.1996) by S.I. 1996/2445, para. 3(13)

Return of initial writ

- 9.3. Subject to rule 9.4 (lodging of pleadings before Options Hearing), the pursuer shall return the initial writ, unbacked and unfolded, to the sheriff clerk within 7 days after the expiry of the period of notice.

Lodging of pleadings before Options Hearing

- 9.4. Where any hearing, whether by motion or otherwise, is fixed before the Options Hearing, each party shall lodge in process a copy of his pleadings, or, where the pleadings have been adjusted, the pleadings as adjusted, not later than 2 days before the hearing.

Process folder

- 9.5. (1) On receipt of the notice of intention to defend, the sheriff clerk shall prepare a process folder which shall include—
- (a) interlocutor sheets;
 - (b) duplicate interlocutor sheets;
 - (c) a production file;
 - (d) a motion file; and
 - (e) an inventory of process.
- (2) Any production or part of process lodged in a cause shall be placed in the process folder.

Defences

- 9.6. (1) Where a notice of intention to defend has been lodged, the defender shall [^{F53}(subject to paragraph (3))] lodge defences within 14 days after the expiry of the period of notice.

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- (2) Subject to rule 19.1(3) (form of defences where counterclaim included), defences shall be in the form of answers in numbered paragraphs corresponding to the articles of the condescence and shall have appended a note of the pleas-in-law of the defender.
- [^{F54}(3) In a family action (within the meaning of rule 33.1(1)), neither a crave nor averments need be made in the defences which relate to any order under section 11 of the Children (Scotland) Act 1995.]

Textual Amendments

F53 Words in rule 9.6(1) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 3(a)

F54 Rule 9.6(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 3(b)

Implied admissions

- 9.7. Every statement of fact made by a party shall be answered by every other party, and if such a statement by one party within the knowledge of another party is not denied by that other party, that other party shall be deemed to have admitted that statement of fact.

Adjustment of pleadings

- 9.8. (1) Parties may adjust their pleadings until 14 days before the date of the Options Hearing or any continuation of it.
- (2) Any adjustments shall be exchanged between parties and not lodged in process.
- (3) Parties shall be responsible for maintaining a record of adjustments made during the period for adjustment.
- (4) No adjustments shall be permitted after the period mentioned in paragraph (1) except with leave of the sheriff.

Effect of sist on adjustment

- 9.9. (1) Where a cause has been sisted, any period for adjustment before the sist shall be reckoned as a part of the period for adjustment.
- (2) On recall of the sist of a cause, the sheriff clerk shall—
- fix a new date for the Options Hearing;
 - prepare and sign an interlocutor recording that date; and
 - intimate that date to each party.

Open record

- 9.10. The sheriff may, at any time before the closing of the record in a cause to which this Chapter applies, of his own motion or on the motion of a party, order any party to lodge a copy of the pleadings in the form of an open record containing any adjustments and amendments made as at the date of the order.

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Record for Options Hearing

- 9.11. (1) The pursuer shall, at the end of the period for adjustment referred to in rule 9.8(1) and before the Options Hearing, make a copy of the pleadings and any adjustments and amendments in the form of a record.
- (2) Not later than 2 days before the Options Hearing, the pursuer shall lodge a certified copy of the record in process.
- [^{F55}(3) Where the Options Hearing is continued under rule 9.12(5), and further adjustment or amendment is made to the pleadings, a copy of the pleadings as adjusted or amended, certified by the pursuer, shall be lodged in process not later than 2 days before the Options Hearing so continued.]

Textual Amendments

F55 Rule 9.11(3) inserted (1.11.1996) by S.I. 1996/2445, para. 3(14)

Options Hearing

- 9.12 (1) At the Options Hearing the sheriff shall seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).
- (2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.
- (3) At the Options Hearing the sheriff shall, except where the cause is ordered to proceed under the procedure in Chapter 10 (additional procedure), close the record and—
- (a) appoint the cause to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit;
 - (b) after having heard parties and considered any note lodged under rule 22.1 (note of basis of preliminary plea), appoint the cause to a proof before answer and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit; or
 - (c) after having heard parties and considered any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of law which [^{F56}if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree].
- (4) At the Options Hearing the sheriff may, having heard parties—
- (a) of his own motion or on the motion of any party, and
 - (b) on being satisfied that the difficulty or complexity of the cause makes it unsuitable for the procedure under this Chapter,
- order that the cause proceed under the procedure in Chapter 10 (additional procedure).
- (5) The sheriff may, on cause shown, of his motion or on the motion of any party, allow a continuation of the Options Hearing on one occasion only for a period not exceeding 28 days or to the first suitable court day thereafter.
- (6) On closing the record—

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (a) where there are no adjustments made since the lodging of the record under rule 9.11.(2), that record shall become the closed record; and
 - (b) where there are such adjustments, the sheriff may order that a closed record including such adjustments be lodged within 7 days after the date of the interlocutor closing the record.
- (7) For the purposes of rules 16.2 (decrees where party in default) and 33.37 (decree by default in family action), an Options Hearing shall be a diet in accordance with those rules.

Textual Amendments

F56 Words in Sch. 1 rule 9.12 substituted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(6)

Inspection and recovery of documents

9.13. ^{F57}

Textual Amendments

F57 Sch. 1 rule 9.13 omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(7)

Exchange of lists of witnesses

9.14. ^{F58}

Textual Amendments

F58 Sch. 1 rule 9.14 omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(7)

Applications for time to pay directions

9.15. ^{F59}

Textual Amendments

F59 Sch. 1 rule 9.15 omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(7)

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[^{F60}CHAPTER 9A

DOCUMENTS AND WITNESSES

Textual Amendments

F60 Sch. 1 Chapter 9A inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(8)

Application of this Chapter

9A.1. This Chapter applies to any cause proceeding under Chapters 9 and 10.

Inspection and recovery of documents

- 9A.2. (1) Each party shall, within 14 days after the date of the interlocutor allowing proof or proof before answer, intimate to every other party a list of the documents, which are or have been in his possession or control and which he intends to use or put in evidence at the proof, including the whereabouts of those documents.
- (2) A party who has received a list of documents from another party under paragraph (1) may inspect those documents which are in the possession or control of the party intimating the list at a time and place fixed by that party which is reasonable to both parties.
- (3) A party who seeks to use or put in evidence at a proof a document not on his list intimated under paragraph (1) shall, if any other party objects to such document being used or put in evidence, seek leave of the sheriff to do so; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.
- (4) Nothing in this rule shall affect—
- (a) the law relating, or the right of a party to object, to the inspection of a document on the ground of privilege or confidentiality; or
 - (b) the right of a party to apply under rule 28.2 for a commission and diligence for recovery of documents or an order under section 1 of the Administration of Justice (Scotland) Act 1972 ^{F61}.

Textual Amendments

F61 1972 c. 59; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73); section 19 and Schedule 2, paragraph 15.

Exchange of lists of witnesses

- 9A.3. (1) Within 28 days after the date of the interlocutor allowing a proof or proof before answer, each party shall—
- (a) intimate to every other party a list of witnesses, including any skilled witnesses, on whose evidence he intends to rely at proof; and
 - (b) lodge a copy of that list in process.

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- (2) A party who seeks to rely on the evidence of a person not on his list intimated under paragraph (1) shall, if any other party objects to such evidence being admitted, seek leave of the sheriff to admit that evidence whether it is to be given orally or not; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.
- (3) The list of witnesses intimated under paragraph (1) shall include the name, occupation (where known) and address of each intended witness.

Applications in respect of time to pay directions, and arrestments

- 9A.4. An application for a time to pay direction under section 1(1) of the Debtors (Scotland) Act 1987 ^{F62}, or for the recall or restriction of an arrestment under section 2(3) or 3(1) of that Act, in a cause which is defended, shall be made by motion lodged before the sheriff grants decree.]

Textual Amendments

F62 1987 c. 18; section 1 was repealed in part by the Social Security Act 1998 (c. 14) (“the 1998 Act”), Schedule 8 and by the Abolition of POUNDINGS and WARRANT SALES (Scotland) Act 2001 (asp 1) (now repealed), Schedule, Part 1 and was amended by the Child Support Act 1991 (c. 48), **Schedule 5**, paragraph 8, the Local Government Finance Act 1992 (c. 14), **Schedule 13**, paragraph 53, the Local Government etc. (Scotland) Act 1994 (c. 39), **Schedule 13**, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), **Schedule 9**, paragraph 1, and the Water Industry (Scotland) Act 2002 (asp 3), **schedule 7**, paragraph 17.

CHAPTER 10

ADDITIONAL PROCEDURE

Additional period for adjustment

- 10.1. (1) Where, under rule 9.12(4) (order at Options Hearing to proceed under Chapter 10), the sheriff orders that a cause shall proceed in accordance with the procedure in this Chapter, he shall continue the cause for adjustment for a period of 8 weeks.
- (2) Paragraphs (2) and (3) of rule 9.8 (exchange and record of adjustments) shall apply to a cause in which a period for adjustment under paragraph (1) of this rule has been allowed as they apply to the period for adjustment under that rule.

Effect of sist on adjustment period

- 10.2. Where a cause has been sisted, any period for adjustment before the sist shall be reckoned as part of the period for adjustment.

Variation of adjustment period

- 10.3. (1) At any time before the expiry of the period for adjustment the sheriff may close the record if parties, of consent or jointly, lodge a motion seeking such an order.
- (2) The sheriff may, if satisfied that there is sufficient reason for doing so, extend the period for adjustment for such period as he thinks fit, if any party—

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- (a) lodges a motion seeking such an order; and
 - (b) lodges a copy of the record adjusted to the date of lodging of the motion.
- (3) A motion lodged under paragraph (2) shall set out—
- (a) the reasons for seeking an extension of the period for adjustment; and
 - (b) the period for adjustment sought.

Order for open record

- 10.4. The sheriff may, at any time before the closing of the record in a cause to which this Chapter applies, of his own motion or on the motion of a party, order any party to lodge a copy of the pleadings in the form of an open record containing any adjustments and amendments made as at the date of the order.

Closing record

- 10.5. (1) On the expiry of the period for adjustment, the record shall be closed and, without the attendance of parties, the sheriff clerk shall forthwith—
- (a) prepare and sign an interlocutor recording the closing of the record and fixing the date of the Procedural Hearing under rule 10.6, which date shall be on the first suitable court day occurring not sooner than 21 days after the closing of the record; and
 - (b) intimate the date of the hearing to each party.
- (2) The pursuer shall, within 14 days after the date of the interlocutor closing the record, lodge a certified copy of the closed record in process.
- (3) The closed record shall contain only the pleadings of the parties.

Procedural Hearing

- 10.6. (1) At the Procedural Hearing, the sheriff shall seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).
- (2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.
- (3) At the Procedural Hearing the sheriff shall—
- (a) appoint the cause to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit;
 - (b) after having heard the parties and considered any note lodged under rule 22.1 (note of basis of preliminary plea), appoint the cause to a proof before answer and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit; or
 - (c) after having heard the parties and considered any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of law which [^{F63}if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree].
- (4) For the purposes of rule 33.37 (decree by default in family action), a Procedural Hearing shall be a diet in accordance with that rule.

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Textual Amendments

- F63** Words in Sch. 1 rule 10.6(3)(c) substituted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(9)

CHAPTER 11

THE PROCESS

Form and lodging of parts of process

- 11.1. All parts of process shall be written, typed or printed on A4 size paper of durable quality and shall be lodged, unbacked and unfolded, with the sheriff clerk.

Custody of process

- 11.2. (1) The initial writ, and all other parts of process lodged in a cause, shall be placed by the sheriff clerk in the process folder.
- (2) The initial writ, interlocutor sheets, borrowing receipts and the process folder shall remain in the custody of the sheriff clerk.
- (3) The sheriff [^{F64}clerk may,] on cause shown, authorise the initial writ to be borrowed by the pursuer, his solicitor or the solicitor's authorised clerk.

Textual Amendments

- F64** Words in rule 11.2(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(15)

Borrowing and returning of process

- 11.3. (1) Subject to paragraph (3), a process, or any part of a process which may be borrowed, may be borrowed only by a solicitor or by his authorised clerk.
- (2) All remedies competent to enforce the return of a borrowed process may proceed on the warrant of the court from the custody of which the process was obtained.
- (3) A party litigant—
- (a) may borrow a process only—
- (i) with leave of the sheriff; and
- (ii) subject to such conditions as the sheriff may impose; or
- (b) may inspect a process and obtain copies, where practicable, from the sheriff clerk.
- (4) The sheriff may, on the motion of any party, ordain any other party who has borrowed a part of process to return it within such time as the sheriff thinks fit.

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Failure to return parts of process

11.4. (1) Where a solicitor or party litigant has borrowed any part of process and fails to return it for any diet or hearing at which it is required, the sheriff may impose on such solicitor or party litigant a fine not exceeding £50, which shall be payable to the sheriff clerk; but an order imposing a fine may, on cause shown, be recalled by the sheriff.

(2) An order made under this rule shall not be subject to appeal.

Replacement of lost documents

11.5. Where any part of process is lost or destroyed, a copy of it, authenticated in such manner as the sheriff thinks fit, may be substituted for and shall, for the purposes of the cause to which the process relates, be treated as having the same force and effect as the original.

Intimation of parts of process and adjustments

11.6. (1) After a notice of intention to defend has been lodged, any party lodging a part of process or making an adjustment to his pleadings shall [^{F65}, at the same time,] intimate such lodging or adjustment to every other party who has entered the process by delivering to every other party a copy of each part of process or adjustment, including, where practicable, copies of any documentary production.

(2) Unless otherwise provided in these Rules, the party required to give intimation under paragraph (1) shall deliver to every other party who has entered the process a copy of the part of process or adjustment or other document, as the case may be, by—

- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
- (b) where intimation is to a party represented by a solicitor—
 - (i) personal delivery,
 - (ii) facsimile transmission,
 - (iii) first class ordinary post,
 - (iv) delivery to a document exchange,
 to that solicitor.

(3) Subject to paragraph (4), where intimation is given under—

- (a) paragraph (2)(b)(i) or (ii), it shall be deemed to have been given—
 - (i) on the day of transmission or delivery where it is given before 5.00 pm on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 pm on any day; or
- (b) paragraph (2)(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.

(4) Where intimation is given [^{F66}or, but for this paragraph, would be deemed to be given] on a Saturday, Sunday or public or court holiday, it shall be deemed to have been given on the next day on which the sheriff clerk's office is open for civil court business.

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Textual Amendments

F65 Words in [rule 11.6\(1\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(16\)\(a\)](#)

F66 Words in [rule 11.6\(4\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(16\)\(b\)](#)

Retention and disposal of parts of process by sheriff clerk

- 11.7. (1) Where any cause has been finally determined and the period for marking an appeal has expired without an appeal having been marked, the sheriff clerk shall—
- (a) retain—
 - (i) the initial writ;
 - (ii) any closed record;
 - (iii) the interlocutor sheets;
 - (iv) any joint minute;
 - (v) any offer and acceptance of tender;
 - (vi) any report from a person of skill;
 - (vii) any affidavit; and
 - (viii) any extended shorthand notes of the proof; and
 - (b) dispose of all other parts of process (except productions) in such a manner as seems appropriate.
- (2) Where an appeal has been marked on the final determination of the cause, the sheriff clerk shall exercise his duties mentioned in paragraph (1) after the final disposal of the appeal and any subsequent procedure.

Uplifting of productions from process

- 11.8. (1) Each party who has lodged productions in a cause shall—
- (a) within 14 days after the final determination of the cause, where no subsequent appeal has been marked, or
 - (b) within 14 days after the disposal of any appeal marked on the final determination of the cause,
- uplift the productions from process.
- (2) Where any production has not been uplifted as required by paragraph (1), the sheriff clerk shall intimate to—
- (a) the solicitor who lodged the production, or
 - (b) where no solicitor is acting, the party himself or such other party as seems appropriate,
- that if he fails to uplift the production within 28 days after the date of such intimation, it will be disposed of in such a manner as the sheriff directs.

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CHAPTER 12

THE PROCESS

Signature of interlocutors by sheriff clerk

- 12.1. In accordance with any directions given by the sheriff principal, any interlocutor other than a final interlocutor may be written and signed by the sheriff clerk and—
- (a) any interlocutor written and signed by a sheriff clerk shall be treated for all purposes as if it had been written and signed by the sheriff; and
 - (b) any extract of such an interlocutor shall not be invalid by reason only of its being written and signed by a sheriff clerk.

Further provisions in relation to interlocutors

- 12.2. (1) The sheriff may sign an interlocutor when furth of his sheriffdom.
- (2) At any time before extract, the sheriff may correct any clerical or incidental error in an interlocutor or note attached to it.
- [^{F67}(3) In any cause, other than a family action within the meaning of rule 33.1(1) which has proceeded as undefended, where at any stage evidence has been led, the sheriff shall—
- (a) in the interlocutor, make findings in fact and law; and
 - (b) append to that interlocutor a note setting out the reasons for his decision.
- (4) In any other interlocutor, the sheriff may, and shall when requested by a party, append a note setting out the reasons for his decision.]
- (5) Where the sheriff reserves his decision and gives his decision at a date later than the date of the hearing outwith the presence of the parties—
- (a) the date of the interlocutor of the sheriff shall be the date on which it is received by the sheriff clerk; and
 - (b) the sheriff clerk shall—
 - (i) enter that date in the interlocutor; and
 - (ii) forthwith send a copy of the interlocutor and any note attached to it free of charge to each party.

Textual Amendments

F67 Rule 12.2(3)(4) substituted (1.11.1996) by S.I. 1996/2445, para. 3(17)

CHAPTER 13

PARTY MINUTER PROCEDURE

Person claiming title and interest to enter process as defender

- 13.1. (1) A person who has not been called as a defender or third party may apply by minute for leave to enter a process as a party minuter and to lodge defences.
- (2) A minute under paragraph (1) shall specify—

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- (a) the applicant’s title and interest to enter the process; and
 - (b) the grounds of the defence he proposes to state.
- (3) Subject to paragraph (4), after hearing the applicant and any party, the sheriff may—
- (a) if he is satisfied that the applicant has shown title and interest to enter the process, grant the applicant leave to enter the process as a party minuter and to lodge defences; and
 - (b) make such order as to expenses or otherwise as he thinks fit.
- (4) Where an application under paragraph (1) is made after the closing of the record, the sheriff shall only grant leave under paragraph (3) if he is satisfied as to the reason why earlier application was not made.

Procedure following leave to enter process

- 13.2. (1) Where a party minuter lodges [^{F68}defences], the sheriff clerk shall fix a date and time under rule 9.2 for a hearing under rule 9.12 (Options Hearing) as if the party minuter had lodged a notice of intention to defend and the period of notice had expired on the date for lodging answers.
- (2) At the Options Hearing, or at any time thereafter, the sheriff may grant such decree or other order as he thinks fit.
- (3) A decree or other order against the party minuter shall have effect and be extractable in the same way as a decree or other order against a defender.

Textual Amendments

F68 Word in rule 13.2(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(18)

VALID FROM 01/07/2008

[^{F69}CHAPTER 13A

INTERVENTIONS BY THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

Textual Amendments

F69 Sch. 1 Chapters 13A 13B inserted (1.7.2008) by Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2008 (S.S.I. 2008/223), para. 4(2)

Interpretation

- 13A.1. In this Chapter “the CEHR” means the Commission for Equality and Human Rights.

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Interventions by the CEHR

13A.2.(1) The CEHR may apply to the sheriff for leave to intervene in any cause in accordance with this Chapter.

- (2) This Chapter is without prejudice to any other entitlement of the CEHR by virtue of having title and interest in relation to the subject matter of any proceedings by virtue of section 30(2) of the Equality Act 2006 ^{F70} or any other enactment to seek to be sisted as a party in those proceedings.
- (3) Nothing in this Chapter shall affect the power of the sheriff to make such other direction as he considers appropriate in the interests of justice.
- (4) Any decision of the sheriff in proceedings under this Chapter shall be final and not subject to appeal.

Textual Amendments

F70 2006 c. 3.

Applications to intervene

13A.3.(1) An application for leave to intervene shall be by way of minute of intervention in Form O7A and the CEHR shall–

- (a) send a copy of it to all the parties; and
 - (b) lodge it in process, certifying that subparagraph (a) has been complied with.
- (2) A minute of intervention shall set out briefly–
- (a) the CEHR's reasons for believing that the proceedings are relevant to a matter in connection with which the CEHR has a function;
 - (b) the issue in the proceedings which the CEHR wishes to address; and
 - (c) the propositions to be advanced by the CEHR and the CEHR's reasons for believing that they are relevant to the proceedings and that they will assist the sheriff.
- (3) The sheriff may–
- (a) refuse leave without a hearing;
 - (b) grant leave without a hearing unless a hearing is requested under paragraph (4);
 - (c) refuse or grant leave after such a hearing.
- (4) A hearing, at which the applicant and the parties may address the court on the matters referred to in paragraph (6)(c), may be held if, within 14 days of the minute of intervention being lodged, any of the parties lodges a request for a hearing.
- (5) Any diet in pursuance of paragraph (4) shall be fixed by the sheriff clerk who shall give written intimation of the diet to the CEHR and all the parties.
- (6) The sheriff may grant leave only if satisfied that–
- (a) the proceedings are relevant to a matter in connection with which the CEHR has a function;
 - (b) the propositions to be advanced by the CEHR are relevant to the proceedings and are likely to assist him; and

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(c) the intervention will not unduly delay or otherwise prejudice the rights of the parties, including their potential liability for expenses.

(7) In granting leave the sheriff may impose such terms and conditions as he considers desirable in the interests of justice, including making provision in respect of any additional expenses incurred by the parties as a result of the intervention.

(8) The sheriff clerk shall give written intimation of a grant or refusal of leave to the CEHR and all the parties.

Form of intervention

13A.4.(1) An intervention shall be by way of a written submission which (including any appendices) shall not exceed 5000 words.

(2) The CEHR shall lodge the submission and send a copy of it to all the parties by such time as the sheriff may direct.

(3) The sheriff may in exceptional circumstances–

- (a) allow a longer written submission to be made;
- (b) direct that an oral submission is to be made.

(4) Any diet in pursuance of paragraph (3)(b) shall be fixed by the sheriff clerk who shall give written intimation of the diet to the CEHR and all the parties.

VALID FROM 01/07/2008

CHAPTER 13B

INTERVENTIONS BY THE SCOTTISH COMMISSION FOR HUMAN RIGHTS

Interpretation

13B.1. In this Chapter–

“the Act of 2006” means the Scottish Commission for Human Rights Act 2006; and

“the SCHR” means the Scottish Commission for Human Rights.

Application to intervene

13B.2.(1) An application for leave to intervene under section 14(2)(a) of the Act of 2006 shall be by way of minute of intervention in Form O7B and the SCHR shall–

- (a) send a copy of it to all the parties; and
- (b) lodge it in process, certifying that subparagraph (a) has been complied with.

(2) In granting leave the sheriff may impose such terms and conditions as he considers desirable in the interests of justice, including making provision in respect of any additional expenses incurred by the parties as a result of the intervention.

(3) The sheriff clerk shall give written intimation of a grant or refusal of leave to the SCHR and all the parties.

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- (4) Any decision of the sheriff in proceedings under this Chapter shall be final and not subject to appeal.

Invitation to intervene

13B.3.(1) An invitation to intervene under section 14(2)(b) of the Act of 2006 shall be in Form O7C and the sheriff clerk shall send a copy of it to the SCHR and all the parties.

- (2) An invitation under paragraph (1) shall be accompanied by—
- (a) a copy of the pleadings in the proceedings; and
 - (b) such other documents relating to those proceedings as the sheriff thinks relevant.
- (3) In issuing an invitation under section 14(2)(b) of the Act of 2006, the sheriff may impose such terms and conditions as he considers desirable in the interests of justice, including making provision in respect of any additional expenses incurred by the parties as a result of the intervention.

Form of intervention

13B.4.(1) An intervention shall be by way of a written submission which (including any appendices) shall not exceed 5000 words.

- (2) The SCHR shall lodge the submission and send a copy of it to all the parties by such time as the sheriff may direct.
- (3) The sheriff may in exceptional circumstances—
- (a) allow a longer written submission to be made;
 - (b) direct that an oral submission is to be made.
- (4) Any diet in pursuance of paragraph (3)(b) shall be fixed by the sheriff clerk who shall give written intimation of the diet to the SCHR and all the parties.]

CHAPTER 14

APPLICATIONS BY MINUTE

Application of this Chapter

14.1. (1) Where an application may be made by minute, the form of the minute and the procedure to be adopted shall, unless otherwise provided in these Rules, be in accordance with this Chapter.

- (2) This Chapter shall not apply to—
- (a) a minute of amendment; ^{F71} . . .
 - (b) a minute of abandonment [^{F72}; or]
 - ^{F73}(c) a joint minute.]

Textual Amendments

F71 Word in rule 14.1(2)(a) omitted (1.11.1996) by S.I. 1996/2445, para. 3(19)(a)

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- F72** Rule 14.1(2)(b): “; or” substituted for the full-stop (1.11.1996) by S.I. 1996/2445, para. 3(19)(b)
F73 Rule 14.1(2)(c) inserted (1.11.1996) by S.I. 1996/2445, para. 3(19)(c)

Form of minute

- 14.2. A minute to which this Chapter applies shall contain—
- (a) a crave;
 - (b) where appropriate, a condescence in the form of a statement of facts supporting the crave; and
 - (c) where appropriate, pleas-in-law.

Lodging of minutes

- [^{F74}14.1] Before intimating any minute, the minuter shall lodge the minute in process.
- (2) On the lodging of a minute, and any document under rule 21.1(1)(b) (lodging documents founded on or adopted), the sheriff—
 - (a) may make an order for answers to be lodged;
 - (b) may order intimation of the minute without making an order for answers; or
 - (c) where he considers it appropriate for the expeditious disposal of the minute or for any other specified reason, may fix a hearing.
 - (3) Any answers ordered to be lodged under paragraph (2)(a) shall, unless otherwise ordered by the sheriff, be lodged within 14 days after the date of intimation of the minute.
 - (4) Where the sheriff fixes a hearing under paragraph (2)(c), the interlocutor fixing that hearing shall specify whether—
 - (a) answers are to be lodged;
 - (b) the sheriff will hear evidence at that hearing; and
 - (c) the sheriff will allow evidence by affidavit.
 - (5) Any answers or affidavit evidence ordered to be lodged under paragraph (4) shall be lodged within such time as shall be specified in the interlocutor of the sheriff.
 - (6) The following rules shall not apply to any hearing fixed under paragraph (2)(c):—
 - rule 14.7 (opposition where no order for answers made),
 - rule 14.8 (hearing of minutes where no opposition or no answers lodged),
 - rule 14.10 (notice of opposition or answers lodged).
 - (7) The sheriff clerk shall forthwith return the minute to the minuter with any interlocutor pronounced by the sheriff.]

Textual Amendments

- F74** Rule 14.3 substituted (1.11.1996) by S.I. 1996/2445, para. 3(20)

Intimation of minutes

- [^{F75}14.4] The party lodging a minute shall, on receipt from the sheriff clerk of the minute, intimate to every other party including any person referred to in rule 14.13(1)—

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- (a) a notice in Form G7A, G7B or G7C, as the case may be, by any of the methods provided for in rule 14.5 (methods of intimation); and
- (b) a copy of–
 - (i) the minute;
 - (ii) any interlocutor; and
 - (iii) any document referred to in the minute.

(2) The sheriff may, on cause shown, dispense with intimation.]

Textual Amendments

F75 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

Methods of intimation

^{F76}14.5(1) Intimation of a minute may be given by–

- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
- (b) where intimation is to a party represented by a solicitor, by–
 - (i) personal delivery,
 - (ii) facsimile transmission,
 - (iii) first class ordinary post, or
 - (iv) delivery to a document exchange,
 to that solicitor.

(2) Where intimation is given–

- (a) under paragraph (1)(b)(i) or (ii), it shall be deemed to have been given–
 - (i) on the day of transmission or delivery where it is given before 5.00 p.m. on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 p.m. on any day; or
- (b) under paragraph 1(b)(iii) or (iv), it shall be deemed to have been given on the day after the date of posting or delivery.

Textual Amendments

F76 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

Return of minute with evidence of intimation

^{F77}14.6. Where intimation of any minute has been given, the minute and a certificate of intimation in Form G8 shall be returned to the sheriff clerk within 5 days after the date of intimation.

Textual Amendments

F77 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

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Opposition where no order for answers made

- ^{F78}14.7(1) Where a party seeks to oppose a minute lodged under rule 14.3 (lodging of minutes) in which no order for answers has been made under paragraph (2)(a) of that rule, that party shall, within 14 days after the date of intimation of the minute to him–
- (a) complete a notice of opposition in Form G9;
 - (b) lodge the notice with the sheriff clerk; and
 - (c) intimate a copy of that notice to every other party.
- (2) Rule 14.5 (methods of intimation) and rule 14.6 (return of minute with evidence of intimation) shall apply to intimation of opposition to a minute under paragraph (1) (c) of this rule as they apply to intimation of a minute.
- (3) The sheriff may, on cause shown, reduce or dispense with the period for lodging the notice mentioned in paragraph (1)(b).

Textual Amendments

F78 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

Hearing of minutes where no opposition or no answers lodged

- ^{F79}14.8(1) Where no notice of opposition is lodged or where no answers have been lodged to the minute within the time allowed, the minute shall be determined by the sheriff in chambers without the attendance of parties, unless the sheriff otherwise directs.
- (2) Where the sheriff requires to hear a party on a minute, the sheriff clerk shall–
- (a) fix a date, time and place for the party to be heard; and
 - (b) inform that party–
 - (i) of that date, time and place; and
 - (ii) of the reasons for the sheriff wishing to hear him.

Textual Amendments

F79 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

Intimation of interlocutor

- ^{F80}14.9. Where a minute has been determined in accordance with rule 14.8 (hearing of minutes where no opposition or no answers lodged), the sheriff clerk shall intimate the interlocutor determining that minute to the parties forthwith.

Textual Amendments

F80 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

Notice of opposition or answers lodged

- ^{F81}14.10(1) Where a notice of opposition has, or answers have, been lodged to the minute, the sheriff clerk shall–

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- (a) assign a date, time and place for a hearing on the first suitable court day after the date of the lodging of the notice of opposition or answers, as the case may be; and
 - (b) intimate that date, time and place to the parties.
- (2) The interlocutor fixing a hearing under paragraph (1) shall specify whether the sheriff will hear evidence at the hearing or receive evidence by affidavit.

Textual Amendments

F81 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, **para. 3(21)**

Procedure for hearing

^{F82}14.1(1) A certified copy of the interlocutor assigning a hearing under this Chapter and requiring evidence to be led shall be sufficient warrant to a sheriff officer to cite a witness on behalf of a party.

- (2) At the hearing, the sheriff shall hear parties on the minute and any answers lodged, and may determine the minute or may appoint such further procedure as he considers necessary.

Textual Amendments

F82 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, **para. 3(21)**

Consent to minute

^{F83}14.12. Subject to paragraph (2) of rule 14.8 (hearing of minutes where no opposition or no answers lodged), where all parties to the action indicate to the sheriff, by endorsement of the minute or otherwise in writing, their intention to consent to the minute, the sheriff may forthwith determine the minute in chambers without the appearance of parties.

Textual Amendments

F83 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, **para. 3(21)**

Procedure following grant of minute

^{F84}14.1(1) Where the minute includes a crave seeking leave–

- (a) for a person–
 - (i) to be sisted as a party to the action, or
 - (ii) to appear in the proceedings, or
- (b) for the cause to be transferred against the representatives of a party who has died or is under a legal incapacity,

the sheriff, on granting the minute, may order a hearing under rule 9.12 (Options Hearing) to be fixed or may appoint such further procedure as he thinks fit.

- (2) Where an Options Hearing is ordered under paragraph (1), the sheriff clerk shall–

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- (a) fix a date and time for such hearing, which date, unless the sheriff otherwise directs, shall be on the first suitable court day occurring not sooner than 10 weeks after the date of the interlocutor of the sheriff ordering such hearing be fixed;
 - (b) forthwith intimate to the parties in Form G5–
 - (i) where appropriate, the last date for lodging defences;
 - (ii) where appropriate, the last date for adjustment; and
 - (iii) the date of the Options Hearing; and
 - (c) prepare and sign an interlocutor recording those dates.
- (3) For the purpose of fixing the date for the Options Hearing referred to in paragraph (1), the date of granting the minute shall be deemed to be the date of expiry of the period of notice.

Textual Amendments

F84 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

[^{F85} CHAPTER 15

MOTIONS]

Textual Amendments

F85 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

Modifications etc. (not altering text)

C1 Sch. 1 Chapter 15 applied (with modifications) (28.9.2009) by Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 (S.S.I. 2009/284), para. 2, {Sch. rule 52(2)}

^{F86} Lodging of motions

[^{F85} 15.(1) A motion may be made–

- (a) orally with leave of the court during any hearing of a cause; or
 - (b) by lodging a written motion in Form G6.
- (2) Subject to paragraph (3), a written motion shall be lodged with the sheriff clerk within 5 days after the date of intimation of the motion required by rule 15.2 (intimation of motions) with–
- (a) a certificate of intimation in Form G8; and
 - (b) so far as practicable any document referred to in the written motion and not already lodged in process.
- (3) Where the period for lodging opposition to the motion is varied under rule 15.2(4) (variation of and dispensing with period of intimation) to a period of 5 days or less, the written motion and certificate to be lodged in terms of paragraph (2) shall be lodged no later than the day on which the period for lodging opposition expires.

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Textual Amendments

F86 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

^{F87} Intimation of motions

- 15.2. (1) Subject to paragraphs (4) and (7), a party intending to lodge a motion in accordance with rule 15.1(1)(b) (lodging written motion) shall intimate the motion in Form G7, and a copy of any document referred to in the motion, to every other party.
- (2) Intimation of a motion may be given by–
- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
 - (b) where intimation is to a party represented by a solicitor, by–
 - (i) personal delivery,
 - (ii) facsimile transmission,
 - (iii) first class ordinary post, or
 - (iv) delivery to a document exchange,
 to that solicitor.
- (3) Where intimation is given–
- (a) under paragraph (2)(b)(i) or (ii), it shall be deemed to have been given–
 - (i) on the day of transmission or delivery where it is given before 5.00 p.m. on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 p.m. on any day; or
 - (b) under paragraph (2)(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.
- (4) The sheriff may, on the application of a party intending to lodge a written motion, vary the period of 7 days specified in rule 15.3(1)(c) for lodging opposition to the motion or dispense with intimation.
- (5) An application under paragraph (4) shall be made in the written motion, giving reasons for such variation or dispensation.
- (6) Where the sheriff varies the period within which notice of opposition is to be lodged under rule 15.3(1)(c), the form of intimation required under rule 15.2(1) (intimation of motion in Form G7) shall state the date by which such notice requires to be lodged.
- (7) A joint motion by all parties lodged in Form G6 need not be intimated.

Textual Amendments

F87 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

Opposition to motions

- ^{F88}15.3(1) Where a party seeks to oppose a motion made in accordance with rule 15.1(1)(b) (written motion), he shall–
- (a) complete a notice of opposition in Form G9;

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- (b) intimate a copy of that notice to every other party; and
 - (c) lodge the notice with the sheriff clerk within 7 days after the date of intimation of the motion or such other period as the sheriff may have determined under rule 15.2(6).
- (2) Paragraphs (2) and (3) of rule 15.2 (methods and time of intimation of motions) shall apply to the intimation of opposition to a motion under paragraph (1)(b) of this rule as they apply to intimation under that rule.

Textual Amendments

F88 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

^{F89} Consent to motions

- 15.4. Where a party consents to a written motion, he shall endorse the motion, or give notice to the sheriff clerk in writing, of his consent.

Textual Amendments

F89 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

^{F90} Hearing of motions

- 15.5. (1) Subject to paragraph (2), where no notice of opposition is lodged with the sheriff clerk within the period specified in rule 15.3(1)(c), or ordered by virtue of rule 15.2(4), the motion shall be determined by the sheriff in chambers without the appearance of parties, unless the sheriff otherwise directs.
- (2) In accordance with any directions given by the sheriff principal, the sheriff clerk may determine any motion other than a motion which seeks a final interlocutor.
- (3) Where the sheriff clerk considers that a motion dealt with by him under paragraph (2) should not be granted, he shall refer that motion to the sheriff who shall deal with it in accordance with paragraph (1).
- (4) Where the sheriff requires to hear a party on a motion which is not opposed, the sheriff clerk shall—
- (a) fix a date, time and place for the party to be heard, and
 - (b) inform that party—
 - (i) of that date, time and place; and
 - (ii) of the reasons for the sheriff wishing to hear him.
- (5) Where a notice of opposition is lodged in accordance with rule 15.3(1), the sheriff clerk shall—
- (a) assign a date, time and place, on the first suitable court day after the lodging of the notice of opposition, for the motion to be heard; and
 - (b) intimate that date, time and place to the parties.
- (6) Where a motion has been determined under paragraph (1) or (2), the sheriff clerk shall intimate the interlocutor determining that motion to all parties forthwith.

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- (7) Where the sheriff, under paragraph (4) of rule 15.2, dispenses with intimation required by paragraph (1) of that rule, he shall make such order as he thinks fit for intimation of his determination of the motion to every party to the action in respect of whom intimation has been so dispensed with.
- (8) Subject to paragraph (4), where all parties consent to a written motion, the sheriff may determine the motion in chambers without the appearance of parties.
- (9) Subject to paragraph (4) where a joint motion of all parties in Form G6 is lodged with the sheriff clerk, the sheriff may determine the motion in chambers without the appearance of parties.

Textual Amendments

F90 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

Motions to sist

- [(1) Where a motion to sist is made, either orally or in writing in accordance with rule ^{F91}15.6. 15.1(1)(a) or (b)–
- (a) the reason for the sist shall be stated by the party seeking the sist; and
 - (b) that reason shall be recorded in the interlocutor.
- (2) Where a cause has been sisted, the sheriff may, after giving parties an opportunity to be heard, recall the sist.]]

Textual Amendments

F91 Sch. 1 rule 15.6 inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(5)

^{F92} *Lodging of motions*

- 15.1. (1) A motion may be made—
- (a) orally with leave of the court during any hearing of a cause; or
 - (b) by lodging a written motion in Form G6.
- (2) Any document referred to in the motion and not already lodged in process shall, so far as practicable, be lodged with the written motion.
- (3) On the lodging of a motion in accordance with paragraph (1)(b), the sheriff clerk shall fix a hearing of the motion and shall advise the party lodging the motion of the date, time and place of the hearing.

Textual Amendments

F92 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

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^{F93} *Intimation of motions*

- 15.2. (1) Subject to paragraph (7), the party lodging a motion in accordance with rule 15.1(1)(b) shall intimate the motion in Form G7, and a copy of any document referred to in the motion, to every other party.
- (2) Unless a period of intimation of a motion is otherwise specified in these Rules, intimation under paragraph (1) shall be made not less than 7 days before the date fixed for the hearing of the motion.
- (3) Subject to paragraph (4), intimation of a motion may be given by—
- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
 - (b) where intimation is to a party represented by a solicitor, by—
 - (i) personal delivery,
 - (ii) facsimile transmission,
 - (iii) first class ordinary post, or
 - (iv) delivery to a document exchange, to that solicitor.
- (4) Subject to paragraph (5), where intimation is given—
- (a) under paragraph (3)(b)(i) or (ii), it shall be deemed to have been given—
 - (i) on the day of transmission or delivery where it is given before 5.00 pm on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 pm on any day; or
 - (b) under paragraph 3(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.
- (5) Where intimation is given on a Saturday, Sunday or public or court holiday, it shall be deemed to have been given on the next day on which the sheriff clerk's office is open for civil court business.
- (6) Where intimation has been given, a certificate of intimation of the motion in Form G8 shall be returned to the sheriff clerk not later than 2 days, or such other period as the sheriff has determined, before the date fixed for the hearing of that motion.
- (7) The sheriff may, on cause shown, dispense with or reduce the period of intimation specified in paragraph (2) or the period specified in paragraph (6).

Textual Amendments

F93 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

CHAPTER 16

DECREES BY DEFAULT

Application of this Chapter

- 16.1. This [^{F94}Chapter] applies to any cause other than—
- (a) an action to which rule 33.37 (decree by default in family action) applies;

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- (b) an action of multiplepoinding; ^{F95} . . .
- (c) a cause under the Presumption of Death (Scotland) Act 1977 ^{F96}. [^{F97}; or
- ^{F97}(d) a commercial action within the meaning of Chapter 40.]

Textual Amendments

- F94** Word in rule 16.1 substituted (1.3.2001) by S.S.I. 2001/8, para. 2(1)(4)(a)
F95 Word in rule 16.1(b) omitted (1.3.2001) by virtue of S.S.I. 2001/8, para. 2(1)(4)(b)
F96 1977 c.27.
F97 Rule 16.1(d) and the preceding word “or” inserted (1.3.2001) by S.S.I. 2001/8, para. 2(1)(4)(c)

Decrees where party in default

- 16.2. (1) In a cause to which this Chapter applies, where a party fails—
- (a) to lodge, or intimate the lodging of, any production or part of process within the period required under a provision in these Rules or an order of the sheriff,
 - (b) to implement an order of the sheriff within a specified period, or
 - (c) to appear or be represented at any diet,
- that party shall be in default.
- (2) Where a party is in default, the sheriff may grant decree as craved, decree of absolvitor or dismiss the cause, as the case may be, with expenses.
- (3) Where no party appears at a diet, the sheriff may dismiss the cause.
- (4) In this rule, “diet” includes—
- (a) a hearing under rule 9.12 (Options Hearing);
 - (b) a hearing under rule 10.6 (Procedural Hearing);
 - (c) a proof or proof before answer; and
 - (d) a debate.

Prorogation of time where party in default

- 16.3. In an action to which this Chapter applies, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process or for giving intimation or for implementing any order.

CHAPTER 17

SUMMARY DECREES

Application of this Chapter

- 17.1. This Chapter applies to any action other than—
- (a) a family action within the meaning of rule 33.1(1);
 - (b) an action of multiplepoinding; or
 - (c) a cause under the Presumption of Death (Scotland) Act 1977.

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Applications for summary decree

17.2. (1) Subject to paragraphs (2) to (5) of this rule, a pursuer may, at any time after a defender has lodged defences, apply by motion for summary decree against that defender on the ground that there is no defence to the action, or part of it, disclosed in the defences.

(2) In applying for summary decree, the pursuer may move the sheriff—

- (a) to grant decree in terms of all or any of the craves of the initial writ;
- (b) to pronounce an interlocutor sustaining or repelling a plea-in-law; or
- (c) to dispose of the whole or part of the subject-matter of the cause.

^{F98}(3)

(4) On a motion under paragraph (1), the sheriff may—

- (a) if satisfied that there is no defence to the action or to any part of it to which the motion relates, grant the motion for summary decree in whole or in part, as the case may be; or
- (b) ordain any party, or a partner, director, officer or office-bearer of, any party—
 - (i) to produce any relevant document or article; or
 - (ii) to lodge an affidavit in support of any assertion of fact made in the pleadings or at the hearing of the motion.

(5) Notwithstanding the refusal of all or part of a motion for summary decree, a subsequent motion may be made where there has been a change of circumstances.

Textual Amendments

F98 Sch. 1 rule 17.2(3) omitted (2.10.2000) by virtue of S.S.I. 2000/239, para. 3(1)(6)

Application of summary decree to counterclaims, etc.

17.3. (1) Where a defender has lodged a counterclaim—

- (a) he may apply by motion for summary decree against the pursuer on that counterclaim on the ground that there is no defence to the counterclaim, or a part of it, disclosed in the answers to it; and
- (b) paragraphs (2) to (5) of rule 17.2 shall, with the necessary modifications, apply to a motion by a defender under this paragraph as they apply to a motion by a pursuer under paragraph (1) of that rule.

(2) Where a defender or third party has made a claim against another defender or third party who has lodged defences or answers, as the case may be—

- (a) he may apply by motion for summary decree against that other defender or third party on the ground that there is no defence to the claim, or a part of it, disclosed in the defences or answers, as the case may be; and
- (b) paragraphs (2) to (5) of rule 17.2 shall, with the necessary modifications, apply to a motion by a defender or third party under this paragraph as they apply to a motion by a pursuer under paragraph (1) of that rule.

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CHAPTER 18

AMENDMENT OF PLEADINGS

Alteration of sum sued for

- 18.1. (1) In a cause in which all other parties have lodged defences or answers, the pursuer may, before the closing of the record, alter any sum sued for by amending the crave of the initial writ, ^{F99} . . . and any record.
- (2) The pursuer shall forthwith intimate any such amendment in writing to every other party.

Textual Amendments

F99 Words in [rule 18.1\(1\)](#) omitted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(23\)](#)

Powers of sheriff to allow amendment

- 18.2. (1) The sheriff may, at any time before final judgment, allow an amendment mentioned in paragraph (2).
- (2) Paragraph (1) applies to the following amendments:—
- (a) an amendment of the initial writ which may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that in consequence of such amendment—
 - (i) the sum sued for is increased or restricted after the closing of the record; or
 - (ii) a different remedy from that originally craved is sought;
 - (b) an amendment which may be necessary—
 - (i) to correct or supplement the designation of a party to the cause;
 - (ii) to enable a party who has sued or has been sued in his own right to sue or be sued in a representative capacity;
 - (iii) to enable a party who has sued or has been sued in a representative capacity to sue or be sued in his own right or in a different representative capacity;
 - (iv) to add the name of an additional pursuer or person whose concurrence is necessary;
 - (v) where the cause has been commenced or presented in the name of the wrong person, or it is doubtful whether it has been commenced or presented in the name of the right person, to allow any other person to be sisted in substitution for, or in addition to, the original person; or
 - (vi) to direct a crave against a third party brought into an action under Chapter 20 (third party procedure);
 - (c) an amendment of a condescendence, defences, answers, pleas-in-law or other pleadings which may be necessary for determining the real question in controversy between the parties; and
 - (d) where it appears that all parties having an interest have not been called or that the cause has been directed against the wrong person, an amendment

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inserting in the initial writ an additional or substitute party and directing existing or additional craves, averments and pleas-in-law against that party.

Applications to amend

- 18.3. (1) A party seeking to amend shall lodge a minute of amendment in process setting out his proposed amendment and, at the same time, lodge a motion—
- (a) to allow the minute of amendment to be received; and
 - (b) to allow—
 - (i) amendment in terms of the minute of amendment and, where appropriate, to grant an order under rule 18.5(1)(a) (service of amendment for additional or substitute party); or
 - (ii) where the minute of amendment may require to be answered, any other person to lodge answers within a specified period.
- (2) Where the sheriff has pronounced an interlocutor allowing a minute of amendment to be received and answered, he may allow a period for adjustment of the minute of amendment and answers and, on so doing, shall fix a date for parties to be heard on the minute of amendment and answers as adjusted.
- [^{F100}(3) Any adjustment to any minute of amendment or answers shall be exchanged between parties and not lodged in process.
- ^{F100}(4) Parties shall be responsible for maintaining a record of adjustment made and the date of their intimation.
- ^{F100}(5) No adjustments shall be permitted after the period of adjustment allowed, except with leave of the sheriff.
- ^{F100}(6) Each party shall, no later than 2 days before the hearing fixed in terms of paragraph (2), lodge in process a copy of their minute of amendment or answers with all adjustments made thereto in italic or bold type, or underlined.]

Textual Amendments

F100 Sch. 1 rule 18.3(3)-(6) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(7)

Applications for diligence on amendment

- 18.4. (1) Where a minute of amendment is lodged by a pursuer under rule 18.2(2)(d) (all parties not, or wrong person, called), he may apply by motion for warrant to use any form of diligence which could be used on the dependence of a separate action.
- (2) A copy certified by the sheriff clerk of the interlocutor granting warrant for diligence on the dependence applied for under paragraph (1) shall be sufficient authority for the execution of that diligence.

Service of amended pleadings

- 18.5. (1) Where an amendment under rule [^{F101}18.2(b)(iv), (v) or (vi) (additional or substitute defenders added by amendment) or rule] 18.2(2)(d) (all parties not, or wrong person, called) has been made—

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- (a) the sheriff shall order that a copy of the initial writ or record, as the case may be, as so amended be served by the party who made the amendment on that additional or substitute party with—
 - (i) in a cause in which a time to pay direction under the ^{M13}Debtors (Scotland) Act 1987 may be applied for, a notice in Form O8 specifying the date by which a notice of intention to defend must be lodged in process, a notice in Form O3 and a notice of intention to defend in Form O7; or
 - (ii) in any other cause, a notice in Form O9 specifying the date by which a notice of intention to defend must be lodged in process and a notice of intention to defend in Form O7; and
 - (b) the party who made the amendment shall lodge in process—
 - (i) a copy of the initial writ or record as amended;
 - (ii) a copy of the notice sent in Form O8 or Form O9; and
 - (iii) a certificate of service.
- (2) When paragraph (1) has been complied with, the cause as so amended shall proceed in every respect as if that party had originally been made a party to the cause.
- (3) Where a notice of intention to defend is lodged by virtue of paragraph (1)(a), the sheriff clerk shall fix a date and time for a hearing under rule 9.12 (Options Hearing).

Textual Amendments

F101 Words in rule 18.5(1) inserted (1.11.1996) by S.I. 1996/2445, para. 3(24)

Marginal Citations

M13 1987 c.18.

Expenses and conditions of amendment

- 18.6. The sheriff shall find the party making an amendment liable in the expenses occasioned by the amendment unless it is shown that it is just and equitable that the expenses occasioned by the amendment should be otherwise dealt with, and may attach such other conditions as he thinks fit.

Effect of amendment on diligence

- 18.7. Where an amendment has been allowed, the amendment—
- (a) shall not validate diligence used on the dependence of a cause so as to prejudice the rights of [^{F102}creditors of] the party against whom the diligence has been executed, who are interested in defeating such diligence; and
 - (b) shall preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.

Textual Amendments

F102 Words in rule 18.7(a) substituted (1.11.1996) by S.I. 1996/2445, para. 3(25)

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Preliminary pleas inserted on amendment

- 18.8. (1) Where a party seeks to add a preliminary plea by amendment or answers to an amendment, or by adjustment thereto, a note of the basis for the plea shall be lodged at the same time as the minute, answers or adjustment, as the case may be.
- (2) If a party fails to comply with paragraph (1), that party shall be deemed to be no longer insisting on the preliminary plea and the plea shall be repelled by the sheriff.

CHAPTER 19

COUNTERCLAIMS

Counterclaims

- 19.1. (1) In any action other than a family action within the meaning of rule 33.1(1) or an action of multiplepinding, a defender may counterclaim against a pursuer—
- (a) where the counterclaim might have been made in a separate action in which it would not have been necessary to call as defender any person other than the pursuer; and
 - (b) in respect of any matter—
 - (i) forming part, or arising out of the grounds, of the action by the pursuer;
 - (ii) the decision of which is necessary for the determination of the question in controversy between the parties; or
 - (iii) which, if the pursuer had been a person not otherwise subject to the jurisdiction of the court, might have been the subject-matter of an action against that pursuer in which jurisdiction would have arisen by reconvention.
- (2) A counterclaim shall be made in the defences—
- (a) when the defences are lodged or during the period for adjustment;
 - (b) by amendment at any other stage, with the leave of the sheriff and subject to such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.
- (3) Defences which include a counterclaim shall commence with a crave setting out the counterclaim in such form as, if the counterclaim had been made in a separate action, would have been appropriate in the initial writ in that separate action and shall include—
- (a) answers to the condescendence of the initial writ as required by rule 9.6(2) (form of defences);
 - (b) a statement of facts in numbered paragraphs setting out the facts on which the counterclaim is founded, incorporating by reference, if necessary, any matter contained in the defences; and
 - (c) appropriate pleas-in-law.

Warrants for diligence on counterclaims

- 19.2. (1) A defender who makes a counterclaim may apply for a warrant for arrestment on the dependence which would have been permitted had the warrant been sought in an initial writ in a separate action.

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- (2) An application for a warrant under paragraph (1) shall be made—
- (a) at the time of making the counterclaim, by inserting [^{F103}after] the crave of the counterclaim the words “Warrant for arrestment on the dependence applied for.”; or
 - (b) after the counterclaim has been made [^{F104}by application], for a precept of arrestment.
- (3) An application for a warrant under paragraph (2)(a) may be granted by the sheriff ^{F105} . . . writing on the defences, defences as adjusted or minute of amendment, as the case may be, the words “Warrant granted as craved.” after the warrant sought, and adding his signature and the date below those words.
- (4) A warrant granted under paragraph (3) shall have the same effect as if the warrant had been in an initial writ.

Textual Amendments

F103 Word in rule 19.2(2)(a) substituted (1.11.1996) by S.I. 1996/2445, para. 3(26)

F104 Words in Sch. 1 rule 19.2(2)(b) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(10)(a)

F105 Word in Sch. 1 rule 19.2(3) omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(10)(b)

Form of record where counterclaim lodged

- [^{F106}19.2A. Where, under rule 9.10 (open record), 9.11 (record for Options Hearing), 10.4 (open record), or 10.5 (closed record), a record requires to be lodged in an action in which a counterclaim is included in the defences, the pleadings of the parties shall be set out in the record in the following order:–
- (a) the crave of the initial writ;
 - (b) the condescendence and answers relating to the initial writ;
 - (c) the pleas-in-law of the parties relating to the crave of the initial writ;
 - (d) the crave of the counterclaim;
 - (e) the statement of facts and answers relating to the counterclaim; and
 - (f) the pleas-in-law of the parties relating to the counterclaim.]

Textual Amendments

F106 Rule 19.2A inserted (1.11.1996) by S.I. 1996/2445, para. 3(27)

Effect of abandonment of cause

- 19.3. (1) The right of a pursuer to abandon a cause under rule 23.1 shall not be affected by a counterclaim; and any expenses for which the pursuer is found liable as a condition of, or in consequence of, such abandonment shall not include the expenses of the counterclaim.

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- (2) Notwithstanding abandonment by the pursuer, a defender may insist in his counterclaim; and the proceedings in the counterclaim shall continue in dependence as if the counterclaim were a separate action.

Disposal of counterclaims

- 19.4. The sheriff may—
- (a) deal with a counterclaim as if it had been stated in a separate action;
 - (b) regulate the procedure in relation to the counterclaim as he thinks fit; and
 - (c) grant decree for the counterclaim in whole or in part or for the difference between it and the sum sued for by the pursuer.

CHAPTER 20

THIRD PARTY PROCEDURE

Applications for third party notice

- 20.1. (1) Where, in an action, a defender claims that—
- (a) he has in respect of the subject-matter of the action a right of contribution, relief or indemnity against any person who is not a party to the action, or
 - (b) a person whom the pursuer is not bound to call as a defender should be made a party to the action along with the defender in respect that such person is—
 - (i) solely liable, or jointly or jointly and severally liable with the defender, to the pursuer in respect of the subject-matter of the action, or
 - (ii) liable to the defender in respect of a claim arising from or in connection with the liability, if any, of the defender to the pursuer,
- he may apply by motion for an order for service of a third party notice on that other person in Form O10 for the purpose of convening that other person as a third party to the action.
- (2) Where—
- (a) a pursuer against whom a counterclaim has been made, or
 - (b) a third party convened in the action,
- seeks, in relation to the claim against him, to make against a person who is not a party, a claim mentioned in paragraph (1) as a claim which could be made by a defender against a third party, he shall apply by motion for an order for service of a third party notice in Form O10 in the same manner as a defender under that paragraph; and rules 20.2 to [F107 20.6] shall, with the necessary modifications, apply to such a claim as they apply in relation to such a claim by a defender.

Textual Amendments

F107 Word in rule 20.1(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(28)

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Averments where order for service of third party notice sought

- 20.2. (1) Where a defender intends to apply by motion for an order for service of a third party notice before the closing of the record, he shall, before lodging the motion, set out in his defences, by adjustment to those defences, or in a separate statement of facts annexed to those defences—
- (a) averments setting out the grounds on which he maintains that the proposed third party is liable to him by contribution, relief or indemnity or should be made a party to the action; and
 - (b) appropriate pleas-in-law.
- (2) Where a defender applies by motion for an order for service of a third party notice after the closing of the record, he shall, on lodging the motion, lodge a minute of amendment containing—
- (a) averments setting out the grounds on which he maintains that the proposed third party is liable to him by contribution, relief or indemnity or should be made a party to the action, and
 - (b) appropriate pleas-in-law,
- unless those grounds and pleas-in-law have been set out in the defences in the closed record.
- (3) A motion for an order for service of a third party notice shall be lodged before the commencement of the hearing of the merits of the cause.

Warrants for diligence on third party notice

- 20.3. (1) A defender who applies for an order for service of a third party notice may apply for a warrant for arrestment to found jurisdiction or for arrestment on the dependence which would have been permitted had the warrant been sought in an initial writ in a separate action.
- (2) Averments in support of the application for such a warrant shall be included in the defences or the separate statement of facts referred to in rule 20.2(1).
- (3) An application for a warrant under paragraph (1) shall be made by motion—
- (a) at the time of applying for the third party notice; or
 - (b) if not applied for at that time, at any stage of the cause thereafter.
- (4) A certified copy of the interlocutor granting warrant for diligence applied for under paragraph (2) shall be sufficient authority for execution of the diligence.

Service on third party

- 20.4. (1) A third party notice shall be served on the third party within 14 days after the date of the interlocutor allowing service of that notice.
- (2) Where service of a third party notice has not been made within the period specified in paragraph (1), the order for service of it shall cease to have effect; and no service of the notice may be made unless a further order for service of it has been applied for and granted.

- [^{F108}(3) There shall be served with a third party notice—
- (a) a copy of the pleadings (including any amendments or adjustments); and

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- (b) where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, a copy of that minute.]
- (4) A copy of the third party notice, with a certificate of service attached to it, shall be lodged in process by the defender.

Textual Amendments

F108 Sch. 1 rule 20.4(3) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(5)

Answers to third party notice

- 20.5. (1) An order for service of a third party notice shall specify 28 days, or such other period as the sheriff on cause shown may specify, as the period within which the third party may lodge answers.
- (2) Answers for a third party shall be headed “Answers for [E.F.], Third Party in the action at the instance of [A.B.], Pursuer against [C.D.], Defender” and shall include—
- (a) answers to the averments of the defender against him in the form of numbered paragraphs corresponding to the numbered articles of the condescence in the initial writ and incorporating, if the third party so wishes, answers to the averments of the pursuer; or
 - (b) where a separate statement of facts has been lodged by the defender under rules 20.2(1), answers to the statement of facts in the form of numbered paragraphs corresponding to the numbered paragraphs of the statement of facts; and
 - (c) appropriate pleas-in-law.

Consequences of failure to amend pleadings

[^{F109}20.5A. Where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, no motion for a finding, order or decree against a third party may be enrolled by the defender unless, at or before the date on which he enrolls the motion, he enrolls a motion to amend the pleadings in accordance with that minute.]

Textual Amendments

F109 Sch. 1 rule 20.5A inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(6)

Procedure following answers

- 20.6 (1) Where a third party lodges answer, the sheriff clerk shall fix a date and time under rule 9.2 for a hearing under rule 9.12 (Options Hearing) as if the third party had lodged a notice of intention to defend and the period of notice had expired on the date for lodging answers.

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- (2) At the Options Hearing, or at any time thereafter, the sheriff may grant such decree or other order as he thinks fit.
- (3) A decree or other order against the third party shall have effect and be extractable in the same way as a decree or other order against a defender.

CHAPTER 21

DOCUMENTS FOUNDED ON OR ADOPTED IN PLEADINGS

Lodging documents founded on or adopted

- 21.1. (1) Subject to any other provision in these Rules, any document founded on by a party, or adopted as incorporated, in his pleadings shall, so far as in his possession or within his control, be lodged in process as a production by him—
- (a) when founded on or adopted in an initial writ, at the time of returning the initial writ under rule 9.3;
 - (b) when founded on or adopted in a minute, defences, counterclaim or answers, at the time of lodging that part of process; and
 - (c) when founded on or adopted in an adjustment to any pleadings, at the time when such adjustment is intimated to any other party.
- (2) Paragraph (1) shall be without prejudice to any power of the sheriff to order the production of any document or grant a commission and diligence for recovery of it.

Consequences of failure to lodge documents founded on or adopted

- 21.2. Where a party fails to lodge a document in accordance with rule 21.1(1), he may be found liable in the expenses of any order for production or recovery of it obtained by any other party.

Objection to documents founded on

- 21.3. (1) Where a deed or writing is founded on by a party, any objection to it by any other party may be stated and maintained by exception without its being reduced.
- (2) Where an objection is stated under paragraph (1) and an action of reduction would otherwise have been competent, the sheriff may order the party stating the objection to find caution or give such other security as the sheriff thinks fit.

CHAPTER 22

PRELIMINARY PLEAS

Note of basis of preliminary plea

- 22.1. (1) A party intending to insist on a preliminary plea shall, not later than 3 days before the Options Hearing under rule 9.12 or the Procedural Hearing under rule 10.6—
- (a) lodge in process a note of the basis for the plea; and
 - (b) intimate a copy of it to every other party.

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- [^{F110}(2) Where the Options Hearing is continued under rule 9.12(5) and a preliminary plea is added by adjustment, a party intending to insist on that plea shall, not later than 3 days before the date of the Options Hearing so continued—
- (a) lodge in process a note of the basis for the plea; and
 - (b) intimate a copy of it to every other party.]
- [^{F111}(3) If a party fails to comply with paragraph (1) [^{F112}or (2)], he shall be deemed to be no longer insisting on the preliminary plea; and the plea shall be repelled by the sheriff at the Options Hearing or Procedural Hearing.
- [^{F111}(4) At any proof before answer or debate, parties may [^{F113}on cause shown] raise matters in addition to those set out in the note mentioned in paragraph (1) [^{F112}or (2)].
- [^{F114}(5) Where a note of the basis of a preliminary plea has been lodged under paragraph (1), and the Options Hearing is continued under rule 9.12(5), unless the basis of the plea has changed following further adjustment, it shall not be necessary for a party who is insisting on the plea to lodge a further note before the Options Hearing so continued.]

Textual Amendments

F110 Rule 22.1(2) inserted (1.11.1996) by S.I. 1996/2445, para. 3(29)(b)

F111 Rule 22.1(2)(3) renumbered as rule 22.1(3)(4) (1.11.1996) by S.I. 1996/2445, para. 3(29)(a)

F112 Words in rule 22.1(3)(4) (as renumbered) inserted (1.11.1996) by S.I. 1996/2445, para. 3(29)(c)

F113 Words in Sch. 1 rule 22.1(4) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(8)

F114 Rule 22.1(5) inserted (1.11.1996) by S.I. 1996/2445, para. 3(29)(d)

CHAPTER 23

ABANDONMENT

Abandonment of causes

- 23.1. (1) A pursuer may abandon a cause at any time before decree of absolvitor or dismissal by lodging a minute of abandonment and—
- (a) consenting to decree of absolvitor; or
 - (b) seeking decree of dismissal.
- (2) The sheriff shall not grant decree of dismissal under paragraph (1)(b) unless full judicial expenses have been paid to the defender, and any third party against whom [^{F115}the pursuer] has directed any crave, within 28 days after the date of taxation.
- (3) If the pursuer fails to pay the expenses referred to in paragraph (2) to the party to whom they are due within the period specified in that paragraph, that party shall be entitled to decree of absolvitor with expenses.

Textual Amendments

F115 Words in Sch. 1 rule 23.1(2) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(7)

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Application of abandonment to counterclaims

- 23.2. Rule 23.1 shall, with the necessary modifications, apply to the abandonment by a defender of his counterclaim as it applies to the abandonment of a cause.

CHAPTER 24

WITHDRAWAL OF SOLICITORS

Intimation of withdrawal to court

- 24.1. (1) [^{F116}Subject to paragraph (3),] Where a solicitor withdraws from acting on behalf of a party, he shall intimate his withdrawal by letter to the sheriff clerk and to every other party.
- (2) The sheriff clerk shall [^{F117}forthwith] lodge such letter in process.
- [^{F118}(3) Where a solicitor withdraws from acting on behalf of a party in open court and in the presence of the other parties to the action or their representatives, paragraph (1) shall not apply.]

Textual Amendments

F116 Words in *Sch. 1 rule 24.1(1)* inserted (2.10.2000) by *S.S.I. 2000/239, para. 3(1)(9)(a)*

F117 Word in *Sch. 1 rule 24.1(2)* inserted (2.10.2000) by *S.S.I. 2000/239, para. 3(1)(9)(b)*

F118 *Sch. 1 rule 24.1(3)* inserted (2.10.2000) by *S.S.I. 2000/239, para. 3(1)(9)(c)*

Intimation to party whose solicitor has withdrawn

- 24.2. (1) [^{F119}Subject to paragraph (1A),] The sheriff shall, of his own motion, or on the motion of any other party, pronounce an interlocutor ordaining the party whose solicitor has withdrawn from acting to appear or be represented at a specified diet fixed by the sheriff to state whether or not he intends to proceed, under certification that if he fails to do so the sheriff may grant decree or make such other order or finding as he thinks fit.
- [^{F120}(1A) Where any previously fixed diet is to occur within 14 days from the date when the sheriff first considers the solicitor's withdrawal, the sheriff may either–
- (a) pronounce an interlocutor in accordance with paragraph (1); or
 - (b) consider the matter at the previously fixed diet.]
- (2) The diet fixed in the interlocutor under paragraph (1) shall not be less than 14 days after the date of the interlocutor unless the sheriff otherwise orders.
- (3) The party who has lodged the motion under paragraph (1), or any other party appointed by the sheriff, shall forthwith serve on the party whose solicitor has withdrawn a copy of the interlocutor and a notice in Form G10; and a certificate of service shall be lodged in process.

Textual Amendments

F119 Words in *Sch. 1 rule 24.2(1)* inserted (2.10.2000) by *S.S.I. 2000/239, para. 3(1)(10)(a)*

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F120 Sch. 1 rule 24.2(1A) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(10)(b)

Consequences of failure to intimate intention to proceed

24.3. Where a party on whom a notice and interlocutor has been served under rule 24.2(2) fails to appear or be represented at a diet fixed under rule 24.2(1) and to state his intention as required by that paragraph, the sheriff may grant decree or make such other order or finding as he thinks fit.

CHAPTER 25

WITHDRAWAL OF SOLICITORS

Minutes of sist

25.1 Where a party dies or comes under legal incapacity while a cause is depending, any person claiming to represent that party or his estate may apply by minute to be sisted as a party to the cause.

Minutes of transference

25.2. ^{F121} . . . Where a party dies or comes under legal incapacity while a cause is depending and the provisions of rule 25.1 are not invoked, any other party may apply by minute to have the cause transferred in favour of or against, as the case may be, any person who represents that party or his estate.

^{F122}(2)

Textual Amendments

F121 Rule 25.2: “-(1)” at the beginning of paragraph (1) is omitted (1.11.1996) by S.I. 1996/2445, para. 3(30)(a)

F122 Rule 25.2(2) omitted (1.11.1996) by S.I. 1996/2445, para. 3(30)(b)

CHAPTER 26

TRANSFER AND REMIT OF CAUSES

Transfer to another sheriff court

26.1. (1) The sheriff may, on cause shown, remit any cause to another sheriff court.

(2) Subject to paragraph (4), where a cause in which there are two or more defenders has been brought in the sheriff court of the residence or place of business of one of them, the sheriff may transfer the cause to any other sheriff court which has jurisdiction over any of the defenders.

(3) Subject to paragraph (4), where a plea of no jurisdiction is sustained, the sheriff may transfer the cause to the sheriff court before which it appears to him the cause ought to have been brought.

Status: Point in time view as at 01/02/2005. This version of this part contains provisions that are not valid for this point in time.

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- (4) The sheriff shall not transfer a cause to another sheriff court under paragraph (2) or (3) except—
 - (a) on the motion of a party; and
 - (b) where he considers it expedient to do so having regard to the convenience of the parties and their witnesses.
- (5) On making an order under paragraph (1), (2) or (3), the sheriff—
 - (a) shall state his reasons for doing so in the interlocutor; and
 - (b) may make the order on such conditions as to expenses or otherwise as he thinks fit.
- (6) The court to which a cause is transferred under paragraph (1), (2) or (3) shall accept the cause.
- (7) A transferred cause shall proceed in all respects as if it had been originally brought in the court to which it is transferred.
- (8) An interlocutor transferring a cause may, with leave of the sheriff, be appealed to the sheriff principal but shall not be subject to appeal to the Court of Session.

Remit to Court of Session

- 26.2. (1) The sheriff clerk shall, within four days after the sheriff has pronounced an interlocutor remitting a cause to the Court of Session, transmit the process to the Deputy Principal Clerk of Session.
- (2) The sheriff clerk shall, within the period specified in paragraph (1), send written notice of the remit to each party and certify on the interlocutor sheet that he has done so.
- (3) Failure by a sheriff clerk to comply with paragraph (2) shall not affect the validity of a remit made under paragraph (1).

Remit from Court of Session

- 26.3. On receipt of the process in an action which has been remitted from the Court of Session under section 14 of the ^{M14}Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, the sheriff clerk shall—
 - (a) record the date of receipt on the interlocutor sheet;
 - (b) fix a hearing to determine further procedure on the first suitable court day occurring not earlier than 14 days after the date of receipt of the process; and
 - (c) forthwith send written notice of the date of the hearing fixed under subparagraph (b) to each party.

Marginal Citations

M14 1985 c.73.

Status: Point in time view as at 01/02/2005. This version of this part contains provisions that are not valid for this point in time.

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CHAPTER 27

CAUTION AND SECURITY

Application of this Chapter

- 27.1. This Chapter applies to—
- (a) any cause in which the sheriff has power to order a person to find caution or give other security; and
 - (b) security for expenses ordered to be given by the election court or the sheriff under section 136(2)(i) of the ^{M15}Representation of the People Act 1983 in an election petition.

Marginal Citations

M15 1983 c.2; section 136 was amended by the [Representation of the People Act 1985 \(c.50\)](#), [Schedule 4](#), paragraph 48.

Form of applications

- 27.2. (1) An application for an order for caution or other security, or for variation or recall of such an order, shall be made by motion.
- (2) The grounds on which such an application is made shall be set out in the motion.

Orders

- 27.3. Subject to section 726(2) of the ^{M16}Companies Act 1985 (expenses by certain limited companies), an order to find caution or give other security shall specify the period within which such caution is to be found or such security given.

Marginal Citations

M16 1985 c.6.

Methods of finding caution or giving security

- 27.4. (1) A person ordered—
- (a) to find caution, shall do so by obtaining a bond of caution; or
 - (b) to consign a sum of money into court, shall do so by consignment under the ^{M17}Sheriff Court Consignations (Scotland) Act 1893 in the name of the sheriff clerk.
- (2) The sheriff may approve a method of security other than one mentioned in paragraph (1), including a combination of two or more methods of security.
- (3) Subject to paragraph (4), any document by which an order to find caution or give other security is satisfied shall be lodged in process.

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- (4) Where the sheriff approves a security in the form of a deposit of a sum of money in the joint names of the agents of parties, a copy of the deposit receipt, and not the principal, shall be lodged in process.
- (5) Any document lodged in process, by which an order to find caution or give other security is satisfied, shall not be borrowed from process.

Modifications etc. (not altering text)

C2 Rule 27.4 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Marginal Citations

M17 1893 c.44.

Cautioners and ^{F123}guarantors]

- 27.5. A bond of caution or other security ^{F124} shall be given only by a person who is an “authorised person” within the meaning of section 31 of the Financial Services and Markets Act 2000 ^{F125}].

Textual Amendments

F123 Word in rule 27.5 heading substituted (1.11.1996) by S.I. 1996/2445, para. 3(31)

F124 Words in Sch. 1 rule 27.5 substituted (1.2.2005) by Act of Sederunt (Ordinary Cause Rules) Amendment (Caution and Security) 2005 (S.S.I. 2005/20), art. 2(2)

F125 2000 c. 8.

Modifications etc. (not altering text)

C3 Rule 27.5 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Forms of bonds of caution and other securities

- 27.6. (1) A bond of caution shall oblige the cautioner, his heirs and executors to make payment of the sums for which he has become cautioner to the party to whom he is bound, as validity and in the same manner as the party and his heirs and successors, for whom he is cautioner, are obliged.
- (2) A bond of caution or other security document given ^{F126} by a person shall state whether that person is an “authorised person” within the meaning of section 31 of the Financial Services and Markets Act 2000].

Textual Amendments

F126 Words in Sch. 1 rule 27.6(2) substituted (1.2.2005) by Act of Sederunt (Ordinary Cause Rules) Amendment (Caution and Security) 2005 (S.S.I. 2005/20), art. 2(3)

Modifications etc. (not altering text)

C4 Rule 27.6 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

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Sufficiency of caution or security and objections

- 27.7. (1) The sheriff clerk shall satisfy himself that any bond of caution, or other document lodged in process under rule 27.4(3), is in proper form.
- (2) A party who is dissatisfied with the sufficiency or form of the caution or other security offered in obedience to an order of the court may apply by motion for an order under rule 27.9 (failure to find caution or give security).

Modifications etc. (not altering text)

C5 Rule 27.7 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Insolvency or death of cautioner or guarantor

- 27.8. Where caution has been found by bond of caution or security has been given by guarantee and the cautioner or guarantor, as the case may be—
- (a) becomes apparently insolvent within the meaning assigned by section 7 of the ^{M18}Bankruptcy (Scotland) Act 1985(constitution of apparent insolvency),
 - (b) calls a meeting of his creditors to consider the state of his affairs,
 - (c) dies unrepresented, or
 - (d) is a company and—
 - (i) an administration or winding up order has been made, or a resolution for a voluntary winding up has been passed, with respect to it,
 - (ii) a receiver of all or any part of its undertaking has been appointed, or
 - (iii) a voluntary arrangement (within the meaning assigned by section 1(1) of the ^{M19}Insolvency Act 1986) has been approved under Part I of that Act,
- the party entitled to benefit from the caution or guarantee may apply by motion for a new security or further security to be given.

Modifications etc. (not altering text)

C6 Rule 27.8 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Marginal Citations

M18 1985 c.66.

M19 1986 c.65.

Failure to find caution or give security

- 27.9. Where a party fails to find caution or give other security (in this rule referred to as “the party in default”), any other party may apply by motion—
- (a) where the party in default is a pursuer, for decree of absolver; or
 - (b) where the party in default is a defender or a third party, for decree by default or for such other finding or order as the sheriff thinks fit.

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CHAPTER 28

RECOVERY OF EVIDENCE

Application and interpretation of this Chapter

28.1. (1) This Chapter applies to the recovery of any evidence in a cause depending before the sheriff.

(2) In this Chapter, “the Act of 1972” means the ^{M20}Administration of Justice (Scotland) Act 1972.

Marginal Citations

M20 1972 c.59.

Applications for commission and diligence for recovery of documents or for orders under section 1 of the Act of 1972

28.2. (1) An application by a party for—

- (a) a commission and diligence for the recovery of a document, or
- (b) an order under ^{M21}section 1 of the Act of 1972,

shall be made by motion.

(2) At the time of lodging a motion under paragraph (1), a specification of—

- (a) the document or other property sought to be inspected, photographed, preserved, taken into custody, detained, produced, recovered, sampled or experimented on or with, as the case may be, or
- (b) the matter in respect of which information is sought as to the identity of a person who might be a witness or a defender,

shall be lodged in process.

[^{F127}(3) A copy of the specification lodged under paragraph (2) and the motion made under paragraph (1) shall be intimated by the applicant to—

- (a) every other party;
- (b) in respect of an application under section 1(1) of the ^{M22}Act of 1972, any third party haver; and
- (c) where necessary, the Lord Advocate.]

(4) Where the sheriff grants a motion made under paragraph (1) in whole or in part, he may order the applicant to find such caution or give such other security as he thinks fit.

(5) The Lord Advocate may appear at the hearing of any motion under paragraph (1).

Textual Amendments

F127 Rule 28.2(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(32)

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Marginal Citations

- M21** Section 1 of the Administration of Justice (Scotland) Act 1972 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 19](#) and Schedule 2, paragraph 15.
- M22** 1972 c.59.

Optional procedure before executing commission and diligence

- 28.3. (1) The party who has obtained a commission and diligence for the recovery of a document on an application made under rule 28.2(1)(a), may at any time before executing it against a haver, serve on the haver an order in Form G11 (in this rule referred to as “the order”); and if so, the provisions of this rule shall apply.
- (2) The order [^{F128}and a copy of the specification referred to in rule 28.2(2) as approved by the court] shall be served on the haver or his known solicitor and shall be complied with by the haver in the manner and within the period specified in the order.
- (3) Not later than the day after the date on which the order, [^{F129}the certificate appended to Form G11] and any document is received by the sheriff clerk from a haver, he shall intimate that fact to each party.
- (4) No party, other than the party who served the order, may uplift such a document until after the expiry of 7 days after the date of intimation under paragraph (3).
- (5) Where the party who served the order fails to uplift such a document within 7 days after the date of intimation under paragraph (3), the sheriff clerk shall intimate that failure to every other party.
- (6) Where no party has uplifted such a document within 14 days after the date of intimation under paragraph (5), the sheriff clerk shall return it to the haver who delivered it to him.
- (7) Where a party who has uplifted such a document does not wish to lodge it, he shall return it to the sheriff clerk who shall—
- intimate the return of the document to every other party; and
 - if no other party uplifts the document within 14 days after the date of intimation, return it to the haver.
- (8) If the party who served the order is not satisfied—
- that full compliance has been made with the order, or
 - that adequate reasons for non-compliance have been given,
- he may execute the commission and diligence under rule 28.4.
- (9) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the sheriff may, on the motion of the party who served the order, direct that that party shall be allowed to inspect the book and take copies of any entries falling within the specification.
- (10) Where any question of confidentiality arises in relation to a book directed to be inspected under paragraph (9), the inspection shall be made, and any copies shall be taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence.
- (11) The sheriff may, on cause shown, order the production of any book (not being a banker’s book or book of public record) containing entries falling under a

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specification, notwithstanding the production of a certified extract [^{F130}from that book].

Textual Amendments

F128 Words in rule 28.3(2) inserted (1.11.1996) by S.I. 1996/2445, para. 3(33)(a)

F129 Words in rule 28.3(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(33)(b)

F130 Words in rule 28.3(11) inserted (1.11.1996) by S.I. 1996/2445, para. 3(33)(c)

Execution of commission and diligence for recovery of documents

- 28.4. (1) The party who seeks to execute a commission and diligence for recovery of a document obtained on an application made under rule 28.2(1)(a) shall—
- (a) provide the commissioner with a copy of the specification, a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment; and
 - (b) instruct the clerk and any shorthand writer considered necessary by the commissioner or any party; and
 - (c) be responsible for the fees of the commissioner and his clerk, and of any shorthand writer.
- (2) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission.
- (3) The interlocutor granting such a commission and diligence shall be sufficient authority for citing a haver to appear before the commissioner.
- (4) A citation in Form G13 shall be served on the haver with a copy of the specification and, where necessary for a proper understanding of the specification, a copy of the pleadings (including any adjustments and amendments) [^{F131}]; and the party citing the haver shall lodge a certificate in Form G12].
- (5) The parties and the haver shall be entitled to be represented by a solicitor or person having a right of audience before the sheriff at the execution of the commission.
- (6) At the commission, the commissioner shall—
- (a) administer the oath de fideli administratione to any [^{F132}clerk and any] shorthand writer appointed for the commission; and
 - (b) administer to the haver the oath in Form G14, or, where the haver elects to affirm, the affirmation in Form G15.
- (7) The report of the execution of the commission and diligence, any document recovered and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.
- (8) Not later than the day after the date on which such a report, document and inventory, if any, are received by the sheriff clerk, he shall intimate to the parties that he has received them.
- (9) No party, other than the party who served the order, may uplift such a document until after the expiry of 7 days after the date of intimation under paragraph (8).

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- (10) Where the party who served the order fails to uplift such a document within 7 days after the date of intimation under paragraph (8), the sheriff clerk shall intimate that failure to every other party.
- (11) Where no party has uplifted such a document within 14 days after the date of intimation under paragraph (10), the sheriff clerk shall return it to the haver.
- (12) Where a party who has uplifted such a document does not wish to lodge it, he shall return it to the sheriff clerk who shall—
 - (a) intimate the return of the document to every other party; and
 - (b) if no other party uplifts the document within 14 days of the date of intimation, return it to the haver.

Textual Amendments

F131 Words in [rule 28.4\(4\)](#) inserted (1.11.1996) by [S.I. 1996/2445, para. 3\(34\)\(a\)](#)

F132 Words in [rule 28.4\(6\)\(a\)](#) inserted (1.11.1996) by [S.I. 1996/2445, para. 3\(34\)\(b\)](#)

Execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972

- 28.5. (1) An order under section 1(1) of the Act of 1972 for the production or recovery of a document or other property shall grant a commission and diligence for the production or recovery of that document or other property.
- (2) Rules 28.3 (optional procedure before executing commission and diligence) and 28.4 (execution of commission and diligence for recovery of documents) shall apply to an order to which paragraph (1) applies as they apply to a commission and diligence for the recovery of a document.

Execution of orders for inspection etc. of documents or other property under section 1(1) of the Act of 1972

- 28.6. (1) An order under section 1(1) of the Act of 1972 for the inspection or photographing of a document or other property, the taking of samples or the carrying out of any experiment thereon or therewith, shall authorise and appoint a specified person to photograph, inspect, take samples of, or carry out any experiment on or with any such document or other property, as the case may be, subject to such conditions, if any, as the sheriff thinks fit.
- (2) A certified copy of the interlocutor granting such an order shall be sufficient authority for the person specified to execute the order.
- (3) When such an order is executed, the party who obtained the order shall serve on the haver a copy of the interlocutor granting it, a copy of the specification and, where necessary for a proper understanding of the specification, a copy of the pleadings (including any adjustments and amendments).

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Execution of orders for preservation etc. of documents or other property under section 1(1) of the Act of 1972

- 28.7. (1) An order under section 1(1) of the Act of 1972 for the preservation, custody and detention of a document or other property ^{F133} . . . shall grant a commission and diligence for the detention and custody of that document or other property.
- (2) The party who has obtained an order under paragraph (1) shall—
- (a) provide the commissioner with a copy of the specification, a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
 - (b) be responsible for the fees of the commissioner and his clerk; and
 - (c) serve a copy of the order on the haver.
- (3) The report of the execution of the commission and diligence, any document or other property taken by the commissioner and an inventory of such property, shall be sent by the commissioner to the sheriff clerk for the further order of the sheriff.

Textual Amendments

F133 Words in [rule 28.7\(1\)](#) omitted (1.11.1996) by [S.I. 1996/2445, para. 3\(35\)](#)

Confidentiality

- 28.8. (1) Where confidentiality is claimed for any evidence sought to be recovered under any of the following rules, such evidence shall [^{F134}, where practicable,] be enclosed in a sealed packet:—
- (28) (optional procedure before executing commission and diligence),
 - (28) (execution of commission and diligence for recovery of documents),
 - (28) (execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972),
 - (28) (execution of orders for preservation etc. of documents or other property under section 1(1) of the Act of 1972).
- (2) A motion to have such a sealed packet opened up [^{F135} or such recovery allowed] may be lodged by—
- (a) the party who obtained the commission and diligence; or
 - (b) any other party after the date of intimation by the sheriff clerk under rule 28.3(5) or 28.4(10) (intimation of failure to uplift documents).
- (3) In addition to complying with rule 15.2 (intimation of motions), the party lodging such a motion shall intimate the terms of the motion to the haver by post by the first class recorded delivery service.
- (4) The person claiming confidentiality may oppose a motion made under paragraph (2).

Textual Amendments

F134 Words in [rule 28.8\(1\)](#) inserted (1.11.1996) by [S.I. 1996/2445, para. 3\(36\)\(a\)](#)

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F135 Words in rule 28.8(2) inserted (1.11.1996) by S.I. 1996/2445, para. 3(36)(b)

Warrants for production of original documents from public records

- 28.9. (1) Where a party seeks to obtain from the keeper of any public record production of the original of any register or deed in his custody for the purposes of a cause, he shall apply to the sheriff by motion.
- (2) Intimation of a motion under paragraph (1) shall be given to the keeper of the public record concerned at least 7 days before the motion is lodged.
- (3) In relation to a public record kept by the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland, where it appears to the sheriff that it is necessary for the ends of justice that a motion under this rule should be granted, he shall pronounce an interlocutor containing a certificate to that effect; and the party applying for production may apply by letter (enclosing a copy of the interlocutor duly certified by the sheriff clerk), addressed to the Deputy Principal Clerk of Session, for an order from the Court of Session authorising the Keeper of the Registers or the Keeper of the Records, as the case may be, to exhibit the original of any register or deed to the sheriff.
- (4) The Deputy Principal Clerk of Session shall submit the application sent to him under paragraph (3) to the Lord Ordinary in chambers who, if satisfied, shall grant a warrant for production or exhibition of the original register or deed sought.
- (5) A certified copy of the warrant granted under paragraph (4) shall be served on the keeper of the public record concerned.
- (6) The expense of the production or exhibition of such an original register or deed shall be met, in the first instance, by the party who applied by motion under paragraph (1).

Commissions for examination of witnesses

- 28.10. (1) This rule applies to a commission—
- (a) to take the evidence of a witness who—
- (i) is resident beyond the jurisdiction of the court;
- (ii) although resident within the jurisdiction of the court, resides at some place remote from that court; or
- (iii) by reason of age, infirmity or sickness, is unable to attend the diet of proof; ^{F136} . . .
- (b) in respect of the evidence of a witness which is in danger of being lost, to take the evidence to lie in retentis ^{F137}; or
- ^{F138}(c) on special cause shown, to take evidence of a witness on a ground other than one mentioned in sub-paragraph (a) or (b)]
- (2) An application by a party for a commission to examine a witness shall be made by motion; and that party shall specify in the motion the name and address of at least one proposed commissioner for approval and appointment by the sheriff.
- (3) The interlocutor granting such a commission shall be sufficient authority for citing the witness to appear before the commissioner.
- (4) At the commission, the commissioner shall—

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- (a) administer the oath de fideli administratione to any [^{F139}clerk and any] shorthand writer appointed for the commission; and
 - (b) administer to the witness the oath in Form G14, or where the witness elects to affirm, the affirmation in Form G15.
- (5) Where a commission is granted for the examination of a witness, the commission shall proceed without interrogatories unless, on cause shown, the sheriff otherwise directs.

Textual Amendments

F136 Word in rule 28.10(1)(a)(iii) omitted (1.11.1996) by S.I. 1996/2445, para. 3(37)(a)(i)

F137 Rule 28.10(1)(b): “;or” substituted for the full-stop (1.11.1996) by S.I. 1996/2445, para. 3(37)(a)(ii)

F138 Rule 28.10(1)(c) inserted (1.11.1996) by S.I. 1996/2445, para. 3(37)(a)(iii)

F139 Words in rule 28.10(4)(a) inserted (1.11.1996) by S.I. 1996/2445, para. 3(37)(b)

Commissions on interrogatories

- 28.11. (1) Where interrogatories have not been dispensed with, the party who obtained the commission to examine a witness under rule 28.10 shall lodge draft interrogatories in process.
- (2) Any other party may lodge cross-interrogatories.
 - (3) The interrogatories and any cross-interrogatories, when adjusted, shall be extended and returned to the sheriff clerk for approval and the settlement of any dispute as to their contents by the sheriff.
 - (4) The party who has obtained the commission shall—
 - (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments), the approved interrogatories and any cross-interrogatories and a certified copy of the interlocutor of his appointment;
 - (b) instruct the clerk; and
 - (c) be responsible, in the first instance, for the fee of the commissioner and his clerk.
 - (5) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission to examine the witness.
 - (6) The executed interrogatories, any document produced by the witness and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.
 - (7) Not later than the day after the date on which the executed interrogatories, any document and an inventory of that document, are received by the sheriff clerk, he shall intimate to each party that he has received them.
 - (8) The party who obtained the commission to examine the witness shall lodge in process—
 - (a) the report of the commission; and
 - (b) the executed interrogatories and any cross-interrogatories.

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Commissions without interrogatories

- 28.12. (1) Where interrogatories have been dispensed with, the party who has obtained a commission to examine a witness under rule 28.10 shall—
- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
 - (b) fix a diet for the execution of the commission in consultation with the commissioner and every other party;
 - (c) instruct the clerk and any shorthand writer; and
 - (d) be responsible for the fees of the commissioner, his clerk and any shorthand writer.
- (2) All parties shall be entitled to be present and represented at the execution of the commission.
- (3) The report of the execution of the commission, any document produced by the witness and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.
- (4) Not later than the day after the date on which such a report, any document and an inventory of that document are received by the sheriff clerk, he shall intimate to each party that he has received them.
- (5) The party who obtained the commission to examine the witness shall lodge the report in process.

Evidence taken on commission

- 28.13. (1) Subject to the following paragraphs of this rule and to all questions of relevancy and admissibility, evidence taken on commission under rule 28.11 or 28.12 may be used as evidence at any proof of the cause.
- (2) Any party may object to the use of such evidence at a proof; and the objection shall be determined by the sheriff.
 - (3) Such evidence shall not be used at a proof if the witness becomes available to attend the diet of proof.
 - (4) A party may use such evidence in accordance with the preceding paragraphs of this rule notwithstanding that it was obtained at the instance of another party.

Letters of request

- 28.14. (1) [^{F140}Subject to paragraph (7), this] rule applies to an application for a letter of request to a court or tribunal outside Scotland to obtain evidence of the kind specified in paragraph (2), being evidence obtainable within the jurisdiction of that court or tribunal, for the purposes of a cause depending before the sheriff.
- (2) An application to which paragraph (1) applies may be made in relation to a request—
- (a) for the examination of a witness [^{F141}],
 - (b) for the inspection, photographing, preservation, custody, detention, production or recovery of, or the taking of samples of, or the carrying out of any experiment on or with, a document or other property, as the case may be [^{F142}],

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- [^{F143}(c) for the medical examination of any person,
 (d) for the taking and testing of samples of blood from any person, or
 (e) for any other order for obtaining evidence,
 for which an order could be obtained from the sheriff.]
- (3) Such an application shall be made by minute in Form G16 together with a proposed letter of request in Form G17.
- (4) It shall be a condition of granting a letter of request that any solicitor for the applicant [^{F144}, or a party litigant, as the case may be, shall be personally liable, in the first instance,] for the whole expenses which may become due and payable in respect of the letter of request to the court or tribunal obtaining the evidence and to any witness who may be examined for the purpose; and he shall consign into court such sum in respect of such expenses as the sheriff thinks fit.
- (5) Unless the court or tribunal to which a letter of request is addressed is a court or tribunal in a country or territory—
 (a) where English is an official language, or
 (b) in relation to which the sheriff clerk certifies that no translation is required,
 then the applicant shall, before the issue of the letter of request, lodge in process a translation of that letter and any interrogatories and cross-interrogatories into the official language of that court or tribunal.
- (6) The letter of request when issued, any interrogatories and cross-interrogatories adjusted as required by rule 28.11 and the translations (if any), shall be forwarded by the sheriff clerk to the Foreign and Commonwealth Office or to such person and in such manner as the sheriff may direct.
- [^{F145}(7) This rule does not apply to any request for the taking of evidence under Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.]

Textual Amendments

- F140** Words in Sch. 1 rule 28.14(1) substituted (1.1.2004) by Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), art. 4(2)(a)
- F141** Rule 28.14(2)(a): a comma is substituted for the semi-colon at the end (1.11.1996) by S.I. 1996/2445, para. 3(38)(a)(i)
- F142** Rule 28.14(2)(b): a comma is substituted for the full-stop at the end (1.11.1996) by S.I. 1996/2445, para. 3(38)(a)(ii)
- F143** Rule 28.14(2)(c)-(e) inserted (1.11.1996) by S.I. 1996/2445, para. 3(38)(a)(iii)
- F144** Words in rule 28.14(4) inserted (1.11.1996) by S.I. 1996/2445, para. 3(38)(b)
- F145** Sch. 1 rule 28.14(7) inserted (1.1.2004) by Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), art. 4(2)(b)

Taking of evidence in the European Community

- [^{F146}28(1A) This rule applies to any request—
 (a) for the competent court of another Member State to take evidence under Article 1.1(a) of the Council Regulation; or
 (b) that the court shall take evidence directly in another Member State under Article 1.1(b) of the Council Regulation.

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- (2) An application for a request under paragraph (1) shall be made by minute in Form G16, together with the proposed request in form A or I (as the case may be) in the Annex to the Council Regulation.
- (3) In this rule, “the Council Regulation” means Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.]

Textual Amendments

F146 Sch. 1 rule 28.14A inserted (1.1.2004) by Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), rule 4(3)

Citation of witnesses and havers

- 28.15. The following rules shall apply to the citation of a witness or haver to a commission under this Chapter as they apply to the citation of a witness for a proof:—
- rule 29.7 (citation of witnesses), except paragraph (4),
 - rule 29.9 (second diligence against a witness),
 - rule 29.10 (failure of witness to attend).

VALID FROM 18/08/2006

[^{F147}CHAPTER 28A

PRE-PROOF HEARING

Textual Amendments

F147 Sch. 1 Chapter 28A inserted (18.8.2006) by Act of Sederunt (Ordinary Cause and Summary Application Rules) Amendment (Miscellaneous) 2006 (S.S.I. 2006/410), art. 2(6)

Pre-proof hearing

- 28A.1.(1) On the appointment of a cause to a proof or proof before answer or thereafter on the motion of any party or of his own motion, the sheriff may appoint the cause to a pre-proof hearing.
- (2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.
 - (3) At a pre-proof hearing the sheriff shall ascertain, so far as is reasonably practicable, whether the cause is likely to proceed to proof on the date fixed for that purpose and, in particular—
 - (a) the state of preparation of the parties; and
 - (b) the extent to which the parties have complied with their duties under rules 9A.2, 9A.3, 29.11 and 29.15 and any orders made by the sheriff under rules 9.12(3)(a) or (b) or 10.6(3)(a) or (b).

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- (4) At a pre-proof hearing the sheriff may—
- (a) discharge the proof or proof before answer and fix a new date for such proof or proof before answer;
 - (b) adjourn the pre-proof hearing; or
 - (c) make such other order as he thinks fit to secure the expeditious progress of the cause.
- (5) For the purposes of rules 16.2 (decrees where party in default), 33.37 (decree by default in family action) and 33A.37 (decree by default in civil partnership action), a pre-proof hearing shall be a diet in accordance with those rules.]

CHAPTER 29

PROOF

Reference to oath

- 29.1. (1) Where a party intends to refer any matter to the oath of his opponent he shall lodge a motion to that effect.
- (2) If a party fails to appear at the diet for taking his deposition on the reference to his oath, the sheriff may hold him as confessed and grant decree accordingly.

Remit to person of skill

- 29.2. (1) The sheriff may, on a motion by any party or on a joint motion, remit to any person of skill, or other person, to report on any matter of fact.
- (2) Where a remit under paragraph (1) is made by joint motion or of consent of all parties, the report of such person shall be final and conclusive with respect to the subject-matter of the remit.
- (3) Where a remit under paragraph (1) is made—
- (a) on the motion of one of the parties, the expenses of the remit shall, in the first instance, be met by that party; and
 - (b) on a joint motion or of consent of all parties, the expenses shall, in the first instance, be met by the parties equally, unless the sheriff otherwise orders.

Written statements

- [^{F148}29.3. Where a statement in a document is admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988 ^{F149}, any party who wishes to have that statement received in evidence shall—
- (a) docket that document as follows:— (*Place and date*) This document contains a statement admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988. (*Signed*) (*Designation and address*);
 - (b) lodge that document in process; and
 - (c) provide all other parties with a copy of that document.]

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Textual Amendments

- F148** Sch. 1 rule 29.3 inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(11)
- F149** 1988 c. 32.

Renouncing probation

- 29.4. (1) Where, on or at any time after, the closing of the record, the parties seek to renounce probation, they shall lodge in process a joint minute to that effect with or without a statement of admitted facts and any productions.
- (2) On the lodging of a joint minute under paragraph (1), the sheriff may order a debate.

Orders for proof

- 29.5 Where proof is necessary in any cause, the sheriff shall fix a date for taking the proof and may limit the mode of proof.

Hearing parts of proof separately

- 29.6. (1) [^{F150}In any cause], the sheriff may—
- (a) of his own motion, or
 - (b) on the motion of any party,
- order that proof on liability or any specified issue be heard separately from proof on the question of the amount for which decree may be pronounced and determine the order in which the proofs shall be heard.
- (2) The sheriff shall pronounce such interlocutor as he thinks fit at the conclusion of the first proof of any cause ordered to be heard in separate parts under paragraph (1).

Textual Amendments

- F150** Words in rule 29.6(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(39)

Citation of witnesses

- 29.7. (1) A witness shall be cited for a proof—
- (a) by registered post or the first class recorded delivery service by the solicitor for the party on whose behalf he is cited; or
 - (b) by a sheriff officer—
 - (i) personally;
 - (ii) by a citation being left with a resident at the person's dwelling place or an employee at his place of business;
 - (iii) by depositing it in that person's dwelling place or place of business;
 - (iv) by affixing it to the door of that person's dwelling place or place of business; or
 - (v) by registered post or the first class recorded delivery service.

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- (2) Where service is executed under paragraph (1)(b)(iii) or (iv), the sheriff officer shall, as soon as possible after such service, send, by ordinary post to the address at which he thinks it most likely that the person may be found, a letter containing a copy of the citation.
- (3) A certified copy of the interlocutor allowing a proof shall be sufficient warrant to a sheriff officer to cite a witness on behalf of a party.
- (4) A witness shall be cited on a period of notice of 7 days in Form G13 and the party citing the witness shall lodge a certificate of citation in Form G12.
- (5) A solicitor who cites a witness shall be personally liable for his fees and expenses.
- (6) In the event of a solicitor intimating to a witness that his citation is cancelled, the solicitor shall advise him that the cancellation is not to affect any other citation which he may have received from another party.

Citation of witnesses by party litigants

- 29.8. (1) Where a party to a cause is a party litigant, he shall—
- (a) not later than 4 weeks before the diet of proof, apply to the sheriff by motion to fix caution in such sum as the sheriff considers reasonable having regard to the number of witnesses he proposes to cite and the period for which they may be required to attend court; and
 - (b) before instructing a sheriff officer to cite a witness, find caution for such expenses as can reasonably be anticipated to be incurred by the witness in answering the citation.
- (2) A party litigant who does not intend to cite all the witnesses referred to in his application under paragraph (1)(a), may apply by motion for variation of the amount of caution.

Second diligence against a witness

- 29.9. (1) The sheriff may, on the motion of a party, grant a second diligence to compel the attendance of a witness under pain of arrest and imprisonment until caution can be found for his due attendance.
- (2) The warrant for a second diligence shall be effective without endorsement and the expenses of such a motion and diligence may be decreed for against the witness.

Failure of witness to attend

- 29.10. (1) Where a witness fails to answer a citation after having been duly cited, the sheriff may, on the motion of a party and on production of a certificate of citation, grant warrant for the apprehension of the witness and for bringing him to court; and the expenses of such a motion and apprehension may be decreed for against the witness.
- (2) Where a witness duly cited and after having demanded and been paid his travelling expenses fails to attend a diet, either before the sheriff or before a commissioner, the sheriff may—
- (a) ordain the witness to forfeit and pay a penalty not exceeding £250 unless a reasonable excuse be offered and sustained; and

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- (b) grant decree for that penalty in favour of the party on whose behalf the witness was cited.

Lodging productions

- 29.11. (1) Where a proof has been allowed, all productions [^{F151}and affidavits] which are intended to be used at the proof shall be lodged in process not later than 14 days before the diet of proof.
- (2) A production which is not lodged in accordance with paragraph (1) shall not be used or put in evidence at a proof unless—
- (a) by consent of parties; or
 - (b) with leave of the sheriff on cause shown and on such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.

Textual Amendments

F151 Words in [Sch. 1 rule 29.11\(1\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(12\)](#)

Copy productions

- 29.12. (1) A copy of every [^{F152}documentary] production, marked with the appropriate number of process of the principal production, shall be lodged for the use of the sheriff at a proof not later than 48 hours before the diet of proof.
- (2) Each copy production consisting of more than one sheet shall be securely fastened together by the party lodging it.

Textual Amendments

F152 Word in [Sch. 1 rule 29.12\(1\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(13\)](#)

Returning borrowed parts of process and productions before proof

- 29.13. All parts of process and productions which have been borrowed shall be returned to process before 12.30 pm on the day preceding the diet of proof.

Notices to admit and notices of non-admission

- 29.14. (1) At any time after [^{F153}the record has closed], a party may intimate to any other party a notice or notices calling on him to admit for the purposes of that cause only—
- (a) such facts relating to an issue averred in the pleadings as may be specified in the notice;
 - (b) that a particular document lodged in process and specified in the notice is—
 - (i) an original and properly authenticated document; or
 - (ii) a true copy of an original and properly authenticated document.
- (2) Where a party on whom a notice is intimated under paragraph (1)—
- (a) does not admit a fact specified in the notice, or

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- (b) does not admit, or seeks to challenge, the authenticity of a document specified in the notice,
- he shall, within 21 days after the date of intimation of the notice under paragraph (1), intimate a notice of non-admission to the party intimating the notice to him under paragraph (1) stating that he does not admit the fact or document specified.
- (3) A party who fails to intimate a notice of non-admission under paragraph (2) shall be deemed to have admitted the fact or document specified in the notice intimated to him under paragraph (1); and such fact or document may be used in evidence at a proof if otherwise admissible in evidence, unless the sheriff, on special cause shown, otherwise directs.
- (4) A party who fails to intimate a notice of non-admission under paragraph (2) within 14 days after the notice to admit intimated to him under paragraph (1) shall be liable to the party intimating the notice to admit for the expenses of proving the fact or document specified in that notice unless the sheriff, on special cause shown, otherwise directs.
- (5) The party serving a notice under paragraph (1) or (2) shall lodge a copy of it in process.
- (6) A deemed admission under paragraph (3) shall not be used against the party by whom it was deemed to be made other than in the cause for the purpose for which it was deemed to be made or in favour of any person other than the party by whom the notice was given under paragraph (1).
- [^{F154}(7) The sheriff may, at any time, allow a party to amend or withdraw an admission made by him on such conditions, if any, as he thinks fit.
- ^{F154}(8) A party may, at any time, withdraw in whole or in part a notice of non admission by intimating a notice of withdrawal.]

Textual Amendments

F153 Words in [Sch. 1 rule 29.14\(1\)](#) substituted (2.10.2000) by [S.S.I. 2000/239, para. 3\(1\)\(14\)\(a\)](#)

F154 [Sch. 1 rule 29.14\(7\)\(8\)](#) inserted (2.10.2000) by [S.S.I. 2000/239, para. 3\(1\)\(14\)\(b\)](#)

Instruction of shorthand writer

- 29.15. Where a shorthand writer is to record evidence at a proof, the responsibility for instructing a shorthand writer shall lie with the pursuer.

Administration of oath or affirmation to witnesses

- 29.16. The sheriff shall administer the oath to a witness in Form G14 or, where the witness elects to affirm, the affirmation in Form G15.

Proof to be taken continuously

- 29.17. A proof shall be taken continuously so far as possible; but the sheriff may adjourn the diet from time to time.

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Recording of evidence

29^{F155}(1) Evidence in a cause shall be recorded by —

- (a) a shorthand writer, to whom the oath de fideli administratione in connection with the sheriff court service generally has been administered, or
 - (b) tape recording or other mechanical means approved by the court,unless the parties, by agreement and with the approval of the sheriff, dispense with the recording of evidence.
- (2) Where a shorthand writer is employed to record evidence, he shall, in the first instance, be paid by the parties equally.
- (3) Where evidence is recorded by tape recording or other mechanical means, any fee payable shall, in the first instance, be paid by the parties in equal proportions.
- (4) The solicitors for the parties shall be personally liable for the fees payable under paragraph (2) or (3), and the sheriff may make an order directing payment to be made.
- (5) The record of the evidence at a proof shall include—
 - (a) any objection taken to a question or to the line of evidence;
 - (b) any submission made in relation to such an objection; and
 - (c) the ruling of the court in relation to the objection and submission.
- (6) A transcript of the record of the evidence shall be made only on the direction of the sheriff; and the cost shall, in the first instance, be borne—
 - (a) in an undefended cause, by the solicitor for the pursuer; and
 - (b) in a defended cause, by the ^{F156}solicitors] for the parties in equal proportions.
- (7) The transcript of the record of the evidence provided for the use of the court shall be certified as a faithful record of the evidence by—
 - (a) the shorthand writer who recorded the evidence; or
 - (b) where the evidence was recorded by tape recording or other mechanical means, by the persons who transcribed the record.
- (8) The sheriff may make such alterations to the transcript of the record of the evidence as appear to him to be necessary after hearing the parties; and, where such alterations are made, the sheriff shall authenticate the alterations.
- (9) Where a transcript of the record of the evidence has been made for the use of the sheriff, copies of it may be obtained by any party from the person who transcribed the record on payment of his fee.
- (10) Except with leave of the sheriff, the transcript of the record of the evidence may be borrowed from process only for the purpose of enabling a party to consider whether to appeal against the interlocutor of the sheriff on the proof.
- (11) Where a transcript of the record of the evidence is required for the purpose of an appeal but has not been directed to be transcribed under paragraph (6), the appellants—
 - (a) may request such a transcript from the shorthand writer or as the case may be, the cost of the transcript being borne by the solicitor for the appellant in the first instance; and
 - (b) shall lodge the transcript in process;

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and copies of it may be obtained by any party from the shorthand writer or as the case may be, on payment of his fee.

- (12) Where the recording of evidence has been dispensed with under paragraph (1), the sheriff, if called upon to do so, shall—
- (a) in the case of an objection to—
 - (i) the admissibility of evidence on the ground of confidentiality, or
 - (ii) the production of a document on any ground,
 note the terms in writing of such objections and his decisions on the objection; and
 - (b) in the case of any other objection, record, in the note to his interlocutor disposing of the merits of the cause, the terms of the objection and his decision on the objection.
- (13) This rule shall, with the necessary modifications, apply to the recording of evidence at a commission as it applies to the recording of evidence at a proof.

Textual Amendments

F155 Rule 29.18: “-(1)” inserted after “29.18” (1.11.1996) by S.I. 1996/2445, para. 3(40)(a)

F156 Word in rule 29.18(6)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(40)(b)

Incidental appeal against rulings on confidentiality of evidence and production of documents

- 29.19. (1) Where a party or any other person objects to the admissibility of oral or documentary evidence on the ground of confidentiality or to the production of a document on any ground, he may, if dissatisfied with the ruling of the sheriff on the objection, express immediately his formal dissatisfaction with the ruling and, with leave of the sheriff, appeal to the sheriff principal.
- (2) The sheriff principal shall dispose of an appeal under paragraph (1) with the least possible delay.
 - (3) Except as provided in paragraph (1), no appeal may be made during a proof against any decision of the sheriff as to the admissibility of evidence or the production of documents.
 - (4) The appeal referred to in paragraph (1) shall not remove the cause from the sheriff who may proceed with the cause in relation to any issue which is not dependent on the ruling appealed against.

Parties to be heard at close of proof

- 29.20. At the close of the proof, or at an adjourned diet if for any reason the sheriff has postponed the hearing, the sheriff shall hear parties on the evidence and thereafter shall pronounce judgment with the least possible delay.

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CHAPTER 30

DECREES, EXTRACTS AND EXECUTION

Interpretation of this Chapter

- 30.1. In this Chapter, “decree” includes any judgment, deliverance, interlocutor, act, order, finding or authority which may be extracted.

Taxes on money under control of the court

- 30.2. (1) Subject to paragraph (2), in a cause in which money has been consigned into court under the ^{M23}Sheriff Court Consignations (Scotland) Act 1893, no decree, warrant or order for payment to any person shall be granted until there has been lodged with the sheriff clerk a certificate by an authorised officer of the Inland Revenue stating that all taxes or duties payable to the Commissioners of Inland Revenue have been paid or satisfied.
- (2) In an action of multiplepointing, it shall not be necessary for the grant of a decree, warrant or order for payment under paragraph (1) that all of the taxes or duties payable on the estate of a deceased claimant have been paid or satisfied.

Marginal Citations

M23 1893 c.44.

Decrees for payment in foreign currency

- 30.3. (1) Where decree has been granted for payment of a sum of money in a foreign currency or the sterling equivalent, a party requesting extract of the decree shall do so by minute endorsed on or annexed to the initial writ stating the rate of exchange prevailing on the date of the decree sought to be extracted or the date, or within 3 days before the date, on which the extract is ordered, and the sterling equivalent at that rate for the principal sum and interest decerned for.
- (2) A certificate in Form G18, from the Bank of England or a bank which is an institution authorised under the ^{M24}Banking Act 1987 certifying the rate of exchange and the sterling equivalent shall be lodged with the minute requesting extract of the decree.
- (3) The extract decree issued by the sheriff clerk shall mention any certificate referred to in paragraph (2).

Marginal Citations

M24 1987 c.22.

When decrees extractable

- 30.4. (1) Subject to the following paragraphs:—
- (a) [^{F157}subject to sub-paragraph (c),] a decree in absence may be extracted after the expiry of 14 days from the date of decree;

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- (b) [^{F157}subject to sub-paragraph (c),] any decree pronounced in a defended cause may be extracted at any time after whichever is the later of the following:—
 - (i) the expiry of the period within which an application for leave to appeal may be made and no such application has been made;
 - (ii) the date on which leave to appeal has been refused and there is no right of appeal from such refusal;
 - (iii) the expiry of the period within which an appeal may be marked and no appeal has been marked; or
 - (iv) the date on which an appeal has been finally disposed of; and
 - (c) where the sheriff has, in pronouncing decree, reserved any question of expenses, extract of that decree may be issued only after the expiry of 14 days from the date of the interlocutor disposing of the question of expenses unless the sheriff otherwise directs.
- (2) The sheriff may, on cause shown, grant a motion to allow extract to be applied for and issued earlier than a date referred to in paragraph (1).
- (3) In relation to a decree referred to in paragraph (1)(b) or (c), paragraph (2) shall not apply unless—
- (a) the motion under that paragraph is made in the presence of parties; or
 - (b) the sheriff is satisfied that proper intimation of the motion has been made in writing to every party not present at the hearing of the motion.
- (4) Nothing in this rule shall affect the power of the sheriff to supersede extract.

Textual Amendments

F157 Words in [rule 30.4\(1\)\(a\)\(b\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(41\)\(a\)\(b\)](#)

Extract of certain awards notwithstanding appeal

- 30.5. The sheriff clerk may issue an extract of an award of custody, access or aliment notwithstanding that an appeal had been made against an interlocutor containing such an award unless an order under rule 31.5 (appeals in connection with custody, access or aliment) has been made excusing obedience to or implement of that interlocutor.

Form of extract decree

- 30.6. (1) The extract of a decree mentioned in Appendix 2 shall be in the appropriate form for that decree in Appendix 2.
- (2) In the case of a decree not mentioned in Appendix 2, the extract of the decree shall be modelled on a form in that Appendix with such variation as circumstances may require.

Form of warrant for execution

- [^{F158}30].7. An extract of a decree on which execution may proceed shall include a warrant for execution in the following terms:— “This extract is warrant for all lawful execution hereon.”.

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Textual Amendments

F158 Rule 3.7 renumbered as rule 30.7 (1.11.1996) by S.I. 1996/2445, para. 3(42)

Date of decree in extract

- 30.8. (1) Where the sheriff principal has adhered to the decision of the sheriff following an appeal, the date to be inserted in the extract decree as the date of decree shall be the date of the decision of the sheriff principal.
- (2) Where a decree has more than one date it shall not be necessary to specify in an extract what was done on each date.

Service of charge where address of defender not known

- 30.9. (1) Where the address of a defender is not known to the pursuer, a charge shall be deemed to have been served on the defender if it is—
- (a) served on the sheriff clerk of the sheriff court district where the defender's last known address is located; and
 - (b) displayed by the sheriff clerk on the walls of court for the period of the charge.
- (2) On receipt of such a charge, the sheriff clerk shall display it on the walls of court and it shall remain displayed for the period of the charge.
- (3) The period specified in the charge shall run from the first date on which it was displayed on the walls of court.
- (4) On the expiry of the period of charge, the sheriff clerk shall endorse a certificate on the charge certifying that it has been displayed in accordance with this rule and shall thereafter return it to the sheriff officer by whom service was executed.

CHAPTER 31

APPEALS

Time limit for appeal

- 31.1. Subject to the provisions of any other enactment, an interlocutor which may be appealed against may be appealed within 14 days after the date of the interlocutor unless it has been extracted following a motion under rule 30.4(2) (early extract).

Applications for leave to appeal

- 31.2. (1) Where leave to appeal is required, applications for leave to appeal against an interlocutor of a sheriff shall be made within 7 days after the date of the interlocutor against which it is sought to appeal unless the interlocutor has been extracted following a motion under rule 30.4(2) (early extract).
- (2) Subject to the provisions of any other enactment, where leave to appeal has been granted, an appeal shall be made within 7 days after the date on which leave was granted.

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- (3) An application for leave to appeal from a decision in relation to a time to pay direction made under section 1 of the ^{M25}Debtors (Scotland) Act 1987 or the recall or restriction of an arrestment made under section 3(4) of that Act shall specify the question of law on which the appeal is made.

Marginal Citations

M25 1987 c.18.

Form of appeal to Court of Session

- [^{F159}31(3)] An appeal to the Court of Session shall be marked by writing a note of appeal–
- (a) on the interlocutor sheet or other written record containing the interlocutor appealed against, or
 - (b) where the decision appealed against is not available or the proceedings appealed against are recorded in an official book, on a separate sheet lodged with the sheriff clerk,
- in the following terms:– “The pursuer [*or defender or as the case may be*] appeals to the Court of Session.”.
- (2) A note of appeal under paragraph (1) shall–
- (a) be signed by the appellant or his solicitor;
 - (b) bear the date on which it is signed; and
 - (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal.]

Textual Amendments

F159 Rule 31.3 substituted (1.11.1996) by S.I. 1996/2445, para. 3(43)(c)

Form of appeal to the sheriff principal

- [^{F160}31(4)] An appeal to the sheriff principal shall be marked by lodging a note of appeal in Form A1.
- (2) A note of appeal under paragraph (1) shall–
- (a) be signed by the appellant or his solicitor;
 - (b) bear the date on which it is signed;
 - (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal; and
 - (d) where a note has not been provided by the sheriff, request that the sheriff write a note setting out the reasons for his decision.
- (3) The grounds of appeal in a note of appeal shall consist of brief specific numbered propositions stating the grounds on which it is proposed to submit that the appeal should be allowed or as the case may be.
- (4) On marking or lodging a note of appeal, the appellant shall send a copy of the note of appeal to every other party.

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- (5) An appellant—
 - (a) may amend the grounds of appeal at any time up to 14 days before the date assigned for the hearing of the appeal; and
 - (b) shall at the same time send or deliver a copy of such amendment to every other party.
- (6) Where any party wishes to cross-appeal, he shall—
 - (a) lodge a note of the grounds of appeal in accordance with paragraph (1) not less than 7 days before the date assigned for the hearing of the appeal; and
 - (b) at the same time send a copy of the note to every other party.
- (7) The sheriff principal may, on cause shown, shorten or dispense with the time limits mentioned in paragraphs (5) and (6).
- (8) On a note of appeal being lodged, the sheriff clerk shall note on the interlocutor sheet that an appeal has been marked and the date of the appeal.]

Textual Amendments

F160 Rule 31.4 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Transmission of process and notice to parties

- [^{F161}31(3)] Where an appeal is marked in terms of rule 31.3 (appeal to Court of Session) or 31.4 (appeal to sheriff principal), the sheriff clerk shall transmit the process of the cause—
- (a) in an appeal to the sheriff principal, to him; or
 - (b) in an appeal to the Court of Session, to the Deputy Principal Clerk of Session, within the period specified in rule 40.6 of the ^{M26}Rules of the Court of Session 1994.
- (2) On transmitting the process in terms of paragraph (1), the sheriff clerk shall—
 - (a) send written notice of the appeal to every party; and
 - (b) certify on the interlocutor sheet that he has done so.
 - (3) Failure of the sheriff clerk to comply with paragraph (2) shall not invalidate the appeal.]

Textual Amendments

F161 Rule 31.5 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Marginal Citations

M26 S.I. 1994/1443.

Record of pleadings etc.

- [^{F162}31.6. In an appeal to him, the sheriff principal may order the appellant to lodge a record of the pleadings containing all adjustments made in the cause with—
- (a) a copy of all relevant interlocutors;

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- (b) any other document lodged in process by any party or produced by order of the sheriff, whether or not pursuant to a commission and diligence for its recovery; and
- (c) any other document to which reference is intended to be made in the appeal, by any party.]

Textual Amendments

F162 Rule 31.6 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Determination of appeal

- [^{F163}31.7. In an appeal to him, the sheriff principal shall–
- (a) hear parties at an oral hearing; or
 - (b) on the motion of the parties, and if he thinks fit, dispose of the appeal without ordering an oral hearing.]

Textual Amendments

F163 Rule 31.7 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Fixing of Options Hearing or making other order following appeal

- [^{F164}31.8. On determination of an appeal from a decision of the sheriff made before or at an Options Hearing or any continuation of it, the sheriff principal may order the sheriff clerk to fix a new date for a hearing under rule 9.12 (options hearing) or may make such other order as he thinks fit.]

Textual Amendments

F164 Rule 31.8 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Appeals in connection with orders under section 11 of the Children (Scotland) Act 1995 or aliment

- [^{F165}31.9. Where an appeal is marked against an interlocutor making an order under section 11 of the ^{M27}Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.) or in respect of aliment, the marking of that appeal shall not excuse obedience to or implement of that order unless by order of the sheriff, the sheriff principal or the Court of Session, as the case may be.]

Textual Amendments

F165 Rule 31.9 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Marginal Citations

M27 1995 c.36.

Status: Point in time view as at 01/02/2005. This version of this part contains provisions that are not valid for this point in time.

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Interim possession etc. pending appeal

[^{F166}31(1)] Notwithstanding an appeal, the sheriff or sheriff principal from whose decision an appeal has been taken shall have power—

- (a) to regulate all matters relating to interim possession;
- (b) to make any order for the preservation of any property to which the action relates or for its sale if perishable;
- (c) to make provision for the preservation of evidence; or
- (d) to make any interim order which a due regard to the interests of the parties may require.

(2) An order made under paragraph (1) may be reviewed—

- (a) by the sheriff principal, on an appeal to him; or
- (b) the Court of Session, on an appeal to it.

Textual Amendments

F166 Rule 31.6 renumbered as rule 31.10 (1.11.1996) by S.I. 1996/2445, para. 3(43)(b)

Abandonment of appeal

[^{F167}31].11. After an appeal to the sheriff principal has been marked, the appellant shall not be entitled to abandon his appeal unless—

- (a) of consent of all other parties; or
- (b) with leave of the sheriff principal.

Textual Amendments

F167 Rule 31.7 renumbered as rule 31.11 (1.11.1996) by S.I. 1996/2445, para. 3(43)(b)

CHAPTER 32

TAXATION OF EXPENSES

Taxation before decree for expenses

32.1. Expenses allowed in any cause, whether in absence or in foro contentioso, unless modified at a fixed amount, shall be taxed before decree is granted for them.

Order to lodge account of expenses

[^{F168}32.1A. A party found liable in expenses may from 4 months after the date of the interlocutor finding him so liable apply by motion for an order ordaining the party entitled to expenses to lodge an account of those expenses in process.]

Textual Amendments

F168 Sch. 1 rule 32.1A inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(12)

Status: Point in time view as at 01/02/2005. This version of this part contains provisions that are not valid for this point in time.

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Decree for expenses in name of solicitor

- 32.2. The sheriff may allow a decree for expenses to be extracted in the name of the solicitor who conducted the cause.

Procedure for taxation

- 32.3. (1) Where an account of expenses awarded in a cause is lodged for taxation, the account and process shall be transmitted by the sheriff clerk to the auditor of court.
- (2) The auditor of court shall—
- (a) assign a diet of taxation not earlier than 7 days from the date he receives the account from the sheriff clerk; and
 - (b) intimate that diet forthwith to the party who lodged the account.
- (3) The party who lodged the account of expenses shall, on receiving intimation from the auditor of court under paragraph (2)—
- (a) send a copy of the account, and
 - (b) intimate the date, time and place of the diet of taxation, to every other party.
- (4) After the account has been taxed, the auditor of court shall transmit the process with the account and his report to the sheriff clerk.
- (5) Where the auditor of court has reserved consideration of the account at the diet of taxation, he shall intimate his decision to the parties who attended the taxation.
- (6) Where no objections are lodged under rule 32.4 (objections to auditor's report), the sheriff may grant decree for the expenses as taxed.

Objections to auditor's report

- 32.4. (1) A party may lodge a note of objections to an account as taxed only where he attended the diet of taxation.
- (2) Such a note shall be lodged within 7 days after—
- (a) the diet of taxation; or
 - (b) where the auditor of court reserved consideration of the account under paragraph (5) of rule 32.3, the date on which the auditor of court intimates his decision under that paragraph.
- (3) The sheriff shall dispose of the objection in a summary manner, with or without answers.

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VALID FROM 29/01/2007

[^{F169}CHAPTER32A

LIVE LINKS

Textual Amendments

F169 Sch. 1 Chapter 32A inserted (29.1.2007) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007 (S.S.I. 2007/6), **para. 2(13)**

32A.1.(1) On cause shown, a party may apply by motion for authority for the whole or part of—

- (a) the evidence of a witness or the party to be given; or
- (b) a submission to be made,

through a live link.

(2) In paragraph (1)—

“witness” means a person who has been or may be cited to appear before the court as a witness;

“submission” means any oral submission which would otherwise be made to the court by the party or his representative in person including an oral submission in support of a motion; and

“live link” means a live television link or such other arrangement as may be specified in the motion by which the witness, party or representative, as the case may be, is able to be seen and heard in the proceedings or heard in the proceedings and is able to see and hear or hear the proceedings while at a place which is outside the courtroom.]

Status:

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Changes to legislation:

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