

Status: Point in time view as at 01/02/2005.

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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 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 ^{M1}Representation of the People Act 1983 in an election petition.

Marginal Citations

- M1** 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 ^{M2}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.

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Marginal Citations

M2 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 ^{M3}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.
- (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)

C1 Rule 27.4 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Marginal Citations

M3 1893 c.44.

Cautioners and ^{F1}guarantors]

- 27.5. A bond of caution or other security [^{F2} 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 ^{F3}].

Textual Amendments

- F1** Word in rule 27.5 heading substituted (1.11.1996) by S.I. 1996/2445, para. 3(31)
- F2** 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)
- F3** 2000 c. 8.

Modifications etc. (not altering text)

C2 Rule 27.5 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

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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 [^{F4} 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

F4 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)

C3 Rule 27.6 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

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)

C4 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 ^{M4}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 ^{M5}Insolvency Act 1986) has been approved under Part I of that Act,

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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)

C5 Rule 27.8 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Marginal Citations

M4 1985 c.66.

M5 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 absolvitor; 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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