



Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

II.—SUMMONS

13^{F1}

Textual Amendments

F1 Ss. 12, 13 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. 1](#)

14 **Induciæ of summonses and other writs passing the signet shortened.**

All summonses before the Court of Session may proceed on seven days warning or induciæ where the defender is within Scotland, unless in Orkney and Shetland or in any other island of Scotland, and fourteen days where he is in Orkney or Shetland or such other island, or furth of Scotland, in place of the longer induciæ required by the present practice, and such shorter induciæ shall also be competent and sufficient in respect to all other letters passing Her Majesty's signet bearing a citation, charge, publication, or service against persons within or furth of Scotland respectively, and in respect to all edictal charges upon decrees and registered protests: Provided always, that in all cases where any shorter induciæ than the induciæ above mentioned are at present sufficient, such shorter induciæ shall continue to be sufficient after the passing of this Act.

[^{F2}(2) Nothing in this section shall apply to a charge for payment.]

Textual Amendments

F2 [S. 14\(2\)](#) added (S.) by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108, [Sch. 6 para. 6](#), [Sch. 7 paras. 5, 9\(1\)](#)

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, II.—Summons. (See end of Document for details)

Modifications etc. (not altering text)

- C1** Section 14 in so far as it relates to summonses and petitions repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I**

15 As to proving lost summonses or pleading.

Where a summons, petition, or other original writ or pleading is lost or destroyed, a copy thereof proved in the cause to the satisfaction of the Court before whom the cause is depending at the time, and authenticated in such manner as he or they shall require, may be substituted, and shall be held equivalent to the original for the purposes of the action.

Modifications etc. (not altering text)

- C2** [Ss. 15–44](#) repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

16 Certified copy may be used in place of original in service of summonses and writs.

It shall not be necessary that any messenger or sheriff officer serving a summons, petition, appeal, or note of suspension or interdict shall have the original document in his hands at the time of such service, provided that a copy certified as correct by the agent in the cause shall at the time be in the possession of such a messenger or officer, and shall be exhibited to the party on whom the service is made, if required.

Modifications etc. (not altering text)

- C3** [Ss. 15–44](#) repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

17 Lord Advocate’s concurrence not to be necessary in actions of reduction-improbation and ranking and sale.

It shall not be necessary to obtain the concurrence of Her Majesty’s Advocate to any summons of reduction-improbation, or ranking and sale, and such summonses in future shall not bear to be instituted with the concurrence of Her Majesty’s Advocate: Provided that nothing herein contained shall affect the right of Her Majesty’s Advocate to institute any such summons for the interest of Her Majesty.

Modifications etc. (not altering text)

- C4** [Ss. 15–44](#) repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, II.—Summons. (See end of Document for details)

18 Warrant of inhibitions may be inserted in will of summons. Publication of such warrants and letters of inhibition.

It shall be competent to insert in the will of a summons passing the signet a warrant of inhibition, which shall have all the like force and effect as letters of inhibition in the form in use at the passing of this Act; and such warrant shall be, as nearly as may be, in the following form:

“And also that ye lawfully inhibit the said , personally or at his dwelling place, if within Scotland, and if furth thereof, at the office of the Keeper of the Record of Edictal Citations at Edinburgh, from selling, burdening, disposing, alienating, or otherwise affecting his lands or heritages, to the prejudice of the pursuer; and that ye cause register this summons and execution hereof in the general register of inhibitions at Edinburgh, for publication to our lieges”:

When warrant of inhibition is contained in the will of a summons passing the signet, such warrant may be executed either at the same time as the summons is served or at any time thereafter, and it shall not be necessary to publish such warrants, or to intimate letters of inhibition passing the signet, to the lieges in any other way than by registration in the general register of inhibitions; and in registering it shall be sufficient to register the summons, including the warrant of inhibition, and the execution of such warrant, without registering any condescendence or note of pleas in law which may follow the summons, or where letters of inhibition are used, then such letters, with the execution thereof, shall be registered; and from and after registration as aforesaid, the inhibition, whether contained in a summons or by separate letters of inhibition, shall be held to be duly intimated and published to all concerned.

Modifications etc. (not altering text)

C5 Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

19 ^{F3}

Textual Amendments

F3 S. 19 repealed by [Execution of Diligence \(Scotland\) Act 1926 \(c. 16\)](#), s. 7

Modifications etc. (not altering text)

C6 Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

20 Amendment of summonses and pleadings in undefended causes.

In undefended actions any error or defect in any summons or other pleading whereby the action is commenced in the the Court of Session may be amended upon application to the Lord Ordinary or the Court before whom it depends, if the Lord Ordinary or the Court think such amendment should be allowed; and such amendment shall be made in writing either upon the summons or pleading, or in a separate paper, and shall be authenticated by the signature of counsel; and the Lord Ordinary or Court may, if he or they think fit, order the amended summons or other pleading to be served upon the absent defender or defenders, with liberty to him or them to enter appearance

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, II.—Summons. (See end of Document for details)

within such time as shall seem proper: Provided, that the expenses occasioned by such amendment shall not be chargeable against the defender or defenders; and provided also, that such amendment shall not have the effect of validating diligence used on the dependence of the actions so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but shall be operative to the effect of obviating any objections to such diligence when stated by the defender himself, or by any person representing him by a title, or in right of a debt contracted by him, subsequent to the using of such diligence.

Modifications etc. (not altering text)

- C7 Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

21 Party appearing not to state objections to execution of summonses, &c.

No party appearing in any action or proceeding in the Court of Session shall be entitled to state any objection to the regularity of the execution or service as against himself of the summons or other pleading or writ whereby he is convened.

Modifications etc. (not altering text)

- C8 Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

Changes to legislation:

There are currently no known outstanding effects for the Court of Session Act 1868, II.—
Summons.