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STATUTORY INSTRUMENTS

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**1994 No. 1443 (S.69)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of the Court of Session 1994) 1994**

*Made*        -        -        -        -        *31st May 1994*

*Coming into force*        -        -        *5th September 1994*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1), the provisions specified in Schedule 1 to this Act of Sederunt and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994) 1994 and shall come into force on 5th September 1994.

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

**Rules of the Court of Session**

2. The provisions of Schedule 2 to this Act of Sederunt shall have effect for the purpose of providing new rules for the Court of Session.

**Amendments, repeals, revocations and savings**

3.—(1) The enactments mentioned in Schedule 3 to this Act of Sederunt shall have effect subject to the amendments there specified.

(2) The enactments mentioned in Schedule 4 to this Act of Sederunt, being enactments relating to matters in respect of which the rules specified in the fourth column of that Schedule are made, are repealed to the extent specified in the third column of that Schedule.

(3) Subject to paragraphs (5) and (6) below, the Acts of Sederunt mentioned in Schedule 5 to this Act of Sederunt are revoked to the extent specified in the third column of that Schedule.

(4) All Acts of Sederunt to the extent that they relate to practice or procedure in the Court of Session made before 10th November 1964 (being the date on which the Act of Sederunt (Rules of Court, consolidation and amendment) 1965(2) was made) are, in so far as still in force, revoked.

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(1) 1988 c. 36; section 5 was amended by section 2(3) of the Civil Evidence (Scotland) Act 1988 (c. 32), section 3(2) and by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 9.

(2) S.I. 1965/321.

(5) No revocation, by virtue of sub-paragraph (3) above, of an Act of Sederunt relating to fees and outlays of solicitors, witnesses' fees and allowances or shorthand writers' fees shall affect fees or allowances in respect of anything done, or outlays incurred, before the date on which this Act of Sederunt comes into force.

(6) No revocation, by virtue of sub-paragraph (3) above, of an Act of Sederunt relating to interest on decrees or extracts shall affect interest included in or exigible under a decree pronounced or an extract extracted before the coming into force of this Act of Sederunt.

Edinburgh  
31st May 1994

*J.A.D. Hope*  
Lord President, IPD

## SCHEDULE 1

Preamble

## POWERS UNDER AND BY VIRTUE OF WHICH THIS ACT OF SEDERUNT IS MADE

Column 1 Relavant enactment conferring power	Column 2 Relevant amending enactment	Column 3 Relevant provision in Schedule 2
Section 34A of the Judicial Factors Act 1849 (c. 51)	Inserted by section 67 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)	Rules 61.31 and 61.32
Section 40 of the Judicial Factors Act 1849	Amended by paragraph 15 of Schedule 1 to the Age of Legal Capacity (Scotland) Act 1991 (c. 50)	Chapter 61
Section 11B of the Judicial Factors Act 1889 (c. 39)	Inserted by paragraph 4 of Schedule 7 to the Bankruptcy (Scotland) Act 1985 (c. 66)	Rules 61.9 and Part II of Chapter 61
Section 21 of the Judicial Factors Act 1889		Chapter 61
Section 4 of the Court of Session Consignations (Scotland) Act 1895 (c. 19)		Rule 33.12(4)
Section 11 of the Administration of Justice Act 1920 (c. 81)		Part II of Chapter 62
Section 12(b) of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (c. 13)		Part II of Chapter 62
Section 1(1) of the Public Records (Scotland) Act 1937 (c. 43)	Amended by section 1(3) and (7) of the Public Registers and Records (Scotland) Act 1948 (c. 57)	Rule 9.1
Section 1(2) of the Public Records (Scotland) Act 1937		Rule 9.2
Section 58C of the Trade Marks Act 1938 (c. 22)	Inserted by section 300 of the Copyright, Designs and Patents Act 1988 (c. 48)	Rules 55.17
Section 8(4) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (c. 19)	Amended by section 52(5) of the Court of Session Act 1988 (c. 36)	Rules 32.3 and 32.7
Section 7(b) of the Arbitration (International Investment Disputes) Act 1966 (c. 41)		Part III of Chapter 62

*Status: This is the original version (as it was originally made).*

Column 1 Relavant enactment conferring power	Column 2 Relevant amending enactment	Column 3 Relevant provision in Schedule 2
Section 1(3) of the Administration of Justice (Scotland) Act <a href="#">1972 (c. 59)</a>		Chapter 64
Paragraph 5 of Schedule 3 to the Domicile and Matrimonial Proceedings Act <a href="#">1973 (c. 45)</a>		Rule 49.1(3)
Sections 47(6) and 102(1) and (3) of the Children Act <a href="#">1975 (c. 72)</a>	Section 102 was amended by Schedule 4 to the Adoption Act <a href="#">1976 (c. 36)</a>	Rule 49.20
Section 48(1) of the Children Act 1975	Amended by Schedule 2 to the Law Reform (Parent and Child) (Scotland) Act <a href="#">1986 (c. 9)</a>	Rules 49.8(3)(g) and 49.20
Section 11 of the Divorce (Scotland) Act <a href="#">1976 (c. 39)</a>		Rule 49.17
Section 15 of the Presumption of Death (Scotland) Act 1977		Chapter 50
Section 92(4) of the Patents Act <a href="#">1977 (c. 37)</a>		Rule 66.7
Section 59(1) of the Adoption Act <a href="#">1978 (c. 28)</a>		Chapter 67
Section 57(4) of the Solicitors (Scotland) Act <a href="#">1980 (c. 46)</a>	Amended by Schedule 2 to the Solicitors (Scotland) Act <a href="#">1988 (c. 42)</a> and section 37(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990	Rules 68.2(1) and 68.3
Section 4 of the Civil Jurisdiction and Judgments Act <a href="#">1982 (c. 27)</a>	Extended by the Civil Jurisdiction and Judgments (Authentic Instruments and Court Settlements) Order 1993 <a href="#">[S.I. 1993/604]</a>	Rule 62.28
Section 12 of the Civil Jurisdiction and Judgments Act 1982	Extended by the Civil Jurisdiction and Judgments (Authentic Instruments and Court Settlements) Order 1993	Rule 62.40
Section 48 of the Civil Jurisdiction and Judgments Act 1982		Part V of Chapter 62
Section 9(5) of the Merchant Shipping (Liner Conferences) Act <a href="#">1982 (c. 37)</a>		Part VI of Chapter 62



Column 1 Relavant enactment conferring power	Column 2 Relevant amending enactment	Column 3 Relevant provision in Schedule 2
Sections 121(3) and (4) and 185(3) of the Representation of the People Act 1983 (c. 2)		Rules 69.2 and 69.3
Sections 136(2)–(4) and (7) and 185 of the Representation of the People Act 1983	Amended by paragraph 48 of Schedule 4 to the Representation of the People Act 1985 (c. 50)	Rule 69.4
Sections 138(1) and 185 of the Representation of the People Act 1983		Rule 69.8
Sections 139(1) and 185 of the Representation of the People Act 1983		Rule 69.9
Sections 146(1) and 185 of the Representation of the People Act 1983		Rule 69.18
Sections 147(1) and (2) and 185 of the Representation of the People Act 1983		Rule 69.19
Sections 152(3) and 185 of the Representation of the People Act 1983		Rule 69.20
Sections 153(1) and 185 of the Representation of the People Act 1983		Rule 69.25
Section 10 of the Child Abduction and Custody Act 1985 (c. 60)		Parts I and II of Chapter 70
Section 24 of the Child Abduction and Custody Act 1985		Parts I and III of Chapter 70
Section 1A(1)(b) of the Bankruptcy (Scotland) Act 1985 (c. 66)	Inserted by section 1(1) of the Bankruptcy (Scotland) Act 1993 (c. 6)	Rule 72.6(1)
Section 14(4) of the Bankruptcy (Scotland) Act 1985	Amended by paragraph 3 of Schedule 1 to the Bankruptcy (Scotland) Act 1993	Rule 72.6(3)
Section 62(2) of the Bankruptcy (Scotland) Act 1985		Rule 72.5

(3) Section 185 of the Representation of the People Act 1983 contains a definition of “prescribed” relevant to the exercise of powers under sections 121, 136, 138, 139, 146, 147, 152 and 153.

*Status: This is the original version (as it was originally made).*

Column 1 Relavant enactment conferring power	Column 2 Relevant amending enactment	Column 3 Relevant provision in Schedule 2
Paragraph 2 of Schedule 5 to the Bankruptcy (Scotland) Act 1985		Rule 72.6(3) and (4)
Section 27 of the Family Law Act 1986 (c. 55)		Rule 71.3
Section 28 of the Family Law Act 1986		Rule 71.6
Section 90(4) of the Debtors (Scotland) Act 1987 (c. 18)		Rule 16.15(1)(i)
Section 102 of the Debtors (Scotland) Act 1987		Part II of Chapter 16
Section 8(4) of the Criminal Justice (Scotland) Act 1987 (c. 41)		Rule 76.4(2)
Section 22 of the Criminal Justice (Scotland) Act 1987		Rules 76.10 to 76.14
Section 28(1) of the Criminal Justice (Scotland) Act 1987		Part VII of Chapter 62
Section 46 of the Criminal Justice (Scotland) Act 1987		Rules 76.3(2) and 76.7(2)
Section 7(e) of the Multilateral Investment Guarantee Agency Act 1988 (c. 8)		Part VIII of Chapter 62
Section 91(1) and (2) of the Criminal Justice Act 1988 (c. 33)		Part VII of Chapter 62
Section 6(i) of the Court of Session Act 1988		Chapter 3
Section 6(ii) of the Court of Session Act 1988		Rules 14.2 and 14.3
Section 6(iii) of the Court of Session Act 1988		Rules 46.2, 46.3 and 46.5
Section 6(iv) of the Court of Session Act 1988		Rules 46.2 and 46.4
Section 6(v) of the Court of Session Act 1988		Chapter 25
Section 6(vi) of the Court of Session Act 1988		Part II of Chapter 63
Section 6(vii) of the Court of Session Act 1988		Rule 13.6(b)

Column 1 Relavant enactment conferring power	Column 2 Relevant amending enactment	Column 3 Relevant provision in Schedule 2
Section 26(2) of the Court of Session Act 1988		Rule 77.10
Section 26(3) of the Court of Session Act 1988		Rule 77.3
Sections 28 and 51(4) of the Court of Session Act 1988		Chapter 38
Sections 29(1) and 51 of the Court of Session Act 1988		Rules 39.1 to 39.5
Sections 34 and 51 of the Court of Session Act 1988		Rule 53.1 and Chapter 60
Sections 48(2)(b) and 51 of the Court of Session Act 1988	Section 48(2)(b) was substituted by paragraph 38 of Schedule 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990	Rule 23.14
Sections 49(1) and 51 of the Court of Session Act 1988		Rule 58.1(3)
Section 114(3) of the Copyright, Designs and Patents Act 1988 (c. 48)		Rule 55.17(2)
Section 204(3) of the Copyright, Designs and Patents Act 1988		Rule 55.17(2)
Section 231(3) of the Copyright, Designs and Patents Act 1988		Rule 55.17(2)
Paragraph 11(2) of Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4)		Rule 76.24
Paragraph 19(1)–(3) of Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989		Part VII of Chapter 62
Section 8(1) to the Access to Health Records Act 1990 (c. 23)		Rule 79.3

(4) Section 51 of the Court of Session Act 1988 contains a definition of “prescribed” relevant to the exercise of powers conferred by sections 28, 29, 34, 48 and 49.

## SCHEDULE 2

Paragraph 2

### THE RULES OF THE COURT OF SESSION 1994

## ARRANGEMENT OF RULES

### *Preliminary*

#### CHAPTER 1

##### *CITATION, APPLICATION, INTERPRETATION AND FORMS*

- 1.1 Citation
- 1.2 Application
- 1.3 Interpretation etc.
- 1.4 Forms

#### CHAPTER 2

##### *RELIEF FROM COMPLIANCE WITH RULES*

- 2.1 Relief for failure to comply with rules

### *General and administration*

#### CHAPTER 3

##### *OFFICES OF THE COURT*

- 3.1 Office of Court
- 3.2 General Department
- 3.3 Petition Department
- 3.4 Rolls Department
- 3.5 Extracts Department
- 3.6 Teind Office
- 3.7 The Auditor

#### CHAPTER 4

##### *THE PROCESS*

- 4.1 Form,size,etc.,of documents forming the process
- 4.2 Signature of documents
- 4.3 Lodging of processes
- 4.4 Steps of process
- 4.5 Productions
- 4.6 Intimation of steps of process
- 4.7 Lodging of documents in Inner House causes
- 4.8 Copies of documents for use of court
- 4.9 Documents ordered or allowed to be lodged

- 4.10 Receipt of documents
- 4.11 Documents not to be borrowed
- 4.12 Borrowing and returning documents
- 4.13 Finally extracted processes not to be borrowed
- 4.14 Lost documents
- 4.15 Outer House interlocutors
- 4.16 Inner House interlocutors

## CHAPTER 5

### *CAVEATS*

- 5.1 Orders against which caveats may be lodged
- 5.2 Form, lodging and renewal of caveats

## CHAPTER 6

### *THE ROLLS*

- 6.1 Printing and publishing of rolls
- 6.2 Fixing and allocation of diets in Outer House
- 6.3 Fixing and allocation of diets in Inner House
- 6.4 Putting out causes for proof, jury trial or hearing

## CHAPTER 7

### *EXTRACTS AND OFFICIAL CERTIFIED COPY INTERLOCUTORS*

- 7.1 Applications for extracts
- 7.2 Extracts of decrees in certain family actions
- 7.3 Amendments to principal writ
- 7.4 Return of steps of process and borrowing productions
- 7.5 Decrees for payment in foreign currency
- 7.6 Decrees of adjudication
- 7.7 Interest
- 7.8 Fees for extracts to be included in extracts
- 7.9 Form of extracts
- 7.10 Warrants for execution
- 7.11 Official certified copy interlocutors

## CHAPTER 8

### *TAXES ON FUNDS UNDER CONTROL OF THE COURT*

- 8.1 Certificates by officer of Inland Revenue

## CHAPTER 9

### *COURT RECORDS*

- 9.1 Transmission of records
- 9.2 Retransmission of processes to Office of Court

*Status: This is the original version (as it was originally made).*

## CHAPTER 10

### *SITTINGS OF THE COURT*

- 10.1 Session and terms of court
- 10.2 Sederunt days
- 10.3 Sittings during term
- 10.4 Sittings during session outwith terms
- 10.5 Sittings during vacation
- 10.6 Lord Ordinary in Exchequer Causes

## CHAPTER 11

### *VACATION JUDGE*

- 11.1 Powers of vacation judge

## CHAPTER 12

### *ASSESSORS*

- 12.1 Summoning of assessors
- 12.2 Consignation of money for fees of assessors
- 12.3 Motions to summon assessors
- 12.4 Copies of pleading for use of assessors
- 12.5 Selection of assessors
- 12.6 Number of assessors
- 12.7 Skilled witnesses where assessors summoned
- 12.8 Note of questions submitted to assessors
- 12.9 Remuneration of assessors

### *Initiation and progress of proceedings*

## CHAPTER 13

### *SUMMONSES, NOTICE, WARRANTS AND CALLING*

- 13.1 Initiation of causes by summons
- 13.2 Form of summonses
- 13.3 Address of defender
- 13.4 Period of notice in summonses
- 13.5 Signeting
- 13.6 Warrants in summonses
- 13.7 Service and intimation of summonses
- 13.8 Warrants after signeting
- 13.9 Effects of warrants for inhibition on dependence
- 13.10 Recall etc. of arrestment or inhibition
- 13.11 Movement of arrested property
- 13.12 Intimation of actions relating to heritable property
- 13.13 Calling
- 13.14 Protestation for not calling summons

## CHAPTER 14

### *PETITIONS*

- 14.1 Application of this Chapter
- 14.2 Applications by petition in the Outer House
- 14.3 Applications by petition in the Inner House
- 14.4 Form of petitions
- 14.5 First order in petitions
- 14.6 Period of notice for lodging answers
- 14.7 Intimation and service of petitions
- 14.8 Procedure where answers lodged
- 14.9 Unopposed petitions

## CHAPTER 15

### *APPLICATIONS BY MINUTE OR NOTE*

- 15.1 Applications by minute
- 15.2 Applications by note

## CHAPTER 16

### *SERVICE, INTIMATION AND DILIGENCE*

#### PART I

##### *SERVICE AND INTIMATION*

- 16.1 Methods and manner of service
- 16.2 Service furth of United Kingdom
- 16.3 Service by messenger-at-arms
- 16.4 Service by post
- 16.5 Service where address of person is not known
- 16.6 Translations of documents served or advertised abroad
- 16.7 Intimation of documents
- 16.8 Intimation on a warrant to intimate
- 16.9 Written intimation
- 16.10 Acceptance of service or intimation and dispensing with period of notice
- 16.11 No objection to regularity of service or intimation

#### PART II

##### *DILIGENCE*

- 16.12 Execution of diligence
- 16.13 Arrestment of ships and arrestment in rem of cargo on board ship
- 16.14 Arrestment of cargo
- 16.15 Forms of diligence

## CHAPTER 17

### *APPEARANCE IN ACTIONS*

- 17.1 Entering appearance

- 17.2 Appearance not to imply acceptance of jurisdiction

## CHAPTER 18

### *DEFENCES AND ANSWERS*

- 18.1 Form and lodging of defences
- 18.2 Contesting jurisdiction
- 18.3 Answers

## CHAPTER 19

### *DECREES IN ABSENCE*

- 19.1 Decrees in absence
- 19.2 Recall of decrees in absence

## CHAPTER 20

### *DECREES BY DEFAULT*

- 20.1 Decrees where party in default

## CHAPTER 21

### *SUMMARY DECREES*

- 21.1 Application of this Chapter
- 21.2 Applications for summary decree
- 21.3 Application of summary decree to counterclaims etc.

## CHAPTER 22

### *MAKING UP AND CLOSING RECORDS*

- 22.1 Making up open records
- 22.2 Adjustment Roll
- 22.3 Closing records
- 22.4 Orders for notes of argument

## CHAPTER 23

### *MOTIONS*

- 23.1 Interpretation of this Chapter
- 23.2 Enrolment of motions
- 23.3 Intimation of motions
- 23.4 Opposition to motions
- 23.5 Consent to motions
- 23.6 Hearing of motions
- 23.7 Motions in session outwith a term or in vacation
- 23.8 Motion by pursuer before calling or petitioner before first order
- 23.9 Motions where caveat lodged
- 23.10 Motions by defender or other person before calling
- 23.11 Statutory applications by motion
- 23.12 Expenses of motions



- 23.13 Conditions attached to granting motions
- 23.14 Appearance by solicitor for certain motions

## CHAPTER 24

### *AMENDMENT OF PLEADINGS*

- 24.1 Powers of court
- 24.2 Applications to amend
- 24.3 Service of amended pleadings
- 24.4 Expenses and conditions of amendment
- 24.5 Effect of amendment on diligence

## CHAPTER 25

### *COUNTERCLAIMS*

- 25.1 Counterclaims
- 25.2 Warrants for diligence on counterclaims
- 25.3 Answers to counterclaims
- 25.4 Effect of abandonment of action
- 25.5 Proof or jury trial of counterclaims
- 25.6 Interlocutors in respect of counterclaims

## CHAPTER 26

### *THIRD PARTY PROCEDURE*

- 26.1 Applications for third party notice
- 26.2 Averments where order for service of third party notice sought
- 26.3 Warrants for diligence on third party notice
- 26.4 Service on third party
- 26.5 Answers to third party notice
- 26.6 Consequences of failure to lodge answers
- 26.7 Procedure following answers

## CHAPTER 27

### *DOCUMENTS FOUNDED ON OR ADOPTED IN PLEADINGS*

- 27.1 Lodging of documents founded on or adopted
- 27.2 Consequences of failure to lodge documents founded on or adopted

## CHAPTER 28

### *PROCEDURE ROLL*

- 28.1 Hearings on procedure roll

## CHAPTER 29

### *ABANDONMENT*

- 29.1 Abandonment of actions
- 29.2 Application of abandonment of actions to counterclaims
- 29.3 Abandonment of petitions, minutes and notes

*Status: This is the original version (as it was originally made).*

## CHAPTER 30

### *WITHDRAWAL OF AGENTS*

- 30.1 Intimation of withdrawal of agent to court
- 30.2 Intimation to party whose agent has withdrawn
- 30.3 Consequences of failure to intimate intention to proceed

## CHAPTER 31

### *MINUTES OF SIST AND TRANSFERENCE*

- 31.1 Minutes of sist
- 31.2 Minutes of transference

## CHAPTER 32

### *TRANSMISSION AND REMIT OF CAUSES*

- 32.1 Remits to sheriff court
- 32.2 Transmissions on contingency
- 32.3 Intimation of receipt of process transmitted from sheriff court
- 32.4 Lodging of process and motion for further procedure
- 32.5 Reponing against failure to comply with rule 32.4(1) or (2)
- 32.6 Insistence in remit by another party
- 32.7 Re-transmission to sheriff clerk

## CHAPTER 33

### *CAUTION AND SECURITY*

- 33.1 Application of this Chapter
- 33.2 Form of applications
- 33.3 Orders to find caution or other security
- 33.4 Methods of finding caution or giving security
- 33.5 Cautioners and guarantors
- 33.6 Form of bonds of caution and other securities
- 33.7 Sufficiency of caution or security and objections
- 33.8 Juratory caution
- 33.9 Insolvency or death of cautioner or guarantor
- 33.10 Failure to find caution or give security
- 33.11 Interlocutors authorising uplifting of consignment receipts
- 33.12 Accountant of Court

## CHAPTER 34

### *REPORTS TO INNER HOUSE*

- 34.1 Report by Lord Ordinary to Inner House
- 34.2 Fixing hearings for reports
- 34.3 Disposal of reports

## CHAPTER 35

### *RECOVERY OF EVIDENCE*

- 35.1 Application and interpretation of this Chapter
- 35.2 Applications for commission and diligence for recovery of documents or for orders under section 1 of the Act of 1972
- 35.3 Optional procedure before executing commission and diligence
- 35.4 Execution of commission and diligence for recovery of documents
- 35.5 Execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972
- 35.6 Execution of orders for inspection etc. of documents or other property under section 1(1) of the Act of 1972
- 35.7 Execution of orders for preservation etc. of documents or other property under section 1(1) of the Act of 1972
- 35.8 Confidentiality
- 35.9 Warrants for production of original documents from public records
- 35.10 Warrants for transmission of processes
- 35.11 Commissions for examination of witnesses
- 35.12 Commissions on interrogatories
- 35.13 Commissions without interrogatories
- 35.14 Evidence taken on commission
- 35.15 Letters of request

## CHAPTER 36

### *PROOFS*

- 36.1 Hearing parts of proof separately
- 36.2 Citation of witnesses
- 36.3 Lodging productions
- 36.4 Copy productions
- 36.5 Returning borrowed documents before proof
- 36.6 Notices to admit and notices of non-admission
- 36.7 Admissions by parties
- 36.8 Conditions for receiving certain written statements in evidence
- 36.9 Attendance, and lists, of witnesses
- 36.10 Administration of oath or affirmation to witnesses
- 36.11 Recording of evidence
- 36.12 Finality of decision on sufficiency of stamp
- 36.13 Death, disability, retiral, etc., of Lord Ordinary

## CHAPTER 37

### *JURY TRIALS*

- 37.1 Applications for jury trial
- 37.2 Citation of jurors
- 37.3 Ineligibility for, and excusal from, jury service
- 37.4 Application of certain rules relating to proofs
- 37.5 Failure of party to appear at jury trial
- 37.6 Administration of oath or affirmation to jurors
- 37.7 Exceptions to judge's charge
- 37.8 Further questions for jury

*Status: This is the original version (as it was originally made).*

- 37.9 Verdicts
- 37.10 Application of verdicts

## CHAPTER 38

### *RECLAIMING*

- 38.1 Interpretation of this Chapter
- 38.2 Reclaiming
- 38.3 Reclaiming days
- 38.4 Leave to reclaim etc. in certain cases
- 38.5 Applications for leave to reclaim
- 38.6 Method of reclaiming
- 38.7 Leave to reclaim out of time
- 38.8 Effect of reclaiming
- 38.9 Effect of extracted interlocutor
- 38.10 Appeals treated as reclaiming motions
- 38.11 Reclaiming against decree by default
- 38.12 Reclaiming against interlocutor adjusting issues
- 38.13 Early disposal of reclaiming motion
- 38.14 Objections to competency of reclaiming motion
- 38.15 Procedure where no objection to competency
- 38.16 Grounds of appeal in reclaiming motions
- 38.17 Orders for hearing
- 38.18 Reclaiming prints
- 38.19 Lodging of appendices in reclaiming motions
- 38.20 Notes of evidence not extended when agreed
- 38.21 Amendment of pleadings in reclaiming motions

## CHAPTER 39

### *APPLICATIONS FOR NEW TRIAL OR TO ENTER JURY VERDICTS*

- 39.1 Applications for new trial
- 39.2 Applications out of time
- 39.3 Objections to competency of application
- 39.4 Procedure where no objections to competency
- 39.5 Lodging of appendix
- 39.6 Applications to order jury verdict

## CHAPTER 40

### *APPEALS FROM INFERIOR COURTS*

- 40.1 Application and interpretation of this Chapter
- 40.2 Applications for leave to appeal from inferior court
- 40.3 Determination of applications for leave to appeal from inferior court
- 40.4 Time and method of appeal
- 40.5 Leave to appeal out of time
- 40.6 Transmission of appeal process
- 40.7 Procedure following transmission of appeal process
- 40.8 Sist of process of appeal
- 40.9 Appeals deemed abandoned
- 40.10 Reponing against deemed abandonment

- 40.11 Early disposal of appeal
- 40.12 Objections to competency of appeals
- 40.13 Procedure where no objection to competency of appeal
- 40.14 Grounds of appeal
- 40.15 Orders for hearing of appeal
- 40.16 Appeal prints
- 40.17 Lodging of appendices in appeals
- 40.18 Notes of evidence not extended when agreed in appeals
- 40.19 Amendment of pleadings in appeals

## CHAPTER 41

### *APPEALS UNDER STATUTE*

#### PART I

##### *GENERAL PROVISIONS*

- 41.1 Application and interpretation of this Chapter
- 41.2 Applications for leave to appeal
- 41.3 Determination of applications for leave to appeal

#### PART II

##### *APPEALS BY STATED CASE ETC.*

- 41.4 Application and interpretation of this Part
- 41.5 Applications for case
- 41.6 Additional questions by other parties
- 41.7 Consideration of application by tribunal
- 41.8 Procedure for ordaining tribunal to state a case
- 41.9 Preparation and issue of the case
- 41.10 Intimation of intention to proceed
- 41.11 Lodging of case in court
- 41.12 Abandonment of appeal
- 41.13 Reponing against deemed abandonment
- 41.14 Procedure on abandonment
- 41.15 Motions for hearing of appeals
- 41.16 Amendment or re-statement of case
- 41.17 Remit to reporter

#### PART III

##### *APPEALS IN FORM 41.19*

- 41.18 Application of this Part
- 41.19 Form of appeal
- 41.20 Lodging of appeal in court
- 41.21 Orders for service and answers
- 41.22 Motion for further procedure

*Status: This is the original version (as it was originally made).*

## PART IV

### *EXCHEQUER APPEALS*

- 41.23 Revenue appeals by stated case
- 41.24 Revenue appeals from Special Commissioners
- 41.25 Appeals relating to penalties
- 41.26 Appeals relating to certain determinations of the Commissioners of Inland Revenue

## PART V

### *APPEALS UNDER THE PENSIONS APPEAL TRIBUNAL ACT 1943*

- 41.27 Form of appeal under the Act of 1943

## PART VI

### *APPEALS UNDER SECTION 50 OF THE SOCIAL WORK (SCOTLAND) ACT 1968*

- 41.28 Application of Part II to this Part
- 41.29 Interpretation of this Part
- 41.30 Lodging of reports and statements with sheriff
- 41.31 Lodging etc. of reports and statements in court
- 41.32 Hearing in private
- 41.33 Expenses

## PART VII

### *APPEALS UNDER THE REPRESENTATION OF THE PEOPLE ACT 1983*

- 41.34 Application of this Part
- 41.35 Form of appeal under this Part
- 41.36 Consolidated appeals
- 41.37 Hearing before Registration Appeal Court
- 41.38 Decision of Registration Appeal Court

## PART VIII

### *STATED CASES UNDER SECTION 11(3) OF THE TRIBUNALS AND INQUIRIES ACT 1992*

- 41.39 Case stated by tribunal at its own instance
- 41.40 Modifications of Part II to appeals under this Part

## PART IX

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## *Preliminary*

### *CHAPTER I*

#### *CITATION, APPLICATION, INTERPRETATION AND FORMS*

##### **Citation**

**1.1.** These Rules may be cited as the Rules of the Court of Session 1994.

##### **Application**

**1.2.** These Rules apply to any cause whether initiated before or after the coming into force of these Rules.

##### **Interpretation etc.**

**1.3. –**

(1) In these Rules, unless the context otherwise requires—

“the Act of 1988” means the Court of Session Act 1988<sup>(5)</sup>;

“act” means an order of the court which is extractable, other than a decree;

“agent”, except in rule 16.2(2)(e) (service furth of United Kingdom by party’s authorised agent) and rule 16.14(1) (arrestment of cargo), means a solicitor or person having a right to conduct the litigation:

“the Auditor” means the Auditor of the Court of Session;

“cause” means any proceedings;

“clerk of court” means the clerk of session acting as such;

“clerk of session” means a depute clerk of session or an assistant clerk of session, as the case may be;

“counsel” means a practising member of the Faculty of Advocates;

“depute clerk of session” means a depute clerk of session and justiciary;

“Deputy Principal Clerk” means the Deputy Principal Clerk of Session;

“document” has the meaning assigned to it in section 9 of the Civil Evidence (Scotland) Act 1988<sup>(6)</sup>;

“the Extractor” means the Extractor of the Court of Session or the Extractor of the acts and decrees of the Teind Court, as the case may be;

“Keeper of the Records” means the Keeper of the Records of Scotland;

“Keeper of the Registers” means the Keeper of the Registers of Scotland;

“other person having a right of audience” means a person having a right of audience before the court by virtue of Part II of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(7)</sup> (legal services) in respect of the category and nature of the cause in question;

“party” means a person who has entered appearance in an action or lodged a writ in the process of a cause (other than a minuter seeking leave to be sisted to a cause); and “parties” shall be construed accordingly;

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<sup>(5)</sup> 1988 c. 36.

<sup>(6)</sup> 1988 c. 32.

<sup>(7)</sup> 1990 c. 40.

“period of notice” means—

- (a) in relation to service, or intimation on a warrant for intimation before calling, of a summons, the period determined in accordance with rule 13.4 (period of notice in summonses); and
- (b) in relation to service of any other writ, intimation of a writ other than intimation referred to in sub-paragraph (a), or the period for lodging answers to a writ, the period determined in accordance with rule 14.6 (period of notice for lodging answers);

“person having a right to conduct the litigation” means a person having a right to conduct litigation by virtue of Part II of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 in respect of the category and nature of the cause in question;

“Principal Clerk” means the Principal Clerk of Session and Justiciary;

“principal writ” means the writ by which a cause is initiated before the court;

“proof” includes proof before answer;

“rolls” means the lists of the business of the court issued from time to time by the Keeper of the Rolls;

“send” includes deliver; and “sent” shall be construed accordingly;

“step of process” means a document lodged in process other than a production;

“summons” includes the condescendence and pleas-in-law annexed to it;

“vacation judge” means a judge of the court sitting as such in vacation;

“writ” means summons, petition, note, application, appeal, minute, defences, answers, counter-claim, issue or counter-issue, as the case may be.

(2) for the purpose 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 power is conferred in these Rules on the Lord President to make directions, the power may be exercised in his absence by the Lord Justice-Clerk.

(4) Where a provision in these Rules imposes an obligation on a principal officer, the obligation may be performed by a clerk of session authorised by him or by another principal officer; and in this paragraph “principal officer” means the Principal Clerk, Deputy Principal Clerk, Deputy Principal Clerk (Administration), Keeper of the Rolls or Principal Extractor.

(5) Unless the context otherwise requires, where a provision in these Rules requires a party to intimate, give written intimation, or send a document, to another party, it shall be sufficient compliance with that provision if intimation is given or the document is sent, as the case may be, to the agent acting in the cause for that party.

(6) Unless the context otherwise requires, anything done or required to be done by a party under a provision in these Rules may be done by the agent for that party acting on his behalf.

(7) Where a provision in these Rules requires a document to be lodged in an office or department of the Office of Court within a specified period and the last day of that period is a day on which that office or department is closed, the period shall be extended to include the next day on which that office or department, as the case may be, is open or on such other day as may be specified in a notice published in the rolls.

(8) Unless the context otherwise requires, a reference to a specified Chapter, Part, rule or form is a reference to the Chapter, Part, rule, or the form in the appendix, so specified 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 the paragraph or that head of the sub-paragraph, in which the reference occurs.

## **Forms**

**1.4.** Where there is a reference to the use of a form in these Rules, that form in the appendix 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 for failure to comply with rules**

##### **2.1. –**

(1) The court may relieve a party from the consequences of a failure to comply with a provision in these Rules shown to be due to mistake, oversight or other excusable cause on such conditions, if any, as the court thinks fit.

(2) Where the court relieves a party from the consequences of a failure to comply with a provision in these Rules under paragraph (1), the court may pronounce such interlocutor as it thinks fit to enable the cause to proceed as if the failure to comply with the provision had not occurred.

#### *General and administration*

## *CHAPTER 3*

### *OFFICES OF THE COURT*

#### **Office of Court**

##### **3.1. –**

(1) The Office of Court shall comprise–

- (a) the General Department;
- (b) the Petition Department;
- (c) the Rolls Department;
- (d) the Extracts Department; and
- (e) the Teind Office;

but shall not include the office of the Accountant of Court or the Auditor.

(2) Each department of the Office of Court shall be under the charge of an officer who shall act under the direction of the Principal Clerk in consultation with the Lord President.

#### **General Department**

##### **3.2. –**

(1) The General Department shall be under the charge of the Deputy Principal Clerk.

(2) There shall be lodged in the General Department all processes in–

- (a) causes originating in the court and initiated by summons or simplified divorce application;

- (b) appeals from inferior courts, remits from the sheriff court, appeals, including references, submissions and applications of the nature of appeals under statute, stated cases and special cases;
  - (c) causes transmitted from the sheriff court on contingency; and
  - (d) appeals to the Lands Valuation Appeal Court.
- (3) All processes lodged in the General Department shall be classified as–
- (a) ordinary actions;
  - (b) Admiralty and commercial actions;
  - (c) family (including consistorial) actions; or
  - (d) lands valuation causes.

### **Petition Department**

#### **3.3. –**

- (1) The Petition Department shall be under the charge of the Deputy Principal Clerk.
- (2) There shall be lodged in the Petition Department all processes in causes which are initiated by petition.

### **Rolls Department**

#### **3.4. –**

- (1) The Rolls Department shall be under the charge of the Keeper of the Rolls, who shall be assisted by a clerk of session known as the Assistant Keeper of the Rolls.
- (2) The Keeper of the Rolls shall be responsible for keeping the rolls of the court in consultation with the Lord President, the Lord Justice-Clerk and the Principal Clerk.

### **Extracts Department**

#### **3.5. –**

- (1) The Extracts Department shall be under the charge of the Principal Extractor who shall be assisted by a clerk of session known as the Extractor.
- (2) The Principal Extractor shall be responsible for extracting the acts and decrees of the court except those in teind causes.
- (3) Subject to rule 3.6(3) (duties of the clerk of teinds), the Extractor shall be the Keeper of–
  - (a) the Register of Acts and Decrees;
  - (b) the Register of Edictal Citations and Executions of Diligence; and
  - (c) the Register of Decrees in Consistorial Causes.
- (4) As Keeper of the Register of Edictal Citations and Executions of Diligence, the Extractor shall–
  - (a) record on the copy of the schedule of diligence received by him the date of its receipt at his office;
  - (b) record the details of that schedule and its receipt in the register;
  - (c) preserve that schedule and any citation for a period of three years from the date of receipt of the schedule or citation, as the case may be; and
  - (d) make the register and schedules of diligence and citations executed on him available for inspection at his office during its normal business hours.

## **Teind Office**

### **3.6. –**

- (1) The Teind Office shall be under the charge of a clerk of session known as the clerk of teinds.
- (2) There shall be lodged in the Teind Office all processes which are dealt with by the Teind Court or the Lord Ordinary in teind causes.
- (3) The clerk of teinds shall–
  - (a) keep and index the records and processes in the Teind Office; and
  - (b) be the Keeper of the Teind Rolls and the Keeper of the Minute Book of the Teind Court.

## **The Auditor**

- 3.7.** The Auditor shall be responsible for the taxation of accounts of expenses in any cause.

## *CHAPTER 4 THE PROCESS*

## **Form, size, etc., of documents forming the process**

### **4.1. –**

- (1) In an action or petition, the principal summons or petition, as the case may be, shall be on a printed form approved by the court, completed in writing, typescript or print and backed with a printed backing approved by the court.
- (2) A writ, other than a principal summons or petition, bringing a cause before the court shall be in writing, typescript or print, on paper of a texture and size approved by the court and backed with cartridge paper or paper of similar durability.
- (3) A step of process lodged in a cause shall be in writing, typescript or print, on paper of a texture and size approved by the court and, except in the case of a motion, backed with cartridge paper or paper of similar durability.
- (4) A step of process other than a motion shall be securely fastened, folded and backed lengthwise and shall bear, on the first page and on the backing, a delimited square for the cause reference number assigned to the principal writ on being lodged.

## **Signature of documents**

### **4.2. –**

- (1) Subject to paragraph (5), each page of a summons and the condescendence and pleas-in-law annexed to it shall be signed by an agent.
- (2) Subject to paragraph (5), a letter passing the signet shall be signed by an agent.
- (3) Subject to paragraphs (5) and (9), a petition, note, application or minute shall be signed by counsel or other person having a right of audience, except that–
  - (a) a petition for the sequestration of the estates of the petitioner, or for recall of his sequestration, may be signed by the petitioner or an agent;
  - (b) a petition for suspension, suspension and interdict or suspension and liberation may be signed by an agent;
  - (c) a simplified divorce application under rule 49.73 shall be signed by the applicant;

- (d) an application for registration under Chapter 62 (recognition, registration and enforcement of foreign judgments etc.) may be signed by the petitioner or an agent; and
  - (e) a minute for variation of custody may be signed by a party litigant.
- (4) Subject to paragraph (9), defences, answers and other writs (other than appeals) not referred to in paragraphs (1), (2) and (3), shall be signed by counsel or other person having a right of audience, or, in the case of a party litigant, the party litigant.
- (5) Where a party litigant is unable to obtain the signature of counsel or other person having a right of audience or an agent on a document as required by paragraph (1), (2) or (3), he may request the Deputy Principal Clerk to place the document before the Lord Ordinary for leave to proceed without such signature; and the decision of the Lord Ordinary shall be final and not subject to review.
- (6) Where the Lord Ordinary grants leave to proceed under paragraph (5), the interlocutor granting leave shall be written and signed on the face of the document and the party litigant shall sign the document.
- (7) Where an agent signs a document under this rule, he shall append to his signature his business address—
- (a) in the case of a summons, at the end of the first page and on the last page after the pleas-in-law; and
  - (b) in the case of any other document, at the end of the last page.
- (8) Where counsel or other person having a right of audience has signed a writ, he shall be regarded as the drawer of it and answerable for what it contains.
- (9) The following documents shall not require any signature:—
- (a) a minute of amendment;
  - (b) answers to a minute of amendment;
  - (c) a minute of sist;
  - (d) a minute of transference;
  - (e) a minute of objection to a minute of transference;
  - (f) a note of objection.

### **Lodgings of processes**

**4.3.** A process shall be lodged in every cause commenced by summons or petition when—

- (a) in the case of a summons, the summons is presented for signeting; and
- (b) in the case of a petition, the petition is presented to the Petition Department.

### **Steps of process**

**4.4.** —

(1) A process shall include the following steps of process:—

- (a) an inventory of process;
- (b) the principal writ;
- (c) an interlocutor sheet;
- (d) a motion sheet; and
- (e) a minute of proceedings.

(2) A step of process referred to in paragraph (1), other than the principal writ, shall contain at least two pages.

(3) A step of process shall be assigned a number of process which shall be marked on the backing with the cause reference number of the principal writ and recorded in the inventory of process.

## **Productions**

### **4.5. –**

- (1) On each occasion a production is lodged in process–
  - (a) an inventory of productions shall be lodged in process; and
  - (b) a copy of the inventory of productions shall be sent to every other party.
- (2) A production shall be–
  - (a) marked with a number of process with the cause reference number assigned to the principal writ; and
  - (b) if consisting of more than one sheet, securely fastened together.

## **Intimation of steps of process**

### **4.6. –**

- (1) A party lodging a step of process shall–
  - (a) give written intimation of the lodgment of it to every other party; and
  - (b) subject to any other provision in these Rules, send a copy of the step of process lodged to every such party.
- (2) A clerk of session shall not mark a step of process as received until a certificate of intimation has been endorsed on it.

## **Lodging of documents in Inner House causes**

### **4.7. –**

- (1) A party, on lodging in a cause in the Inner House–
  - (a) a petition or note,
  - (b) an appeal, application for leave to appeal, stated case, special case, case, reference or submission,
  - (c) answers,
  - (d) a reclaiming print required under rule 38.6(2) or 38.7(3) (reclaiming prints for reclaiming motions),
  - (e) a print of the whole pleadings and other documents required under rule 39.1(4) (print of pleadings etc. for motion for new jury trial),
  - (f) an appeal print required under rule 40.7(2)(a)(ii) (appeal print in appeal from inferior court), or
  - (g) an appendix required under rule 38.19 (lodging of appendices in reclaiming motions), 39.5 (lodging of appendix in application for new trial) or 40.17 (lodging of appendices in appeals from inferior court),

shall lodge in process six copies of the document; and, unless otherwise agreed, send six copies of it to every other party.

(2) Where a party intends to refer to a document, other than one mentioned in paragraph (1) at a hearing before a Division of the Inner House, he shall lodge four copies of it in process by 12 noon on the second sederunt day before the hearing.



### **Copies of documents for use of court**

#### **4.8. –**

(1) A clerk of session shall refuse to accept a copy of a document for the use of the court which does not conform to a standard approved by the court in size, spacing, lettering, legibility, quality of paper or otherwise.

(2) A party tendering a document which is refused by a clerk of session shall have the right to appeal in writing to the Deputy Principal Clerk.

(3) Where the Deputy Principal Clerk refuses an appeal under paragraph (2), he may extend the time for lodging the document.

(4) A decision of the Deputy Principal Clerk under this rule shall be final and not subject to review.

### **Documents ordered or allowed to be lodged**

#### **4.9. –**

(1) Where the court pronounces an interlocutor ordering or allowing a document to be lodged in process, it shall specify a time within which the document shall be lodged.

(2) The time for lodging a document referred to in paragraph (1) may be prorogated by the court on an application by motion enrolled before the time for lodging has expired.

(3) A document lodged in process, in terms of an interlocutor ordering or allowing it to be lodged, shall have marked on it–

- (a) the date of the interlocutor ordering or allowing it to be lodged;
- (b) the date of any interlocutor prorogating the time originally allowed; and
- (c) the time allowed for lodging it.

### **Receipt of documents**

#### **4.10. –**

(1) Subject to paragraph (2), a clerk of session shall mark the date of receipt on every document lodged in process other than a production.

(2) A clerk of session shall not accept, or mark as received, a document after the day on which it is due to be lodged.

### **Documents not to be borrowed**

#### **4.11. –**

(1) Subject to paragraph (2), a writ shall remain in the Office of Court and shall not be borrowed from process, but may be inspected by any person having an interest.

(2) Paragraph (1) shall not apply to–

- (a) a party borrowing his principal writ in order to do diligence for which a warrant mentioned in rule 13.6(c) has been obtained;
- (b) a party borrowing his principal writ for the purposes of service or intimation; or
- (c) a party borrowing his writ for the purpose of writing on it and authenticating an amendment which has been made.

(3) The following steps of process shall not be borrowed from process:–

- (a) the inventory of process;

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- (b) the interlocutor sheet;
- (c) the motion sheet;
- (d) the minute of proceedings;
- (e) any inventory of productions;
- (f) the principal copy of a report ordered by the court and lodged in process;
- (g) the principal or any copy of a bond of caution or a consignment receipt lodged in process;  
and
- (h) the principal copy of any other document by which an order of the court to find caution or give security is satisfied and lodged in process until the order is recalled.

### **Borrowing and returning documents**

#### **4.12. –**

(1) A party borrowing a document which may be borrowed shall give a receipt for it, dated and signed, on the inventory of process.

(2) Subject to paragraph (3), before a clerk of session accepts a document for return to process, he shall–

- (a) compare it with the inventory of process and receipt in the presence of the person returning it, delete the receipt and initial and date the deletion; or
- (b) in the case of a partial return, mark on the inventory of process the document so returned and initial and date the entry.

(3) Where the document being returned is bulky so that it cannot be examined conveniently at the time–

- (a) a clerk of session shall not accept the document without a separate slip accompanying it, dated and signed by the party returning it, specifying the number of process so returned;  
and
- (b) the clerk of session receiving it shall examine it before the close of the following business day and give written intimation to the party returning it of any inaccuracy in the slip accompanying it.

(4) Where written intimation is not given under paragraph (3)(b), the accuracy of the slip shall be presumed and the party returning the document shall be exonerated as if the receipt had been deleted under paragraph (2)(a) or marked under paragraph (2)(b), as the case may be.

(5) A party returning more than one document shall ensure that the documents returned are arranged in consecutive order according to the inventory of process; and a clerk of session may refuse to accept documents which are not so arranged.

(6) The court may, on the motion of a party, ordain any other party who has borrowed a document to return that document within such period as the court think's fit.

### **Finally extracted processes not to be borrowed**

**4.13.** No step of process may be borrowed after a final extract has been issued.

### **Lost documents**

#### **4.14. –**

(1) Where–

- (a) a principal writ,

- (b) other pleadings, or
- (c) an interlocutor sheet,

is lost or destroyed, a copy of it may be substituted which is proved in the cause to the satisfaction of the court and authenticated in such manner as the court thinks fit.

(2) A copy of a document substituted under paragraph (1) shall be equivalent to the original for the purposes of the cause and the process of which it forms a part, including the use of diligence.

### **Outer House interlocutors**

#### **4.15. –**

- (1) This rule applies to interlocutors pronounced in the Outer House.
- (2) Subject to paragraph (3), an interlocutor pronounced by the Lord Ordinary may be written by the clerk of court and shall be signed by the Lord Ordinary.
- (3) Subject to any direction he may be given by the Lord Ordinary, a depute clerk of session may sign an interlocutor, other than a final interlocutor, in respect of a motion which is not starred; and that interlocutor shall be treated for all purposes as if it had been signed by the Lord Ordinary.
- (4) An interlocutor may be signed during session or in vacation.
- (5) An extract of an interlocutor which is not signed in accordance with the provisions of this rule shall be void and of no effect.
- (6) An interlocutor may, on cause shown, be corrected or altered at any time before extract by–
  - (a) the Lord Ordinary who signed it or on whose behalf it was signed; or
  - (b) in the event of the death, disability or absence of the Lord Ordinary, any other judge of the court.

### **Inner House interlocutors**

#### **4.16. –**

- (1) This rule applies to interlocutors pronounced in the Inner House.
- (2) Subject to paragraph (3), an interlocutor of the Inner House may be written by the clerk of court and shall be adjusted and signed by–
  - (a) the judge who presided in the Division of the Inner House when the matter to be dealt with in the interlocutor was determined, or
  - (b) in the event of the death, disability or absence of that judge, the next senior judge who sat in that Division when the matter to be dealt with in the interlocutor was determined,as soon as reasonably practicable and after such consultation as may be necessary with the other members of the Division who sat.
- (3) An interlocutor of the Inner House in respect of a motion which is not starred shall be adjusted and signed by the judge presiding at the time when the motion was brought before the Division of the Inner House.
- (4) An interlocutor may be signed during session or in vacation.
- (5) The judge signing an interlocutor of the Inner House shall append the letters “I.P.D.” to his signature as conclusive evidence that the requirements of the preceding paragraphs of this rule have been complied with.
- (6) An extract of an interlocutor which is not signed in accordance with the provisions of this rule shall be void and of no effect.
- (7) An interlocutor may, on cause shown, be corrected or altered at any time before extract by–

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- (a) the judge who signed it; or
- (b) in the event of the death, disability or absence of that judge, the next senior judge of the same Division of the Inner House.

## CHAPTER 5

### CAVEATS

#### Orders against which caveats may be lodged

**5.1.** A person may only lodge a caveat against—

- (a) an interim interdict sought in an action before he has lodged defences;
- (b) an interim order sought in an action before the expiry of the period within which he could enter appearance;
- (c) an interim order (other than an order under section 1 of the Administration of Justice (Scotland) Act 1972<sup>(8)</sup> (orders for inspection of documents and other property, etc.) sought in a petition before he has lodged answers;
- (d) an order for intimation, service and advertisement of a petition to wind up, or to appoint an administrator to, a company in which he has an interest; and
- (e) an order for intimation, service and advertisement of a petition for his sequestration.

#### Form, lodging and renewal of caveats

**5.2.** —

- (1) A caveat shall be in Form 5.2 and shall be lodged in the Petition Department.
- (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 a year and yearly thereafter.

## CHAPTER 6

### THE ROLLS

#### Printing and publishing of rolls

**6.1.** The rolls shall be printed and published, and delivered to subscribers, under directions made from time to time by the Lord President.

#### Fixing and allocation of diets in Outer House

**6.2.** —

- (1) This rule applies to the fixing and allocation of diets in the Outer House.
- (2) The court shall not proceed to fix a diet where—
  - (a) a proof is allowed;
  - (b) issues are approved; or
  - (c) a cause is appointed to the Procedure Roll.

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<sup>(8)</sup> 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.

(3) Subject to paragraph (4), a cause appointed to the Procedure Roll may be put out for hearing by the Keeper of the Rolls in the course of any week where, unless the parties otherwise agree, the diet has been published in the rolls on Thursday of the preceding week.

(4) Where a hearing on the Procedure Roll is anticipated to be of some length or complexity, the parties may arrange a fixed diet with the Keeper of the Rolls.

(5) As soon as convenient after the allowance of a proof or the approval of issues, the Keeper of the Rolls shall publish in the rolls a list of causes in which diets for proof or jury trial are to be fixed or allocated.

(6) Within 28 days after the appearance of a cause on a list published under paragraph (5), each party shall ensure that Form 6.2 is completed and sent to the Keeper of the Rolls.

(7) The Keeper of the Rolls may allocate a diet of proof or jury trial having regard to the information provided in Form 6.2.

(8) If a party fails to comply with paragraph (6), the Keeper of the Rolls may put the cause out on the By Order Roll before the Lord Ordinary.

(9) At a hearing on the By Order Roll under paragraph (8), the Lord Ordinary shall—

- (a) seek an explanation as to why Form 6.2 was not completed and sent timeously to the Keeper of the Rolls;
- (b) ascertain the information sought in Form 6.2, if not already ascertained by the Keeper of the Rolls;
- (c) require the production of a completed Form 6.2, if not already in the hands of the Keeper of the Rolls; and
- (d) make such order as to expenses, if any, as he thinks fit.

(10) Where Form 6.2 is completed and sent to the Keeper of the Rolls before the hearing on the By Order Roll under paragraph (8), the Keeper of the Rolls may cancel that hearing.

(11) Where, at any time after Form 6.2 has been completed and sent to the Keeper of the Rolls, a party's estimate of the likely length of the proof or jury trial alters materially, that party shall inform the Keeper of the Rolls of the new estimated length.

(12) On the allocation of a diet of proof or jury trial, the Keeper of the Rolls shall—

- (a) give written intimation of that diet to each party; and
- (b) cause the date of the diet to be inserted in the interlocutor which allowed the proof or jury trial.

(13) An application for the allocation of a special diet may be made to the Keeper of the Rolls—

- (a) on cause shown;
- (b) of consent of all parties; and
- (c) before a diet has been allocated under a preceding paragraph of this rule.

(14) Where an application under paragraph (13) is refused, the parties may bring the application before the Lord President; and the Lord President, or a judge nominated by him, shall determine the application in chambers.

(15) Parties shall attend on the Keeper of the Rolls for the purpose of fixing a diet for—

- (a) a proof or jury trial in a cause of exceptional length or complexity;
- (b) an undefended proof;
- (c) a continued proof;
- (d) a continued hearing; or
- (e) a hearing on evidence.

### **Fixing and allocation of diets in Inner House**

#### **6.3. –**

- (1) This rule applies to the fixing and allocation of diets in the Inner House.
- (2) Within 28 days after a cause depending before the Inner House is appointed to the Summer Roll for hearing, each party shall ensure that Form 6.3 is completed and sent to the Keeper of the Rolls.
- (3) The Keeper of the Rolls may fix or allocate a diet for a hearing on the Summer Roll, having regard to the information provided in Form 6.3.
- (4) If a party fails to comply with paragraph (2), the Keeper of the Rolls may put the cause out on the By Order Roll before a Division of the Inner House.
- (5) At a hearing on the By Order Roll under paragraph (4), the court shall–
  - (a) seek an explanation as to why Form 6.3 was not completed and sent timeously to the Keeper of the Rolls;
  - (b) ascertain the information sought in Form 6.3, if not already ascertained by the Keeper of the Rolls;
  - (c) require the production of a completed Form 6.3, if not already in the hands of the Keeper of the Rolls; and
  - (d) make such order as to expenses, if any, as it thinks fit.
- (6) Where Form 6.3 is completed and sent to the Keeper of the Rolls before the hearing on the By Order Roll under paragraph (4), the Keeper of the Rolls may cancel that hearing.
- (7) Where, at any time after Form 6.3 has been completed and sent to the Keeper of the Rolls, a party's estimate of the likely length of the hearing alters materially, that party shall inform the Keeper of the Rolls of the new estimated length.
- (8) On the allocation of a diet under this rule, the Keeper of the Rolls shall give written intimation of the diet allocated to each party.
- (9) Not less than 5 weeks before the hearing of a cause on the Summer Roll, the Keeper of the Rolls shall put the cause out on the By Order Roll before a Division of the Inner House.
- (10) At a hearing on the By Order Roll under paragraph (9), parties shall–
  - (a) advise the court whether or not the hearing on the Summer Roll is to proceed; and
  - (b) where such a hearing is to proceed, provide the court with a re-assessment of the likely duration of the hearing.

### **Putting out causes for proof, jury trial or hearing**

#### **6.4. –**

- (1) The Keeper of the Rolls shall prepare and publish in the rolls from time to time lists of all causes in which diets have been fixed or allocated–
  - (a) in the Summer Roll, or
  - (b) for proof, jury trial or other hearing,and put out such causes before such Division of the Inner House or Lord Ordinary, as the case may be, as may be convenient.
- (2) Without prejudice to rule 6.2(3) (causes appointed to procedure roll put out for hearing), a cause published in the rolls for hearing on any roll or at any diet shall be published not later than the second day before the day on which the cause is to be heard.

## CHAPTER 7

### EXTRACTS AND OFFICIAL CERTIFIED COPY INTERLOCUTORS

#### Applications for extracts

##### 7.1. –

(1) Subject to the provisions of this Chapter mentioned in paragraph (2), an application may be made for an extract of an act or a decree after the expiry of 7 days after the date of the act or decree, as the case may be.

(2) The provisions referred to in paragraph (1) are:–

paragraph (4) of this rule,

rule 7.2 (extracts of decrees in certain family actions),

rule 7.3 (amendments to principal writ),

rule 7.4 (return of steps of process and borrowing productions).

(3) An application under paragraph (1) shall be made by note to the Extractor in Form 7.1 lodged in the appropriate department of the Office of Court.

(4) The court may authorise immediate extract or supersede extract for such period as it thinks fit.

#### Extracts of decrees in certain family actions

##### 7.2. –

(1) Subject to paragraph (2), a decree–

(a) of divorce,

(b) of declarator of nullity of marriage, or

(c) in an action to which rule 49.28 (evidence in certain undefended family actions) applies, shall be extracted automatically after the expiry of 21 days after the date of decree unless a reclaiming motion has been enrolled.

(2) A decree of divorce in a simplified divorce application shall be extracted immediately.

(3) An extract under paragraph (1) or (2) shall be issued by the Extractor to the pursuer and a copy of it sent by the Extractor by first class post to the defender where his address is known.

(4) Additional extracts under this rule may be obtained from the Extracts Department.

#### Amendments to principal writ

**7.3.** An amendment which has been allowed to the instance or a conclusion of a summons, or to a petition, shall be written on the principal writ before the process is transmitted to the Extracts Department for an extract.

#### Return of steps of process and borrowing productions

**7.4.** Before an application is made under rule 7.1 for a final extract–

(a) any step of process which has been borrowed shall be returned; and

(b) each party shall borrow the productions lodged by him.

#### Decrees for payment in foreign currency

##### 7.5. –

(1) Where an application is made under rule 7.1 for an extract of a decree for payment in a foreign currency, the applicant shall lodge with the note to the Extractor a certified statement of the rate of exchange prevailing at—

- (a) the date of the decree sought to be extracted,
- (b) the date on which the note to the Extractor is lodged, or
- (c) a date within three days before the date on which the note to the Extractor is lodged,

and the sterling equivalent of the principal sum, interest and expenses decerned for.

(2) The certified statement required under paragraph (1) shall be by an official in the Bank of England or an institution authorised under the Banking Act 1987(9).

### **Decrees of adjudication**

**7.6.** Where an application is made under rule 7.1 for an extract of a decree of adjudication for debt, the applicant shall lodge with the note to the Extractor a statement of the accumulated sum in Form 7.6.

### **Interest**

**7.7.** Where interest is included in, or payable under, a decree, it shall be at the rate of 8 per cent a year unless otherwise stated.

### **Fees for extracts to be included in extracts**

**7.8.** —

(1) Where the court pronounces an interlocutor awarding a sum of expenses, the interlocutor shall be deemed to include, in addition to such sum, the fees for any extract required to enforce the award.

(2) In an extract of an interlocutor containing an award of expenses, the Extractor shall include the amount of the fee for the extract.

### **Form of extracts**

**7.9.** —

(1) Subjects to paragraphs (2) and (3), the extract of an act or a decree shall be in such form as the Extractor thinks fit.

(2) An extract shall be—

- (a) partly or wholly written,
- (b) typewritten,
- (c) printed,
- (d) lithographed, or
- (e) photographed,

and subscribed on the last page by the Extractor and have each page impressed with the stamp of the Extractor.

(3) An alteration in an extract shall be authenticated by the initials of the Extractor.

(4) In this rule, a reference to the Extractor includes the Principal Extractor.

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(9) 1987 c. 22.



## **Warrants for execution**

**7.10.** An extract of a decree on which execution may proceed shall include a warrant for all lawful execution in the following terms:– “and the Lords grant warrant for all lawful execution on this decree”.

## **Official certified copy interlocutors**

### **7.11. –**

(1) An application may be made to the appropriate department of the Office of Court for an official certified copy of an interlocutor in respect of–

- (a) the appointment of a judicial factor;
- (b) the approval of a scheme of arrangement in a petition for variation of a trust under section 1(1) of the Trusts (Scotland) Act 1961<sup>(10)</sup>;
- (c) the approval of a cy pres scheme or a scheme for the variation or reorganisation of a public trust; or
- (d) a decree for interim aliment.

(2) The Principal Clerk, the Deputy Principal Clerk, or a clerk of session authorised by either of them, may append to an official certified copy of an interlocutor granting decree for interim aliment a warrant for all lawful execution in the following terms:– “and the Lords grant warrant for all lawful execution on this decree for interim aliment”.

## *CHAPTER 8*

### *TAXES ON MONEY UNDER CONTROL OF THE COURT*

## **Certificates by officer of Inland Revenue**

### **8.1. –**

(1) Subject to paragraph (2), no–

- (a) decree or other interlocutor for payment to a person of any money consigned in the name of the Accountant of Court under the Court of Session Consignations (Scotland) Act 1895<sup>(11)</sup>,
- (b) decree or other interlocutor for payment of consigned money, or for transfer or conveyance to a person of any heritable or moveable property, in a cause which seeks the distribution of the estate of a deceased person, or
- (c) decree of exoneration and discharge of a judicial factor appointed by the court to administer and distribute an estate, unless appropriate steps have been taken for the continued administration of a lapsed trust, intestate estate, partnership estate or other estate, heritable or moveable,

shall be pronounced until there has been lodged with the clerk of court 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 relation to paragraph (1)(b), in an action of multiplepounding it shall not be necessary for the issue of such a certificate that all of the taxes or duties payable on the estate of a deceased claimant have been paid or satisfied.

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<sup>(10)</sup> 1961 c. 57; section 1(1) was amended by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 1, paragraph 27.

<sup>(11)</sup> 1985 c. 19.

## *CHAPTER 9*

### *COURT RECORDS*

#### **Transmission of records**

##### **9.1. –**

(1) The Register of Acts and Decrees for each year shall be transmitted by the Extractor to the Keeper of the Records for permanent custody within 6 months after the end of that year.

(2) Subject to paragraph (3), a process, other than a teind process, shall be transmitted to the Keeper of the Records after the expiry of 5 years after–

- (a) the date of the last interlocutor pronounced in the cause; or
- (b) where no interlocutor has been pronounced, the date of the calling of the summons or the presentation of the petition, as the case may be.

(3) No process of a petition for–

- (a) appointment of a judicial factor, or
- (b) the winding up of a company,

shall be transmitted under this rule unless the factor or liquidator, as the case may be, has been granted a final discharge by the court.

#### **Retransmission of processes to Office of Court**

**9.2.—**(1) Where a person, having an interest in a process in the custody of the Keeper of the Records (other than a finally extracted process), requires that process to be transmitted back to the Office of Court–

- (a) it shall be transmitted back on payment of such fee as may be due to the Keeper of the Records; and
- (b) an entry shall be made in a book to be kept by the Keeper of the Records recording the retransmission, which shall be signed by the clerk of session who receives the process.

(2) No document in a process, may be borrowed by any person while the process remains in the custody of the Keeper of the Records except under the provisions of paragraph (1).

(3) A process transmitted back to the Office of Court under paragraph (1) shall be returned by the Office of Court to the Keeper of the Records as soon as possible after it has ceased to be required.

## *CHAPTER 10*

### *SITTINGS OF THE COURT*

#### **Session and terms of court**

##### **10.1. –**

(1) The court shall be in session throughout the year except during such periods as the Lord President shall specify by direction as periods when the court shall be in vacation.

(2) There shall be three terms during session when the court shall sit to conduct the ordinary business of the court, namely:–

- (a) a winter term,
- (b) a spring term, and
- (c) a summer term,

the dates of which shall be such as the Lord President shall direct annually.

(3) The Lord President may, if at any time he considers the business of the court so requires, direct that a term of the court shall be extended for such period as may be necessary.

### **Sederunt days**

#### **10.2. –**

(1) A day on which the court sits during session under rule 10.3(1) shall be a sederunt day.

(2) The Lord President may, by direction, provide that such days in vacation as he may specify in the direction shall be sederunt days.

### **Sittings during term**

#### **10.3. –**

(1) Subject to the following paragraphs of this rule, the court shall sit on Tuesday, Wednesday, Thursday and Friday of each week during a term at such times as the Lord President may direct.

(2) The court shall not sit during a term–

- (a) subject to paragraph (3), on such public holidays, or
- (b) on such other days in exceptional circumstances,

as the Lord President may direct.

(3) A Division of the Inner House or the Lord Ordinary may sit–

- (a) on a Monday where it is considered necessary to hear and determine a cause; or
- (b) on a Saturday, Sunday or public holiday to hear and determine a matter of urgency.

### **Sittings during session outwith terms**

**10.4.—**(1) A Division of the Inner House or the Lord Ordinary may sit on any day when the court is in session after a term has ended to conclude a hearing which has commenced during a term.

(2) A Division of the Inner House may sit at any time when the court is in session outwith a term to hear and determine urgent Inner House business.

(3) At any time during session outwith a term, the Lord Ordinary shall–

- (a) have the powers of the vacation judge in rule 11.1; and
- (b) have such other powers to hear and determine a cause in the Outer House as the Lord President may from time to time direct.

### **Sittings during vacation**

**10.5.—**(1) During vacation, one or more of the judges of the court, other than the Lord President and the Lord Justice-Clerk, shall act from time to time as a vacation judge sitting in court or in chambers.

(2) The vacation judge shall deal with the business of the vacation judge under rule 11.1(1) on such days and at such times as may be necessary or convenient, subject to any direction of the Lord President.

(3) A Division of the Inner House or the Lord Ordinary may sit during vacation, whether or not on a sederunt day, to conclude a hearing commenced when the court was in session.

(4) A Division of the Inner House may sit during vacation, whether or not on a sederunt day, to hear and determine urgent Inner House business which cannot competently be heard and determined by the vacation judge.

### **Lord Ordinary in Exchequer Causes**

**10.6.** The Lord Ordinary in Exchequer Causes may hear and determine an Exchequer cause when the court is in session or in vacation.

## *CHAPTER 11*

### *VACATION JUDGE*

#### **Powers of vacation judge**

**11.1.**—(1) Subject to any other provision in these Rules and paragraph (2) of this rule, the vacation judge may, during vacation, hear and determine—

- (a) a motion which might be determined during session by the Lord Ordinary;
- (b) an application which might be determined during session by the Lord Ordinary in chambers; and
- (c) a motion which does not affect the merits, in a cause in dependence in the Inner House.

(2) The vacation judge shall not be bound to hear or determine any matter if, in his opinion, it would be more appropriate for the matter to be dealt with in the session of the court after the vacation.

## *CHAPTER 12*

### *ASSESSORS*

#### **Summoning of assessors**

**12.1.**—(1) Subject to the following provisions of this Chapter, the court may, at its own instance or on the motion of a party, summon to its assistance a qualified person to sit with the court to act as an assessor at a proof or hearing in any cause.

(2) Where the court considers summoning an assessor at its own instance, it shall hear the parties on the matter before making a decision.

(3) Where an interlocutor is pronounced summoning an assessor, the court shall remit to the Deputy Principal Clerk to arrange for the attendance of the assessor selected.

#### **Consignation of money for fees of assessors**

**12.2.** An interlocutor summoning an assessor other than in a cause under the Patents Act 1977<sup>(12)</sup> shall only be pronounced subject to the condition that there shall be consigned into court such sum as the court thinks fit to meet the fees and expenses of the assessor by—

- (a) the party enrolling the motion; or
- (b) where an assessor is summoned by the court at its own instance, the pursuer or petitioner, as the case may be, unless the court otherwise directs.

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(12) 1977 c. 37.

### **Motions to summon assessors**

**12.3.** A party seeking to summon an assessor shall—

- (a) enrol a motion for that purpose not less than 28 days before the diet of the proof or hearing at which the presence of an assessor is sought; and
- (b) give written intimation of the motion to every other party not less than 7 days before it is enrolled.

### **Copies of pleadings for use of assessors**

**12.4.—**(1) Where an assessor is summoned by the court at its own instance, the pursuer or petitioner, as the case may be, shall lodge in process such copy of the closed record or other pleadings in the cause as the court directs for the use of the assessor.

(2) Where a motion under rule 12.3 (motions to summon assessors) has been granted, the party who enrolled the motion shall lodge in process a copy of the closed record or other pleadings in the cause for the use of the assessor.

### **Selection of assessors**

**12.5.—**(1) Subject to paragraph (2), an assessor shall be selected by agreement between the parties, failing which, by the court on the motion of a party.

(2) A nautical assessor shall be selected from the list of persons—

- (a) approved by the Lord President;
- (b) kept by the Principal Clerk; and
- (c) published as the Lord President shall direct.

(3) The list of nautical assessors published under paragraph (2) shall be in force for a period of 3 years; but a person on that list may be approved in any subsequent list.

### **Number of assessors**

**12.6.—**(1) For a proof or hearing in the Outer House, only one assessor shall be summoned.

(2) In the case of—

- (a) a proof or hearing ordered by a Division of the Inner House to be taken by one of the judges of the Inner House, or
- (b) a hearing in the Inner House,

the number of assessors to be summoned shall be such number as the court thinks fit.

### **Skilled witnesses where assessors summoned**

**12.7.—**(1) In a cause arising out of a collision at sea where the court is assisted by a nautical assessor at a proof, no party may lead a skilled witness on nautical matters.

(2) In a cause other than one to which paragraph (1) applies, where the court is assisted by an assessor at a proof, a party may not lead evidence from more than one skilled witness on any matter within the special qualifications of the assessor.

(3) Where a question arises at a proof in relation to the application of paragraph (2), the decision of the Lord Ordinary shall be final and not subject to review.

(4) In a cause to which paragraph (2) applies, the court may, on the motion of a party—

- (a) enrolled not less than 14 days before the diet of proof, and

(b) of which written intimation has been given to every other party not less than 7 days before the motion is enrolled,  
on cause shown, allow evidence to be led from a greater number of skilled witnesses.

#### **Note of questions submitted to assessors**

**12.8.** The judge who presides at a proof or hearing to which an assessor is summoned shall make a note of each question submitted to the assessor and of the answer; and the note shall be lodged in process.

#### **Remuneration of assessors**

**12.9.** The remuneration to be paid to an assessor, other than in a cause under the Patents Act 1977, shall, unless the court otherwise directs, be treated as expenses in the cause.

### *Initiation and progress of proceedings*

## *CHAPTER 13*

### *SUMMONSES, NOTICE, WARRANTS AND CALLING*

#### **Initiation of causes by summons**

**13.1** Subject to any other provision in these Rules, all causes originating in the court shall be commenced in the Outer House by summons.

#### **Form of summonses**

**13.2.—(1)** Subject to any other provision in these Rules, a summons shall be in Form 13.2–A.

(2) A conclusion in a summons shall be stated in accordance with the appropriate style, if any, in Form 13.2–B.

(3) Subject to rule 46.6(3) (no condescendence or pleas-in-law in ship collision actions), there shall be annexed to a summons—

- (a) a statement, in the form of numbered articles of the condescendence, of the averments of fact which form the grounds of the claim; and
- (b) appropriate pleas-in law.

(4) A condescendence shall include averments stating—

- (a) in an action to which the Civil Jurisdiction and Judgments Act 1982<sup>(13)</sup> applies, the domicile of the defender (to be determined in accordance with the provisions of that Act) so far as known to the pursuer;
- (b) the ground of jurisdiction of the court, unless jurisdiction would arise only if the defender prorogated the jurisdiction of the court without contesting jurisdiction;
- (c) unless the court has exclusive jurisdiction, whether or not there is an agreement prorogating the jurisdiction of a court in another country; and
- (d) whether or not there are proceedings involving the same cause of action in subsistence between the parties in a country to which the convention in Schedule 1 or 3C to the

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(13) 1982 c. 27.

Civil Jurisdiction and Judgments Act 1982(14) applies and the date any such proceedings commenced.

(5) A summons may include warrants for diligence and intimation in so far as permitted under these Rules.

### **Address of defender**

**13.3.** In a summons, the pursuer shall—

- (a) set out in the instance the known residence, registered office, other official address or place of business of the defender where he is to be served; or
- (b) where that residence, office, address or place, as the case may be, is not known and cannot reasonably be ascertained, 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.

### **Period of notice in summonses**

**13.4.—**(1) Subject to any other provision in these Rules, the period of notice in a summons shall be—

- (a) in the case of service within Europe, 21 days from whichever is the later of the date of execution of service or the giving of intimation before calling on a warrant for intimation;
- (b) in the case of service furth of Europe under rule 16.2(2) (d) or (e) (service by an *huissier* etc. or personally), 21 days from whichever is the later of the date of execution of service or the giving of intimation before calling on a warrant for intimation;
- (c) in the case of service furth of Europe other than under sub-paragraph (b), 42 days from whichever is the later of the date of execution of service or the giving of intimation before calling on a warrant for intimation; and
- (d) in the case of service by advertisement under rule 16.5 (service where address of person is not known), other than in an action to which rule 49.12 (notice of family actions by advertisement) applies, 6 months from the date of publication of the advertisement.

(2) An application may be made by motion to shorten or extend the period of notice in a summons.

(3) Where a motion under paragraph (2) is made after signeting of the summons but before service—

- (a) the summons shall be produced to the court; and
- (b) the decision of the Lord Ordinary on the motion shall be final and not subject to review.

### **Signeting**

**13.5.—**(1) A summons shall pass the signet.

(2) No summons shall bear any date but the date of signeting, which date shall be treated as the date of the summons.

(3) A summons shall be signeted and registered by a clerk of session acting under authority from the Principal Clerk (by virtue of a commission granted to him by the Keeper of the Signet).

(4) Subject to paragraph (5), a summons shall be presented to the General Department during its normal office hours for signeting and registration.

(5) In an emergency, a summons may be signeted and registered outwith the normal office hours.

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(14) Schedule 1 to the Act of 1982 was substituted by [S.I. 1990/2591](#) and Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 ([c. 12](#)), section 1(3).

**Warrants in summonses**

**13.6.** When signed, a summons shall be authority for—

- (a) service on the defender designed in the instance;
- (b) subject to any other provision in these Rules and the provisions of any other enactment or rule of law, arrestment to found jurisdiction where a warrant in the appropriate form in Form 13.2–A has been inserted in the summons;
- (c) subject to any other provision in these Rules and the provisions of any other enactment or rule of law, diligence by—
  - (i) inhibition on the dependence of the action,
  - (ii) arrestment on the dependence of the action where there is a conclusion for the payment of money,
  - (iii) arrestment *in rem*, or
  - (iv) dismantling a ship,
 where a warrant in the appropriate form in Form 13.2–A has been inserted in the summons; and
- (d) intimation of the summons on any person on whom intimation is required by these Rules where a warrant for that purpose has been inserted in the summons.

**Service and intimation of summonses**

**13.7.**—(1) Where a summons is to be executed, a copy of the summons which has passed the signet shall be—

- (a) served on the defender with a citation in Form 13.7 attached to it; and
- (b) intimated to any person named in a warrant for intimation.

(2) Where service of a summons is not executed within a year and a day after the date of signing, the instance shall fall.

**Warrants after signing**

**13.8.**—(1) Where a warrant for diligence mentioned in rule 13.6(c) or for intimation referred to in rule 13.6(d) is not obtained when the summons is signed, the pursuer may apply by motion for such a warrant at any stage of the action.

(2) Where a minute of amendment is lodged by a pursuer under rule 24.2 calling an additional or substitute defender, the pursuer may apply by motion for warrant to use any form of diligence which would have been permitted under rule 13.6(c) in a separate action.

(3) A certified copy of the interlocutor granting warrant for diligence applied for under this rule shall be sufficient authority for execution of the diligence.

**Effect of warrants for inhibition on dependence**

**13.9.**—(1) A warrant for inhibition on the dependence in a summons, or in a certified copy of an interlocutor granted on a motion under rule 13.8(3), shall have the same effect as letters of inhibition and may be executed at the same time as the summons is served or at any time thereafter.

(2) A summons, or a certified copy of the interlocutor, containing a warrant for inhibition on the dependence and a certificate of execution of it may be registered in the Register of Inhibitions and Adjudications.



(3) A notice of the certified copy of the interlocutor containing a warrant for inhibition on the dependence may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868<sup>(15)</sup>; and such registration shall have the same effect as registration of a notice under that section.

### **Recall etc. of arrestment or inhibition**

**13.10.**—(1) An application by any person having an interest—

- (a) to loose, restrict or recall an arrestment, or
- (b) to recall, in whole or in part, an inhibition,

mentioned in rule 13.6(c) shall be made by motion.

(2) Where the court grants a motion under paragraph (1), it may do so, on such conditions, if any, as to caution or other security and expenses as it thinks fit.

(3) Where a motion under paragraph (1) is enrolled before calling of the summons, the pursuer shall produce the principal summons, or a copy of it, with the certificate of execution of service of the arrestment or inhibition, as the case may be.

### **Movement of arrested property**

**13.11.**—(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 mentioned in rule 13.6.

(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.

(3) A warrant granted on a motion under paragraph (1) shall be without prejudice to the validity and subsistence of the arrestment.

### **Intimation of actions relating to heritable property**

**13.12.**—(1) In an action relating to heritable property, it shall not be necessary to call a person as a defender by reason only of any interest he may have as the holder of a heritable security over the heritable property; but intimation of the summons shall be given to that person by notice of intimation in Form 13.12 attached to a copy of the summons.

(2) A warrant for intimation under paragraph (1) shall be inserted in the summons by the pursuer in the following terms:— “Warrant to intimate to (*name and address*) as a person who is believed to be a heritable creditor of the defender.”.

(3) A person on whom intimation has been made under this rule may apply by motion for leave to be sisted as a party and to lodge defences.

### **Calling**

**13.13.**—(1) A summons shall not be called earlier than the day on which the period of notice expires.

(2) A summons shall be lodged for calling not later than 12.30 p.m. on the second day before that on which it is to be called.

(3) A summons may be called—

- (a) during session, on a sederunt day; or
- (b) in vacation, on a calling day of which notice has been given in the rolls.

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<sup>(15)</sup> 1868 c. 101.

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(4) A summons lodged for calling shall be accompanied by a typewritten slip containing the instance, subject to the following provisions:—

- (a) where there is more than one pursuer or defender, the slip shall contain only the name and designation of the first pursuer or defender, as the case may be, followed by the words “and Another [*or Others, as the case may be*]”; and
- (b) in naming and designing a pursuer or defender who is a body of persons (such as a trust or a partnership), whether individual members are also parties or not, it shall be sufficient to use the collective name of that body.

(5) The calling of a summons shall be published in the rolls on the date on which the summons calls.

(6) Where a summons has not called within a year and a day after the expiry of the period of notice, the instance shall fall.

#### **Protestation for not calling summons**

**13.14.**—(1) Where the pursuer does not lodge the summons for calling within 7 days after the date on which the period of notice expires, the defender, on production of the service copy summons, may apply by motion for an order ordaining the pursuer to lodge the summons for calling within 7 days, or such other period as the court thinks fit, after the date of the order.

(2) Where the court pronounces an interlocutor under paragraph (1), the defender shall serve a certified copy of that interlocutor on the pursuer.

(3) Where the pursuer fails to lodge the summons within the period ordered by the court under paragraph (1), the defender may apply by motion—

- (a) for declarator that the instance has fallen;
  - (b) for recall of any diligence mentioned in rule 13.6(c) which has been executed; and
  - (c) for payment to the defender of his expenses of process under this rule.
- (4) An interlocutor granting a motion under paragraph (3) shall be final and not subject to review.

## *CHAPTER 14*

### *PETITIONS*

#### **Application of this Chapter**

**14.1.** Subject to any other provisions in these Rules, this Chapter applies to a petition presented to the court.

#### **Applications by petition in the Outer House**

**14.2.** Subject to any other provision in these Rules, the following applications to the court shall be made by petition presented in the Outer House:—

- (a) an application for the appointment of a judicial factor, a factor *loco absentis*, a factor pending litigation or a curator *bonis*;
- (b) an application for the appointment of a judicial factor on the estate of a partnership or joint adventure;
- (c) an application to the *nobile officium* of the court which relates to—
  - (i) the administration of a trust;
  - (ii) the office of trustee; or

- (iii) a public trust;
- (d) a petition and complaint for breach of interdict;
- (e) an application to the supervisory jurisdiction of the court;
- (f) an application for suspension, suspension and interdict, and suspension and liberation;
- (g) an application to recall an arrestment or inhibition other than in a cause depending before the court; and
- (h) a petition or other application under these Rules or any other enactment or rule of law.

### **Applications by petition in the Inner House**

**14.3.** Any of the following applications shall be made by petition presented in the Inner House:—

- (a) a petition and complaint other than for breach of interdict;
- (b) an application under any enactment relating to solicitors or notaries public;
- (c) an application which is, by virtue of these Rules or any other enactment, to be by petition and is incidental to a cause depending before the Inner House;
- (d) an application to the *nobile officium* of the court other than an application mentioned in rule 14.2(c) (applications relating to the administration of a trust, the office of trustee or a public trust);
- (e) a petition by trustees for directions under Part II of Chapter 63;
- (f) an application under section 1 of the Evidence (Proceedings in Other Jurisdictions) Act 1975<sup>(16)</sup> (assistance in obtaining evidence for civil proceedings in another jurisdiction);
- (g) an application under section 1 of the Trusts (Scotland) Act 1961<sup>(17)</sup> (variation or revocation of trusts);
- (h) an application under section 49 of the Insurance Companies Act 1982<sup>(18)</sup> (sanction for transfer of long term business);
- (i) an application under section 136 (order for confirmation of reduction of share capital) or section 425 (order for meeting for compromise or arrangement) of the Companies Act 1985<sup>(19)</sup>;
- (j) an application under section 17(6), 18(7), 20(7), 20(11)(b), 21(5), 21(7) or 21(10) of, or under paragraph 20 of Schedule 1 to, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(20)</sup> (orders in relation to conveyancing or executry practitioners); and
- (k) an application required to be made to the Inner House under any enactment.

### **Form of petitions**

**14.4.—**(1) A petition shall be in Form 14.4.

(2) A petition shall include—

- (a) a statement of facts in numbered paragraphs setting out the facts and circumstances on which the petition is founded; and
- (b) a prayer setting out the orders sought.

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<sup>(16)</sup> 1975 c. 34.

<sup>(17)</sup> 1961 c. 57.

<sup>(18)</sup> 1982 c. 50; section 49 was amended by the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), Schedule 2.

<sup>(19)</sup> 1985 c. 6; section 425 was amended by the Court of Session Act 1988 (c. 36), Schedule 2.

<sup>(20)</sup> 1990 c. 40.

(3) In a petition presented under an enactment, the statement of facts shall expressly refer to the relevant provision under the authority of which the petition is presented.

(4) Where a petition is one to which the Civil Jurisdiction and Judgments Act 1982<sup>(21)</sup> applies, the statement of facts shall include averments stating—

- (a) the ground of jurisdiction of the court, unless jurisdiction would arise only if the respondent prorogated the jurisdiction of the court without contesting jurisdiction;
- (b) unless the court has exclusive jurisdiction, whether or not there is an agreement prorogating the jurisdiction of a court in another country; and
- (c) whether or not there are proceedings involving the same cause of action in subsistence between the parties in a country to which the convention in Schedule 1 or 3C to that Act<sup>(22)</sup> applies and the date any such proceedings commenced.

(5) The prayer of a petition shall crave warrant for such intimation, service and advertisement as may be necessary having regard to the nature of the petition, or as the petitioner may seek; and the name, address and capacity of each person on whom service of the petition is sought shall be set out in a schedule annexed to, and referred to in, the prayer of the petition.

(6) Where it is sought in a petition—

- (a) to dispense with intimation, service or advertisement, or
- (b) to shorten or extend the period of notice,

the appropriate order shall be craved in the prayer, and the grounds on which the order is sought shall be set out in the statement of facts.

### **First order in petitions**

**14.5.**—(1) Subject to paragraph (2), a petition on being lodged shall, without a motion being enrolled—

- (a) during term, appear in the rolls for the first available day after lodging, in the Motion Roll or Single Bills, as the case may be, for an order for such intimation, service and advertisement as may be necessary; or
- (b) during session outwith a term, be brought before the Lord Ordinary for such an order; or
- (c) during vacation, be brought before the vacation judge for such an order.

(2) Where a petitioner seeks—

- (a) to dispense with intimation, service or advertisement on any person, or
- (b) any interim order,

he shall apply by motion for such order as appears appropriate.

(3) On disposing of a motion under paragraph (2), the court shall make such order as it thinks fit.

### **Period of notice for lodging answers**

**14.6.**—(1) Subject to any other provision in these Rules, the period of notice for lodging answers to a petition shall be—

- (a) in the case of service, intimation or advertisement within Europe, 21 days from whichever is the later of the date of execution of service, the giving of intimation or the publication of the advertisement;

<sup>(21)</sup> 1982 c. 27.

<sup>(22)</sup> Schedule 1 to the Civil Jurisdiction and Judgments Act 1982 was substituted by S.I. 1990/2591 and Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1(3).

- (b) in the case of service or intimation furth of Europe under rule 16.2(2)(d) or (e) (service by an *huissier* etc. or personally), 21 days from whichever is the later of the date of execution of service or the giving of intimation;
  - (c) in the case of service or intimation furth of Europe other than under sub-paragraph (b), or advertisement furth of Europe, 42 days from whichever is the later of the date of execution of service, the giving of intimation or the publication of the advertisement;
  - (d) in the case of service by advertisement under rule 16.5 (service where address of person is not known), 6 months from the date of publication of the advertisement.
- (2) An application may be made by motion to shorten or extend the period of notice.
- (3) Where a motion under paragraph (2) is made in a petition at the time that an order for intimation, service or advertisement is made under rule 14.5 (first order in petitions), the decision of the court on the motion shall be final and not subject to review.

### **Intimation and service of petitions**

**14.7.**—(1) A petition shall be intimated—

- (a) on the walls of the court; and
- (b) in such other manner as the court thinks fit.

(2) A copy of the petition shall be served on every person, specified in the petition or by the court as a person on whom the petition is to be served, with a citation in Form 14.7 attached to it.

### **Procedure where answers lodged**

**14.8.** Where answers to a petition have been lodged, the petitioner shall, within 28 days after the expiry of the period of notice, apply by motion for such further procedure as he seeks, and the court shall make such order for further procedure as it thinks fit.

### **Unopposed petitions**

**14.9.**—(1) Subject to paragraph (2), where the period of notice has expired without answers being lodged, the court shall, on the motion of the petitioner, after such further procedure and inquiry into the grounds of the petition, if any, as it thinks fit, dispose of the petition.

(2) Where—

- (a) the prayer of the petition seeks an order directed against a person,
- (b) service of the petition has been made on that person furth of the United Kingdom under rule 16.2, and
- (c) such order has been granted without that person having lodged answers,

a certified copy of the interlocutor granting the order shall be served forthwith by the petitioner on that person.

(3) The court may, on the motion of a person to whom paragraph (2) applies, recall the interlocutor and allow answers to be lodged if—

- (a) that person—
  - (i) without any fault on his part, did not have knowledge of the petition in sufficient time to lodge answers;
  - (ii) has disclosed a *prima facie* answer to the petition on the merits; and
  - (iii) has enrolled the motion for recall within a reasonable time after he had knowledge of the petition; and

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- (b) the motion is enrolled before the expiry of one year from the date of the interlocutor sought to be recalled.
- (4) The recall of an interlocutor under paragraph (3) shall be without prejudice to the validity of anything already done or transacted, of any contract made or obligation incurred, or of any appointment made or power granted, in or by virtue of that interlocutor.
- (5) The provisions of this rule are without prejudice to the power of the court to make any interim appointment or order at any stage of the cause.

## CHAPTER 15

### APPLICATIONS BY MINUTE OR NOTE

#### Applications by minute

**15.1.**—(1) Subject to paragraph (6) and to any other provision in these Rules, this rule applies to any application to the court by minute in a cause.

- (2) A minute shall—
  - (a) include a crave, a statement of facts and appropriate pleas-in-law; and
  - (b) be lodged in the process of the cause to which it relates.
- (3) On lodging a minute, the minuter shall enrol a motion, as appropriate—
  - (a) for a warrant for service of the minute on a person who has not entered the process of the cause;
  - (b) where the cause is not a depending cause, for service of the minute on parties to that cause;
  - (c) for intimation of the minute to any person;
  - (d) to dispense with service on, or intimation to, a person; and
  - (e) for an order for any answers to the minute to be lodged in process within the period of notice.
- (4) A notice in Form 15.1 shall be attached to the minute to be served or intimated under paragraph (3).
- (5) After the expiry of the period of notice, the court shall, on the motion of any party, after such further procedure, if any, as it thinks fit, determine the application.
- (6) This rule shall not apply to—
  - (a) a minute of abandonment;
  - (b) a minute of amendment;
  - (c) a minute of sist;
  - (d) a minute of transference; or
  - (e) a minute of objection to a minute of transference.

#### Applications by note

**15.2.**—(1) Subject to paragraph (4) and to any other provision in these Rules, this rule applies to any application to the court by note in a cause.

- (2) A note shall—
  - (a) include a statement of facts and a prayer; and
  - (b) be lodged in the process of the cause to which it relates.

(3) The following provisions of Chapter 14 (petitions) shall, with the necessary modifications and the modification mentioned below, apply to a note under this rule as they apply to a petition:—

rule 14.5 (first order in petitions),

rule 14.6 (period of notice for lodging answers),

rule 14.7 (intimation and service of petitions) with the substitution in paragraph (2) of that rule of the words “a notice in Form 15.2” for the words “a citation in form 14.7”,

rule 14.8 (procedure where answers lodged),

rule 14.9 (unopposed petitions).

(4) This rule shall not apply to—

(a) a note to the Extractor; or

(b) a note of objection.

## CHAPTER 16

### SERVICE, INTIMATION AND DILIGENCE

#### PART I SERVICE AND INTIMATION

##### Methods and manner of service

**16.1.**—(1) Subject to any other provision in these Rules or any other enactment, service of a document required under these Rules on a person shall be executed—

(a) in the case of an individual—

(i) personally, by tendering the document and any citation or notice, as the case may be, to that individual;

(ii) by leaving the document and any citation or notice, as the case may be, in the hands of a person, or failing which, depositing it, in a dwelling place where the person executing service, after due enquiry, has reasonable grounds for believing that that individual resides but is not available;

(iii) by leaving the document and any citation or notice, as the case may be, in the hands of a person at, or depositing it in, a place of business where the person executing service, after due enquiry, has reasonable grounds for believing that that individual carries on business; or

(iv) by posting the document and any citation or notice, as the case may be, to the known dwelling place of that individual;

(b) in the case of any other person—

(i) by leaving the document and any citation or notice, as the case may be, in the hands of an individual at, or depositing it in, the registered office, other official address or a place of business, of that other person, in such a way that it is likely to come to the attention of that other person; or

(ii) by posting the document and any citation or notice, as the case may be, to the registered office, other official address or a place of business, of that other person.

(2) Service of a principal writ on a person whose known residence is the same as that of the party on whose behalf service is to be executed shall be executed personally.

(3) Subject to paragraph (4), where service has been executed, the party on whose behalf service has been executed shall attach to the document served and lodge in process—

(a) a certificate of service as required by these Rules;

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- (b) a copy of any notice or advertisement ordered to be published; and
- (c) a copy of any interlocutor ordering service of that document.

(4) In relation to a petition or note, where service has been executed by a petitioner or noter, he shall attach the documents required by paragraph (3)(a) and (b) to a copy of the petition or note, as the case may be, marked "Execution Copy" and certified a true copy.

### **Service furth of United Kingdom**

**16.2.**—(1) Subject to any other enactment, this rule applies to service of a document on a person on whom service is to be executed in a country furth of the United Kingdom.

(2) Service under this rule may be executed by any of the following methods of service, if, and in a manner, permitted under a convention providing for service in that country or by the laws of that country:—

- (a) by post to the known residence, registered office or place of business, as the case may be, of the person on whom service is to be executed;
- (b) through the central, or other appropriate, authority of that country, at the request of the Secretary of State for Foreign and Commonwealth Affairs;
- (c) through a British consular office in that country, at the request of the Secretary of State for Foreign and Commonwealth Affairs;
- (d) by an *huissier*, other judicial officer or competent official of that country, at the request of a messenger-at-arms, a party or his agent; or
- (e) personally by the party executing service or his authorised agent tendering the document and the citation (if any) to the person on whom service is to be executed.

(3) Where service is to be executed through a central, or other appropriate, authority, or through a British consular officer, at the request of the Secretary of State for Foreign and Commonwealth Affairs, the party executing service shall—

- (a) send a copy of the document, 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) Where service is to be executed by an *huissier*, other judicial officer or competent official at the request of a messenger-at-arms—

- (a) the messenger-at-arms shall send a copy of the document 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
- (b) the party on whose behalf service has been executed shall 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 has been executed personally by the party executing service or his authorised agent—

- (a) the execution of service shall be witnessed by one witness who shall sign the certificate of service (which shall state his name, occupation and address); and
- (b) the person who executed service shall complete a certificate of service in Form 16.2.

(6) Where service is executed by a method mentioned in paragraph (2)(a) or (e), the party executing service shall lodge in process a certificate by a person qualified in the law of the country, or a duly accredited representative of the country, in which service was executed stating that the method of service used is permitted by the law of that country.



### **Service by messenger-at-arms**

**16.3.**—(1) Service by a method mentioned in rule 16.1(1)(a)(i), (ii) or (iii), or (b)(i), shall be executed by a messenger-at-arms who shall—

- (a) explain the purpose of service to any person on whom he executes service;
- (b) complete a citation or notice, as the case may be, and a certificate of service in Form 16.3; and
- (c) send the certificate of service to the pursuer.

(2) Such service shall be witnessed by one witness who shall sign the certificate of service (which shall state his name, occupation and address).

(3) Where service is executed by a method mentioned in rule 16.1(1)(a)(ii) or (iii), or (b)(i), and the document served is left in the hands of a person other than the person on whom service is to be executed, that document and the citation or notice of intimation, as the case may be, shall be placed in an envelope (bearing the notice specified in rule 16.4(2)) and sealed by the messenger-at-arms.

(4) A messenger-at-arms shall, when he executes service of a document, have in his possession—

- (a) in the case of service of a copy of a principal writ, the principal writ or a copy of it certified as correct by the agent for the party whose writ it is, and
- (b) where an interlocutor has been pronounced allowing service of the document, a certified copy of that interlocutor,

which he shall show, if required, to the person on whom he executes service.

(5) The certificate of service required under paragraph (1) shall include the full name and designation of any person in whose hands any document and the citation or notice, as the case may be, were left.

(6) In the application of this rule to service in a part of the United Kingdom furth of Scotland, reference to a messenger-at-arms shall be construed as a reference to a person entitled to serve Supreme Court writs in that part.

### **Service by post**

**16.4.**—(1) This rule applies to service of a document by post.

(2) Service by post shall be executed by—

- (a) a messenger-at-arms, or
- (b) an agent,

posting a copy of the document to be served with any citation or notice, as the case may be, by registered post or the first class recorded delivery service addressed to the person on whom service is to be executed and having on the face of the envelope a notice in the following terms:— “This envelope contains a citation to, or intimation from, the Court of Session. If delivery of the letter cannot be made it must be returned immediately to the Deputy Principal Clerk of Session, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ.”.

(3) Where English is not an official language of the country in which service is to be executed, a translation in an official language of that country of the notice required under paragraph (2) shall appear on the face of the envelope.

(4) The person executing service of a document shall complete—

- (a) a citation or notice, as the case may be; and
- (b) a certificate of service in Form 16.4.

(5) A Post Office receipt of posting by registered post or a certificate of posting by the first class recorded delivery service, as the case may be, issued and stamped by the Post Office shall be attached to the certificate of service.

(6) The date of execution of service shall be deemed to be the day after the date of posting.

(7) Subject to rule 16.11 (no objection to regularity of service or intimation), the execution of service by post shall be valid unless the person on whom service was sought to have been made proves that the envelope and its contents were not tendered or left at his address.

### **Service where address of person is not known**

**16.5.**—(1) Where the residence of the person to be served with a document is not known and cannot reasonably be ascertained or service on that person cannot be executed under rule 16.1 (methods and manner of service) or 16.2 (service furth of United Kingdom), the party who wishes to execute service may apply by motion—

- (a) for an order for service by the publication of an advertisement in a specified newspaper circulating in the area of the last known residence of that person or elsewhere; or
- (b) on special cause shown, for an order to dispense with service; and
- (c) stating the last known residence of that person and what steps have been taken to ascertain his present whereabouts.

(2) On enrolling such a motion, a copy of the document to be served shall be lodged with the Deputy Principal Clerk who shall retain it for a period of three years and from whom it may be uplifted by the person for whom it is intended.

(3) Where an interlocutor has been pronounced ordering publication of an advertisement under this rule—

- (a) the advertisement shall be in Form 16.5; and
- (b) publication of the advertisement shall have effect as if service of the document had been executed on the date of publication.

(4) Where an interlocutor has been pronounced dispensing with service under this rule—

- (a) service of the document shall be deemed to have been executed on the date of the interlocutor; and
- (b) the period of notice shall be dispensed with.

(5) A motion under paragraph (1) made before calling shall be heard in chambers.

(6) Where publication of an advertisement has been made under this rule, there shall be lodged in process—

- (a) a copy of the newspaper containing the advertisement; or
- (b) a certificate of publication by the publisher stating the date of publication and the text of the advertisement.

### **Translations of documents served or advertised abroad**

**16.6.**—(1) Where English is not an official language of the country in which a document is to be served, the document shall be accompanied by a translation in an official language of that country.

(2) An advertisement authorised under rule 16.5 (service where address of person is not known) to be published in a newspaper in a country in which English is not an official language of that country shall be in an official language of that country.

(3) With any certificate of service, or advertisement under rule 16.5, in a language other than English there shall be lodged a translation in English.

(4) A translation under this rule shall be certified as correct by the translator; and the certificate shall include his full name, address and qualifications.

### **Intimation of documents**

**16.7.**—(1) Subject to rule 16.8 (intimation on a warrant to intimate), rule 16.9 (written intimation) and any other provision in these Rules, where intimation of a document is to be given under these Rules to any person, the intimation shall be given—

- (a) personally, by tendering the document and the notice of intimation (if any) to that person; or
- (b) by registered post or the first class recorded delivery service—
  - (i) in the case of an individual, addressed to the known, or last known, dwelling place or a place of business of that individual; or
  - (ii) in the case of any other person, addressed to the registered office, other official address or a place of business of that person.

(2) Where intimation has been given in accordance with paragraph (1), the party on whose behalf intimation has been given shall attach to the principal writ or lodge in process, as the case may be—

- (a) certificate of intimation in Form 16.7;
- (b) a copy of any notice of intimation which was intimated; and
- (c) a copy of any interlocutor ordering the intimation.

### **Intimation on a warrant to intimate**

**16.8.**—(1) Where intimation of a document is to be given to a person for whom a warrant to intimate has been obtained, the intimation shall be made in the same manner as service of a document; and the following rules shall, with the necessary modifications, apply to that intimation as they apply to service of a document:—

- rule 16.1 (methods and manner of service),
- rule 16.2 (service forth of United Kingdom),
- rule 16.3 (service by messenger-at-arms),
- rule 16.4 (service by post),
- rule 16.5 (service where address of person is not known),
- rule 16.6 (translations of documents served or advertised abroad).

(2) Where intimation has been given in accordance with paragraph (1), the party on whose behalf intimation has been given shall attach a copy of any notice of intimation to the certificate of intimation.

### **Written intimation**

**16.9.** Where a provision in these Rules requires written intimation to be given to a person, that intimation may be made by first class post or other means of delivery to that person.

### **Acceptance of service or intimation and dispensing with period of notice**

**16.10.**—(1) An agent may accept service or intimation of a document on behalf of the person on whom service is to be executed or to whom intimation is to be given and may dispense with any period of notice.

(2) A person on whom service of a document is executed or to whom intimation of a document is given may dispense with any period of notice as respects him in relation to that document.

(3) Where a period of notice is dispensed with under paragraph (1) or (2), it shall be deemed to expire on the day on which the party on whose behalf service is executed or intimation is given receives written intimation that the period of notice has been dispensed with.

### **No objection to regularity of service or intimation**

**16.11.**—(1) A person who enters the process of a cause shall not be entitled to state any objection to the regularity of the execution of service or intimation of a document on him; and his appearance shall be deemed to remedy any defect in such service or intimation.

(2) Nothing in paragraph (1) shall preclude a person from pleading that the court has no jurisdiction.

### **PART IIDILIGENCE**

### **Excution of diligence**

**16.12.**—(1) This rule applies to—

- (a) the execution of any diligence on a warrant, act or decree of the court other than—
  - (i) an arrestment to which rule 16.13 (arrestment of ships and arrestment *in rem* of cargo on board ship) applies; or
  - (ii) an arrestment to which rule 16.14(1) (arrestment *in rem* of cargo landed or transhipped) applies; and
- (b) diligence in execution of a writ registered for execution in the Books of Council and Session.

(2) Subject to the following paragraphs of this rule, the execution of any diligence by virtue of these Rules on a person shall be executed by a messenger-at-arms in the same manner as service of a document is permitted under rule 16.1(1)(a)(i), (ii) or (iii) or (b)(i) (methods and manner of service); and, where appropriate, the following provisions of Part I (service and intimation) shall, with the necessary modifications, apply to the execution of diligence as they apply to service of a document:—

- rule 16.3(1) to (4) (service by messenger-at-arms),
- rule 16.4(2)(a), (3), (6) and (7) (service by post).

(3) In the application under this rule, by virtue of paragraph (2), of—

- (a) sub-paragraph (b) of paragraph (1) of rule 16.3 (completion of citation or notice and certificate of service) for the reference to Form 16.3 in that sub-paragraph there shall be substituted a reference to the appropriate form of certificate of execution in rule 16.15 (forms for diligence); and
- (b) sub-paragraph (b) of paragraph (4) of rule 16.4 (completion of citation or notice and certificate of service), for the reference to Form 16.4 in that sub-paragraph, there shall be substituted a reference to the appropriate form of certificate of execution in rule 16.15.

(4) The execution of such diligence on—

- (a) an individual who is resident furth of Scotland,
- (b) a person who has no registered office, other official address or a place of business in Scotland,
- (c) a person whose residence is not known and cannot reasonably be ascertained, or
- (d) a person on whom service cannot be executed in a manner permitted under paragraph (2),

shall be executed edictally by a messenger-at-arms leaving or depositing the appropriate schedule mentioned in rule 16.15. at the office of the Extractor.

(5) Where the execution of diligence is made edictally under paragraph (4), a copy of the schedule left at the office of the Extractor shall be sent by a messenger-at-arms by registered post or the first class recorded delivery service to the place furth of Scotland where the person on whom diligence is executed edictally resides, has his registered office, official address or place of business, as the case may be, or such last known place.

(6) A messenger-at-arms executing diligence shall have in his possession—

- (a) in the case of diligence on a warrant in a principal writ, the principal writ or a copy of it certified as correct by the agent for the party whose writ it is,
- (b) in the case of diligence on a warrant in an interlocutor, a certified copy of that interlocutor, or
- (c) in the case of diligence on an extract of an act or a decree, or a document registered in the Books of Council and Session, the extract,

which he shall show, if required, to any person on whom he executes diligence.

(7) The party on whose behalf diligence has been executed in a cause depending before the court shall attach the certificate of execution to the document containing the warrant for diligence.

#### **Arrestment of ships and arrestment *in rem* of cargo on board ship**

**16.13.**—(1) An arrestment of a ship *in rem* or on the dependence, or an arrestment *in rem* of cargo on board ship, may be executed on any day by a messenger-at-arms who shall affix the schedule of arrestment—

- (a) to the mainmast of the ship;
- (b) to the single mast of the ship; or
- (c) where there is no mast, to some prominent part of the ship.

(2) In the execution of an arrestment of a ship on the dependence, the messenger-at-arms shall, in addition to complying with paragraph (1), mark the initials “ER” above the place where the schedule of arrestment is fixed.

(3) On executing an arrestment under paragraph (1), the messenger-at-arms shall deliver a copy of the schedule of arrestment and a copy of the certificate of execution of it to the master of the ship, or other person on board in charge of the ship or cargo, as the case may be, as representing the owners of, or parties interested in, the ship or cargo, as the case may be.

(4) Where the schedule of arrestment and the copy of the certificate of execution of it cannot be delivered as required under paragraph (3)—

- (a) the certificate of execution shall state that fact; and
- (b) either—
  - (i) the arrestment shall be executed by serving it on the harbour master of the port where the ship lies; or
  - (ii) where there is no harbour master, or the ship is not in a harbour, the pursuer shall enrol a motion for such further order as to intimation and advertisement, if any, as may be necessary.

(5) A copy of the schedule of arrestment and a copy of the certificate of excution of it shall be delivered by the messenger-at-arms to the harbour master, if any, of any port where the ship lies.

(6) In this rule, “ship” has the meaning assigned in section 48(f) of the Administration of Justice Act 1956<sup>(23)</sup>.

### Arrestment of cargo

**16.14.**—(1) Where cargo has been, or is in the course of being, landed or transhipped, whether or not it has been delivered to its owner or his agent, any arrestment *in rem* of the cargo shall be executed by a messenger-at-arms who shall serve the schedule of arrestment—

- (a) on the custodian for the time being of such cargo; or
- (b) where the cargo has been landed on the quay or into a shed of any port or harbour authority, to the harbour master.

(2) An arrestment, other than an arrestment to which paragraph (1) applies, of cargo on board ship may be executed on any day by a messenger-at-arms who shall serve the schedule of arrestment on the owner of the cargo or other proper arrestee.

### Forms for diligence

**16.15.**—(1) In the execution of diligence, the following forms shall be used:—

- (a) in the case of an arrestment to found jurisdiction, a schedule in Form 16.15—A and a certificate of execution in Form 16.15—H;
- (b) Subject to sub-paragraph (e), in the case of an arrestment on the dependence, a schedule in Form 16.15—B and a certificate of execution in Form 16.15—H;
- (c) in the case of an arrestment *in rem* of a ship or cargo to enforce a maritime hypothec or lien, a schedule in Form 16.15—C and a certificate of execution in Form 16.15—I;
- (d) in the case of an arrestment *in rem* of a ship to enforce a non-pecuniary claim, a schedule in Form 16.15—D and a certificate of execution in Form 16.15—I;
- (e) in the case of an arrestment of a ship or cargo on board ship on the dependence, a schedule in Form 16.15—B and a certificate of execution in Form 16.15—J;
- (f) subject to paragraph (g), in the case of an arrestment in execution, a schedule in Form 16.15—E and a certificate of execution in form 16.15—H;
- (g) in the case of an earnings arrestment, or a current maintenance arrestment, within the meaning of Part III of the Debtors (Scotland) Act 1987<sup>(24)</sup>, a schedule in Form 30 (in respect of an earnings arrestment), or Form 34 (in respect of a current maintenance arrestment), and a certificate of execution in Form 60, in the Schedule to the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988<sup>(25)</sup>;
- (h) in the case of an inhibition, a schedule in Form 16.15—F and a certificate of execution in Form 16.15—H;
- (i) in the case of the execution of a charge for payment of money, a charge in Form 16.15—G and a certificate of execution in Form 16.15—K; and
- (j) in the case of a poinding, a schedule in Form 5, and a certificate of execution in Form 60, in the Schedule to the Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988.

(2) Where two or more of the arrestments mentioned in paragraph (1)(a), (b), (c) and (d) are to be executed, they may be combined in one schedule of arrestment.

<sup>(23)</sup> 1956 c. 46.

<sup>(24)</sup> 1987 c. 18.

<sup>(25)</sup> S.I. 1988/2013.

## *CHAPTER 17*

### *APPEARANCE IN ACTIONS*

#### **Entering appearance**

**17.1.**—(1) Appearance in an action shall be entered within 3 days after the date on which the summons has called by the defender requesting a clerk of session in the appropriate section of the General Department to mark on the summons—

- (a) the names of the counsel, or other person having a right of audience, and the agent acting for him; or
- (b) that he appears for himself.

(2) On entering appearance, the defender shall give written intimation to the pursuer that appearance has been entered.

(3) On entering appearance, the defender shall have the right to borrow any production which has been lodged in process.

#### **Appearance not to imply acceptance of jurisdiction**

**17.2.** The entering of appearance shall not imply acceptance of the jurisdiction of the court.

## *CHAPTER 18*

### *DEFENCES AND ANSWERS*

#### **Form and lodging of defences**

**18.1.**—(1) Defences to an action shall consist of—

- (a) numbered answers corresponding to the articles of the condescendence annexed to the summons; and
- (b) appropriate pleas-in-law.

(2) Subject to rule 46.6 (ship collisions and preliminary acts), defences to an action shall be lodged in process within 7 days after the date on which the summons has called, or, if the seventh day is in vacation, on the next day on which a summons may be called.

#### **Contesting jurisdiction**

**18.2.**—(1) Where a defender seeks to contest the jurisdiction of the court, he may—

- (a) lodge defences relating both to jurisdiction and the substantive issues of the action without submitting to the jurisdiction of the court; or
- (b) lodge defences relating only to the question of jurisdiction in the first instance.

(2) Where a defender lodges defences under paragraph (1)(b) and is unsuccessful in contesting jurisdiction, the court shall allow the defender to amend his defences to defend on the substantive issues of the action within such period as the court thinks fit.

#### **Answers**

**18.3.**—(1) This rule applies to answers lodged to a petition, counterclaim, minute or note.

(2) Answers shall consist of—

- (a) numbered answers corresponding to the paragraphs of the statement of facts in the writ to which they apply; and
  - (b) appropriate pleas-in-law.
- (3) Answers may be lodged at any time within the period of notice specified in the interlocutor calling for answers.

## CHAPTER 19

### DECREES IN ABSENCE

#### Decrees in absence

**19.1.**—(1) This rule applies to any action other than an action in which the court may not grant decree without evidence.

- (2) Where a defender—
  - (a) fails to enter appearance in accordance with rule 17.1(1), or
  - (b) having entered appearance, fails to lodge defences in accordance with rule 18.1(2),
 the pursuer may apply by motion for decree in absence against him.
- (3) A motion enrolled under paragraph (2) shall specify—
  - (a) the decree sought; and
  - (b) where appropriate, whether expenses are sought—
    - (i) as taxed by the Auditor; or
    - (ii) as elected by the pursuer under Part I of Chapter III of the Table of Fees in rule 42.16.
- (4) Where a motion has been enrolled under paragraph (2), the court shall grant decree in absence in terms of all or any of the conclusions of the summons—
  - (a) subject to such restrictions, if any, as may be set out in a minute appended to the summons and signed by the pursuer;
  - (b) if satisfied that it has jurisdiction;
  - (c) if satisfied that the rules of service have been complied with; and
  - (d) where the summons was served on the defender furth of Scotland, if satisfied about service on the defender—
    - (i) in a case to which the Civil Jurisdiction and Judgments Act 1982<sup>(26)</sup> applies, as required by Article 20(2) or (3) of the convention in Schedule 1, or 3C, or Article 20(2) of Schedule 4, to that Act<sup>(27)</sup>, as the case may be;
    - (ii) in a case in which service has been executed on the defender under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated 15th November 1965<sup>(28)</sup>, as required by Article 15 of that convention; or
    - (iii) in a case in which service has been executed on the defender under a convention between the United Kingdom and the country in which service was executed, as required by the provisions of that convention.

<sup>(26)</sup> 1982 c. 27.

<sup>(27)</sup> Schedule 1 to the Act of 1982 was substituted by S.I. 1990/2591 and Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1(3).

<sup>(28)</sup> Cmnd. 3986 (1969).



(5) In an undefended action in which a defender is designed as resident or carrying on business furth of the United Kingdom and has no known solicitor in Scotland, the court shall, in the interlocutor granting decree in absence against him, supersede extract of that decree for such period beyond 7 days as it thinks fit to allow for the number of days required in the ordinary course of post for the transmission of a letter from Edinburgh to the residence, registered office, other official address or place of business, as the case may be, of that defender and the transmission of an answer from there to Edinburgh.

(6) Where a copy of the summons has been served on the defender furth of the United Kingdom under rule 16.2 and decree in absence is pronounced against him as a result of his failure to enter appearance, a certified copy of the interlocutor granting decree shall be served on him forthwith by the pursuer.

(7) Where a decree in absence on which a charge may be made has been granted after personal service of a summons on the defender or after the defender has entered appearance, and—

- (a) the decree has not been recalled,
- (b) the decree has been extracted,
- (c) a charge on the decree has not been brought under review by suspension, and
- (d) 60 days have elapsed since the expiry of the charge,

that decree shall have effect as a decree *in foro contentioso*

#### **Recall of decrees in absence**

**19.2.**—(1) A decree in absence may not be reclaimed against.

(2) A defender may, not later than—

- (a) 7 days after the date of a decree in absence against him, or
- (b) the last day of the period for which extract of the decree has been superseded,

apply by motion for recall of the decree and to allow defences to be received.

(3) Where a defender enrolls a motion under paragraph (2), he shall—

- (a) at the same time lodge defences in process;
- (b) have paid the sum of £25 to the pursuer; and
- (c) lodge the receipt for that sum in process.

(4) On compliance by the defender with paragraphs (2) and (3), the court shall recall the decree against him and allow the defences to be received; and the action shall proceed as if the defences had been lodged timeously.

(5) Where a summons has been served on a defender furth of the United Kingdom under rule 16.2 and decree in absence has been pronounced against him as a result of his failure to enter appearance, the court may, on the motion of that defender, recall the decree and allow defences to be received if—

- (a) without fault on his part, he did not have knowledge of the summons in sufficient time to defend;
- (b) he has disclosed a *prima facie* defence to the action on the merits; and
- (c) the motion is enrolled 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 the decree;

and, where that decree is recalled, the action shall proceed as if the defences had been lodged timeously.

(6) On enrolling a motion under paragraph (5), the defender shall lodge defences in process.

(7) The recall of a decree under this rule shall be without prejudice to the validity of anything already done or transacted, of any contract made or obligation incurred, or of any appointment made or power granted, in or by virtue of that decree.

## *CHAPTER 20*

### *DECREES BY DEFAULT*

#### **Decrees where party in default**

**20.1.**—(1) Without prejudice to the power of the court to grant decree by default in other circumstances, where a party fails to attend before the Lord Ordinary on the calling of a cause—

- (a) on the By Order Roll,
- (b) on the Procedure Roll,
- (c) for a proof, or
- (d) for jury trial,

that party shall be in default.

(2) Where a pursuer is in default under paragraph (1)(a), (c) or (d), the court may grant decree by default against him with expenses.

(3) Where a pursuer is in default under paragraph (1)(b), the court may grant decree of dismissal with expenses.

(4) Where a defender is in default under paragraph (1), the court may grant decree by default against him with expenses.

(5) Where a third party is in default under paragraph (1), the court may grant decree by default against him with expenses or make such finding or order as it thinks fit.

## *CHAPTER 21*

### *SUMMARY DECREES*

#### **Application of this Chapter**

**21.1.** This Chapter applies to any action other than—

- (a) a family action within the meaning of rule 49.1(1);
- (b) an action of multiplepinding;
- (c) an action of proving the tenor; or
- (d) an action under the Presumption of Death (Scotland) Act 1977(29).

#### **Applications for summary decree**

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

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

- (a) to grant decree in terms of all or any of the conclusions of the summons;

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(29) 1977 c. 27.

- (b) to pronounce an interlocutor sustaining or repelling a plea-in-law; or
- (c) to dispose of the whole or a part of the subject-matter of the action.
- (3) The pursuer shall—
  - (a) intimate a motion under paragraph (1) by registered post or the first class recorded delivery service to every other party not less than 14 days before the motion is enrolled; and
  - (b) on enrolling the motion, lodge in process—
    - (i) a copy of each letter of intimation; and
    - (ii) The Post Office receipt or certificate of posting in respect of each letter of intimation.
- (4) On a motion under paragraph (1), the court may—
  - (a) if satisfied that there is no defence to the action disclosed 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 Bar.
- (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.

#### **Application of summary decree to counterclaims etc.**

- 21.3.**—(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 21.2 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 his 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 21.2 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.

## *CHAPTER 22*

### *MAKING UP AND CLOSING RECORDS*

#### **Making up open records**

- 22.1.**—(1) Subject to any other provision in these Rules, where defences have been lodged, the pursuer in an action shall, within 14 days after the date on which the time for lodging defences expired or on which the defences were lodged, whichever is the earlier—
- (a) send not less than four copies of an open record to every other party; and

(b) lodge two copies of the open record in process.

(2) Where in a cause a party is ordered by the court to make up an open record, he shall comply with sub-paragraphs (a) and (b) of paragraph (1) within the period specified by the court.

(3) Where the pursuer, petitioner, noter or minuter, as the case may be, fails to comply with a requirement of paragraph (1) or (2), the defender or other party may apply by motion for decree of dismissal.

(4) An open record shall consist of the pleadings of the parties and the interlocutors pronounced in the cause.

### **Adjustment Roll**

**22.2.**—(1) A cause shall be put out on the Adjustment Roll as soon as possible after the lodging of the open record.

(2) On a cause first appearing on the Adjustment Roll, the court shall pronounce an interlocutor continuing the cause on that roll for 8 weeks.

(3) While a cause is on the Adjustment Roll, parties may adjust their respective pleadings and shall intimate their adjustments to each other.

(4) At any time while a cause is on the Adjustment Roll, the court may, on the motion of any party, pronounce an interlocutor—

(a) closing the record; or

(b) continuing the cause on that roll for such period as the court thinks fit.

(5) On enrolling a motion under paragraph (4), a party shall lodge in process a copy of the open record showing the adjustments, if any, at that date.

### **Closing records**

**22.3.**—(1) The court shall, on the day on which the period allowed for adjustment in a cause expires, pronounce an interlocutor closing the record.

(2) The pursuer shall, within 4 weeks after the date of the interlocutor closing the record—

(a) send not less than six copies of the closed record to every other party; and

(b) lodge three copies of the closed record in process.

(3) if the pursuer fails to comply with either of the requirements of paragraph (2), the court may, on the motion of any other party, grant decree of dismissal.

(4) A closed record shall consist of the pleadings of the parties and the interlocutors pronounced in the cause.

(5) The pursuer shall, on lodging the copies of the closed record as required by paragraph (2), enrol a motion craving the court—

(a) where parties have agreed on further procedure, of consent—

(i) to appoint the cause to the Procedure Roll for consideration of all the preliminary pleas of parties or such of the pleas as may be specified;

(ii) to allow to parties a preliminary proof on specified matters or in respect of specified pleas;

(iii) to allow to parties a proof before answer of their respective averments under reservation of such preliminary pleas as may be specified;

(iv) to allow a proof;

(v) to allow issues for jury trial; or

- (vi) to make some other specified order; or
  - (b) where parties have been unable to agree on further procedure, to appoint the cause to the By Order (Adjustment) Roll.
- (6) In a cause which is one of more than one cause arising out of the same cause of action, the court may, on or after pronouncing an interlocutor ordering further procedure under paragraph (5)–
- (a) on the motion of a party to that cause, and
  - (b) after hearing parties to all those causes,
- appoint that cause or any other of those causes to be the leading cause and to sist the other causes pending the determination of the leading cause.
- (7) In this rule, “pursuer” includes petitioner, noter or minuter, as the case may be.

### **Orders for notes of argument**

- 22.4.** Where a cause has been appointed to the Procedure Roll, the court may, at its own instance or on the motion of a party–
- (a) to lodge in process a concise note of argument consisting of numbered paragraphs stating the grounds on which he proposes to submit that any preliminary plea should be sustained, and
  - (b) to send a copy of the note to every other party concerned,
- within such period as the court thinks fit.

## *CHAPTER 23*

### *MOTIONS*

### **Interpretation of this Chapter**

**23.1.** In this Chapter, unless the context otherwise requires, “party” includes any person entitled under these Rules to enrol a motion or to whom intimation of a motion is required to be made by these Rules or the court.

### **Enrolment of motions**

- 23.2.**—(1) A motion by a party may be–
- (a) made orally at the Bar with leave of the court during any hearing of a cause; or
  - (b) enrolled in the process of the cause to which it relates in accordance with paragraph (2).
- (2) A motion may be enrolled–
- (a) by lodging it in Form 23.2, with any document which requires to be lodged with or which accompanies the motion, at the appropriate department of the Office of Court during its normal office hours;
  - (b) subject to paragraph (3), by posting it in Form 23.2, with any document which requires to be lodged with or which accompanies the motion, to the appropriate department of the Office of Court; or
  - (c) subject to paragraph (4), by sending it by facsimile transmission in Form 23.2, with any document which requires to be lodged with or which accompanies the motion, to the appropriate department of the Office of Court.

(3) A motion may not be enrolled under paragraph (2)(b) where a fee is payable with that motion unless—

- (a) the motion is enrolled by an agent who has a Court of Session account; or
- (b) is accompanied by a cheque from the agent for the fee.

(4) A motion may not be enrolled under paragraph (2)(c) where—

- (a) a document which requires to be lodged with, or which accompanies, the motion—
  - (i) is a step of process which requires to be or is signed;
  - (ii) is an open or closed record, reclaiming print, appeal print or appendix;
  - (iii) consists of more than four pages (including the backing sheet); or
  - (iv) does not fall within a class of documents prescribed by the Lord President by direction as a document which may be sent by facsimile transmission in support of a motion of a category, and on such conditions, prescribed by that direction;
- (b) a fee is payable with that motion unless the motion is enrolled by an agent who has a Court of Session account; or
- (c) it falls within a category of motions prescribed by the Lord President by direction as unsuitable for enrolment by facsimile transmission.

(5) On receipt of a motion lodged, sent by post or transmitted by facsimile under paragraph (2), a clerk of session shall attach the motion to the motion sheet.

(6) A motion sent by post or facsimile transmission under paragraph (2) shall be treated as enrolled when it is received in the appropriate department of the Office of Court.

(7) Where appearance for the party who enrolled the motion is required for a motion, the entry in the rolls in respect of that motion shall be starred.

### **Intimation of motions**

**23.3.**—(1) Subject to paragraph (2) and any other provision in these Rules, the party enrolling a motion in a cause where—

- (a) appearance has been entered by a defender under rule 17.1(1),
- (b) defences, a minute or answers have been lodged by a party, or
- (c) provision for intimation of a motion to a party is made in these Rules,

shall give written intimation of his intention to make such enrolment, and of the terms of the motion, to every such party.

(2) The requirement under paragraph (1) to give written intimation of a motion to a party shall not apply where that party—

- (a) having entered appearance, fails to lodge defences within the period for lodging those defences;
- (b) has not lodged answers within the period of notice for lodging those answers; or
- (c) has withdrawn or is deemed to have withdrawn his defences, minute, note or answers, as the case may be.

(3) Such intimation shall be made so as to reach the other party not later than 12.30 p.m. on the day before enrolment, except where—

- (a) the other party concerned in the motion consents to a shorter period of intimation;
- (b) the period of intimation is otherwise provided in these Rules; or
- (c) the court shortens or extends the period of intimation or dispenses with intimation.

(4) Where a motion is enrolled after the lapse of one year from the date of the last interlocutor in the cause, written intimation shall be given to every other party not less than 14 days before the date of enrolment.

(5) Where written intimation of a motion has been given, the party enrolling the motion shall state that this has been done on the motion in Form 23.2.

### **Opposition to motions**

**23.4.**—(1) Where a party seeks to oppose a motion enrolled under rule 23.2, he shall—

- (a) not later than the day and time as the Lord President shall prescribe by direction for the lodging of notices of opposition to motions, lodge a notice of his opposition in Form 23.4 at the appropriate department of the Office of Court during its normal office hours;
- (b) post a notice of opposition in Form 23.4 to the appropriate department of the Office of Court; or
- (c) send by facsimile transmission a notice of opposition in Form 23.4 to the appropriate department of the Office of Court.

(2) Opposition to a motion sent by post or facsimile transmission under paragraph (1)(b) or (c) shall be treated as lodged when the notice of opposition is received in the appropriate department of the Office of Court.

(3) On receipt of a notice of opposition lodged, sent by post or facsimile transmission under paragraph (1), a clerk of session shall attach the notice to the motion sheet.

(4) A party who opposes a motion shall give written intimation of his opposition to every other party so as to reach such other party not later than 12.30 p.m. on the day on which the opposition is lodged or treated as lodged.

(5) Where written intimation of opposition to a motion has been given, the party who has given such intimation shall state that this has been done on the notice of opposition in Form 23.4.

(6) Where a motion is opposed, the entry in the rolls in respect of that motion shall be starred.

### **Consent to motions**

**23.5.** Where a party seeks to consent to a motion, he may—

- (a) endorse the motion with his consent;
- (b) post a notice of consent in Form 23.5 to the appropriate department of the Office of Court; or
- (c) send by facsimile transmission a notice of consent in Form 23.5 to the appropriate department of the Office of Court.

### **Hearing of motions**

**23.6.**—(1) Subject to the rules mentioned in paragraph (2), the day of publication on the walls of the court and of the hearing of a motion enrolled on any day shall be determined in accordance with such provisions as the Lord President shall prescribe by direction.

(2) The rules referred to in paragraph (1) are:—

- rule 23.7 (motions in session outwith a term or in vacation),
- rule 23.8 (motions by pursuer before calling or petitioner before first order),
- rule 23.9 (motions where caveat lodged),
- rule 23.10 (motions by defender or other person before calling).

(3) A motion enrolled in a cause in the Outer House shall be heard by the Lord Ordinary.

(4) A motion enrolled in a cause in the Inner House shall be heard in the Single Bills by a Division of the Inner House.

#### **Motions in session outwith a term or in vacation**

**23.7.**—(1) A motion which is to be heard by the Lord Ordinary in session outwith a term, or in vacation by the vacation judge, shall not appear in the rolls.

(2) A party enrolling such a motion shall be informed at the time of enrolment whether or not any appearance is required.

(3) Any such motion which is opposed in accordance with rule 23.4 shall require appearance for the party whose motion it is.

(4) On the afternoon of the day preceding each sitting of the lord Ordinary in session outwith a term or of the vacation judge there shall be published on the walls of the court a list of unopposed motions for which appearance is required followed by a list of opposed motions, each in alphabetic order.

(5) Motions before the Lord Ordinary in session outwith a term or the vacation judge shall be called for hearing in the order in which they appear in the list published under paragraph (4).

#### **Motions by pursuer before calling or petitioner before first order**

**23.8.**—(1) A motion enrolled by a pursuer in an action before the calling of the summons or by a petitioner before an order under rule 14.5(1)(a) (order for intimation, service and advertisement in petitions) has been made—

(a) shall, subject to any other provision in these Rules, be brought as soon as reasonably practicable by the Keeper of the Rolls, or a clerk of session instructed by him, before the Lord Ordinary sitting in court or in chambers; and

(b) shall not require to be published in the rolls.

(2) On enrolling such a motion, the pursuer or petitioner, as the case may be, shall be informed whether or not appearance is required.

#### **Motions where caveat lodged**

**23.9.** Where a motion in respect of which a caveat has been lodged is enrolled, the Keeper of the Rolls shall—

(a) fix a hearing of the motion before the Lord Ordinary sitting in court or in chambers as soon as reasonably practicable; and

(b) inform the parties concerned of the date and time of the hearing.

#### **Motions by defender or other person before calling**

**23.10.**—(1) A motion enrolled in an action before the calling of the summons by a person other than the pursuer shall be intimated forthwith by the Deputy Principal Clerk to the pursuer.

(2) The Keeper of the Rolls shall—

(a) fix a hearing of such a motion before the Lord Ordinary sitting in court or in chambers as soon as reasonably practicable; and

(b) inform the parties concerned of the date and time of the hearing.



### **Statutory applications by motion**

**23.11.** Unless otherwise provided in these Rules or any other enactment, an application to the court under any other enactment in fi a cause depending before the court shall be made by motion.

### **Expenses of motions**

**23.12.** Where a motion is called for hearing in the Motion Roll or Single Bills and is dropped, the Auditor shall, in taxing any expenses found due to the party on whose behalf the motion was enrolled, disallow the expenses occasioned by the motion unless he is satisfied that the motion was properly enrolled and properly dropped.

### **Conditions attached to granting of motions**

**23.13.** Where the court grants a motion in whole or in part, it may do so subject to such conditions, if any, as to expenses or otherwise as it thinks fit.

### **Appearance by solicitor for certain motions**

**23.14.**—(1) A solicitor shall have a right of audience before the court in respect of a motion which is heard in chambers under any of the following rules:—

rule 23.8 (motions by pursuer before calling or petitioner before first order),

rule 23.9 (motions where caveat lodged),

rule 23.10 (motions by defender or other person before calling).

(2) A solicitor shall have a right of audience before the Lord Ordinary sitting during session outwith a term in respect of any motion.

## *CHAPTER 24*

### *AMENDMENT OF PLEADINGS*

### **Powers of court**

**24.1.**—(1) In any cause the court 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 a principal 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 in a summons is increased or restricted; or

(ii) a different remedy from that originally concluded for or 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, a petitioner 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 conclusions against a third party brought into an action under Chapter 26 (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 inserting in the instance of the principal writ an additional or substitute party and directing existing or additional conclusions or craves, averments and pleas-in-law against that party.

### **Applications to amend**

**24.2.**—(1) Subject to paragraph (2), a party seeking to amend shall lodge a minute of amendment in process setting out his proposed amendment and, at the same time, enrol 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 24.3(1) or (2) (service of amended pleadings); or
  - (ii) in any other case, where the minute of amendment may require to be answered, any other party to lodge answers within a specified period or such period as the court thinks fit.

(2) Where the amendment proposed is of a minor and formal nature, the party seeking to amend may enrol a motion to allow amendment in the terms set out in the motion.

(3) Where the court has pronounced an interlocutor allowing a minute of amendment to be received and answered, then—

- (a) where answers have been lodged, parties may adjust the minute of amendment and answers within 4 weeks after the date on which answers were lodged or, where more than one set of answers have been lodged, the latest date on which answers were lodged;
- (b) the party who has lodged the minute of amendment shall—
  - (i) where answers have been lodged, within 14 days after the expiry of the period for adjustment of the minute of amendment and answers or any continuation of it, or
  - (ii) where no answers have been lodged, within 14 days after the expiry of the period for lodging answers or any prorogation of it,

enrol a motion to amend the writ or other pleadings in terms of the minute of amendment and answers (if any) or for other further procedure, as the case may be.

(4) Where a party fails to enrol a motion under paragraph (3)(b), the court shall appoint the cause to be put out on the By Order Roll and, having heard parties on that roll, may—

- (a) if moved to do so, allow the amendment;
- (b) make such order as to further procedure as it thinks fit; and
- (c) in any event, make such order in respect of expenses as it thinks fit.

(5) Where a party to a cause before the Inner House enrolls a motion to amend a record in terms of a minute of amendment and answers (if any), he shall at the same time enrol for an order for further procedure.

### **Service of amended pleadings**

**24.3.**—(1) In an undefended action where no appearance has been entered or in an unopposed petition or note, unless the amendment is formal in character, the court shall—

- (a) order that a copy of the principal writ as amended be served on a specified person; and
- (b) allow that person to lodge defences or answers, as the case may be, within such period as the court thinks fit.

(2) Where an amendment under rule 24.1(2)(d) (all parties not, or wrong person, called) has been made—

- (a) the court shall order that a copy of the pleadings as so amended be served by the party who made the amendment on that additional or substitute party with a notice in Form 24.3 specifying the date by which defences or answers, as the case may be, must be lodged; and
- (b) the party who made the amendment shall lodge in process—
  - (i) a copy of the pleadings as amended;
  - (ii) a copy of the notice mentioned in sub-paragraph (a);
  - (iii) a copy of the interlocutor ordering service; and
  - (iv) a certificate of service.

(3) When paragraph (2) 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.

### **Expenses and conditions of amendment**

**24.4.** The court 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 it thinks fit.

### **Effect of amendment on diligence**

**24.5.** Where an amendment has been allowed, the amendment shall—

- (a) not validate diligence used on the dependence of a cause so as to prejudice the rights of creditors, of the party against whom the diligence has been executed, who are interested in defeating such diligence; and
- (b) 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.

## *CHAPTER 25*

## *COUNTERCLAIMS*

### **Counterclaims**

**25.1.**—(1) In any action other than a family action within the meaning of rule 49.1(1) or an action of multipointing, a defender may lodge a 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 a 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 may be lodged in process—
  - (a) at any time before the record is closed; or
  - (b) at any later stage, with leave of the court and subject to such conditions, if any, as to expenses or otherwise as the court thinks fit.
- (3) A counterclaim shall be headed “Counterclaim for the defender” and shall contain—
  - (a) conclusions, stated in accordance with the appropriate short style, if any, in Form 13.2—B which, if the counterclaim had been made in a separate action, would have been appropriate in the summons in that separate action;
  - (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**

**25.2.**—(1) A defender who lodges a counterclaim may apply for a warrant to use any form of diligence which would have been permitted under rule 13.6(c) (warrants for diligence in summonses) had the warrant been sought in a summons in a separate action.

- (2) An application for a warrant under paragraph (1) shall be made—
  - (a) at the time of lodging the counterclaim, by inserting before the conclusions of the counterclaim the words “Warrant for arrestment [and inhibition] on the dependence [*or inhibition on the dependence or arrestment in rem of (details of ship or cargo) or to dismantle (details of ship), as the case may be*] applied for.”; or
  - (b) after the counterclaim has been lodged, by motion.
- (3) An application for a warrant under paragraph (2)(a) may be granted by the clerk of session who receives the counterclaim by writing 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 a signeted summons.
- (5) A certified copy of the interlocutor granting warrant for diligence applied for under paragraph (2) (b) shall be sufficient authority for execution of the diligence.
- (6) A counterclaim, or a certified copy of the interlocutor, containing a warrant for inhibition granted under this rule and a certificate of execution of it may be registered in the Register of Inhibitions and Adjudications.
- (7) A notice of a warrant in a counterclaim, or a notice of the certified copy of the interlocutor containing a warrant, for inhibition granted under this rule may be registered under section 155 of

the Titles to Land Consolidation (Scotland) Act 1868<sup>(30)</sup>; and such registration shall have the same effect as registration of a notice under that section.

### **Answers to counterclaims**

**25.3.**—(1) Answers to a counterclaim may be lodged by a pursuer—

- (a) where the counterclaim is lodged before the record is closed, within 14 days after the date on which the counterclaim is lodged; or
- (b) in any other case, within the period appointed by the interlocutor allowing the counterclaim to be received.

(2) Where answers to a counterclaim have been lodged, the court may, on the motion of the pursuer or defender, allow such period for adjustment as it thinks fit.

### **Effect of abandonment of action**

**25.4.**—(1) The right of a pursuer to abandon his action under rule 29.1 shall not be affected by a counterclaim; and any expenses for which the pursuer is found liable as a condition, or in consequence, of such abandonment shall not include the expenses of the counterclaim.

(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.

### **Proof or jury trial of counterclaims**

**25.5.**—(1) Where a proof or jury trial is allowed between parties to an action, the court may allow any counterclaim to proceed to proof or jury trial, as the case may be, before, at the same time as or after, the action as it thinks fit.

(2) Where evidence is led in a counterclaim separately from the evidence in the action, the evidence in one cause shall, so far as competent and relevant, be evidence in the other cause.

### **Interlocutors in respect of counterclaims**

**25.6.** A decree or other interlocutor which could have been pronounced in a separate action brought to enforce the conclusions stated in a counterclaim may be pronounced in respect of the counterclaim.

## *CHAPTER 26*

### *THIRD PARTY PROCEDURE*

### **Applications for third party notice**

**26.1.**—(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

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(30) 1868 c. 101.

- (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 26.1–A 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 26.1–B (notice by pursuer) or Form 26.1–C (notice by third party), as the case may be, in the same manner as a defender under that paragraph; and rules 26.2 to 26.7 shall, with the necessary modifications, apply to such a claim as they apply in relation to such a claim by a defender.

#### **Averments where order for service of third party notice sought**

**26.2.**—(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 enrolling 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 enrolling 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.

#### **Warrants for diligence on third party notice**

**26.3.**—(1) A defender who applies for an order for service of a third party notice may apply for a warrant to use any form of diligence which would have been permitted under rule 13.6 (b) or (c) (warrants for diligence in summonses) had the warrant been sought in a summons in a separate action.

(2) 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.

(3) A certified copy of the interlocutor granting warrant for diligence applied for under paragraph (2) shall be sufficient authority for execution of the diligence.

(4) A certified copy of the interlocutor containing a warrant for inhibition granted under this rule and a certificate of execution of it may be registered in the Register of Inhibitions and Adjudications.

(5) A notice of the certified copy of the interlocutor containing a warrant for inhibition granted under this rule may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868; and such registration shall have the same effect as registration of a notice under that section.

### **Service on third party**

**26.4.—**(1) A third party notice shall be served on the third party within such period as the court shall specify in the interlocutor allowing service of that notice.

(2) Where service of a third party notice has not been made within the period specified by virtue of 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.

(3) There shall be served with a third party notice—

- (a) a copy of the pleadings (including any adjustments and amendments); and
- (b) a copy of the interlocutor allowing service of the notice.

(4) The defender who served the third party notice shall lodge in process—

- (a) a copy of the third party notice;
- (b) a copy of the interlocutor allowing service of it; and
- (c) a certificate of service.

### **Answers to third party notice**

**26.5.—**(1) An order for service of a third party notice shall specify 28 days, or such other period as the court on cause shown may specify, as the period within which the third party may lodge answers.

(2) Answers for a third party 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 condescendence annexed to the summons 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 rule 26.2(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 lodge answers**

**26.6.—**(1) Where a third party fails to lodge answers, the defender may apply by motion for such finding, order or decree against the third party as may be appropriate to give effect to the claim in the third party notice.

(2) Where such a finding, order or decree is pronounced by the court, rule 19.2 (recall of decrees in absence) shall, with the necessary modifications, apply to that finding, order or decree as it applies to recall of a decree in absence by a defender.

### **Procedure following answers**

**26.7.—**(1) Within 14 days after the date on which answers are lodged by the third party, the defender who has served the third party notice shall—

- (a) make up an open record incorporating the pleadings of all parties;
- (b) deliver four copies of that record to every other party; and
- (c) lodge two copies of that record in process.

(2) When an open record is lodged in process under paragraph (1), the action shall be put out on the Adjustment Roll and the court shall pronounce an interlocutor continuing the action on that roll for 6 weeks.

(3) Where a proof or jury trial is necessary between parties to the action, the court may allow the action so far as directed against the third party to proceed to proof or jury trial, as the case may be, before, at the same time as or after, the action between the pursuer and the defender as the court thinks fit.

(4) Where a third party challenges the case pled by the pursuer, he may appear at the proof or jury trial of the pursuer's case and lead evidence as if he were a defender; and such evidence, so far as competent and relevant, shall be evidence for or against the pursuer or for or against the defender, as the case may be, and shall be available to all the parties in the action.

(5) Subject to the preceding provisions of this Chapter and unless the context otherwise requires, the other provisions of these Rules in relation to actions shall, with the necessary modifications, apply as between the defender and a third party or the pursuer and a third party, as the case may be, as they apply to the action between the pursuer and defender.

## *CHAPTER 27*

### *DOCUMENTS FOUNDED ON OR ADOPTED IN PLEADINGS*

#### **Lodging of documents founded on or adopted**

**27.1.**—(1) 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 a summons, at the time of lodging the summons for calling;
- (b) when founded on or adopted in a petition, note, application, minute, defences, counterclaim or answers, at the time of lodging that writ; 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 court to order the production of any document or to grant a commission and diligence for recovery of it.

#### **Consequences of failure to lodge documents founded on or adopted**

**27.2.** Where a party fails to lodge a document in accordance with rule 27.1(1), he may be found liable in the expenses of any order for the production or recovery of it obtained by any other party.

## *CHAPTER 28*

### *PROCEDURE ROLL*

#### **Hearings on procedure roll**

**28.1.**—(1) When a cause calls on the Procedure Roll and no counsel, other person having a right of audience or party attends, the Lord Ordinary may pronounce an interlocutor dismissing or refusing the cause, as the case may be, and finding no expenses due to or by any party.

(2) An interlocutor pronounced under paragraph (1) may, if reclaimed, be recalled on such conditions, if any, as to expenses or otherwise as the court thinks fit.

(3) The court, after hearing parties on the Procedure Roll, may dispose of all or any of the preliminary pleas and may—

- (a) allow parties a preliminary proof on specified matters or in respect of specified pleas;
- (b) allow parties a proof before answer of their respective averments under reservation of such preliminary pleas as may be specified;



- (c) allow a proof;
- (d) allow issues for jury trial; or
- (e) make such other order as it thinks fit.

(4) Where a cause has been appointed to the Procedure Roll, parties may, of consent, apply by motion to withdraw the cause from that roll and for any order which might have been pronounced at the hearing of the cause on that roll.

## *CHAPTER 29*

### *ABANDONMENT*

#### **Abandonment of actions**

**29.1.**—(1) A pursuer may abandon an action by lodging a minute of abandonment in process and—

- (a) consenting to decree of absolvitor; or
- (b) seeking decree of dismissal.

(2) The court shall not grant decree of dismissal under paragraph (1)(b) unless—

- (a) full judicial expenses have been paid to the defender, and to any third party against whom he has directed any conclusions, within 28 days after the date of intimation of the report of the Auditor on the taxation of the account of expenses of that party; and
- (b) where abandonment is made in a proof or jury trial, the minute of abandonment is lodged before avizandum is made in the proof or the charge to the jury by the presiding judge has begun in the jury trial, as the case may be.

(3) If the pursuer fails to pay the expenses referred to in sub-paragraph (a) of paragraph (2) to the party to whom they are due within the period specified in that sub-paragraph, that party shall be entitled to decree of absolvitor with expenses.

#### **Application of abandonment of actions to counterclaims**

**29.2.** Rule 29.1 shall, with the necessary modifications, apply to the abandonment by a defender of his counterclaim as it applies to the abandonment of an action.

#### **Abandonment of petitions, minutes and notes**

**29.3.**—(1) A petition, minute or note may be abandoned by the petitioner, minuter or noter, as the case may be—

- (a) enrolling a motion for abandonment of the cause; and
- (b) intimating the motion to every person who lodged answers.

(2) The court may grant a motion under paragraph (1) subject to such conditions as to expenses or otherwise, if any, as it thinks fit.

## *CHAPTER 30*

### *WITHDRAWAL OF AGENTS*

#### **Intimation of withdrawal of agent to court**

**30.1.**—(1) Where an agent withdraws from acting on behalf of a party, he shall intimate his withdrawal by letter to the Deputy Principal Clerk and to every other party.

(2) The Deputy Principal Clerk shall cause such letter to be lodged in process.

#### **Intimation to party whose agent has withdrawn**

**30.2.**—(1) The court shall, on the motion of any other party, pronounce an interlocutor ordaining the party whose agent has withdrawn from acting to intimate to the Deputy Principal Clerk within 14 days (or such other period as the court, on cause shown, thinks fit) after service of the interlocutor as required by paragraph (2) whether or not he intends to proceed, under certification that if he fails to intimate whether or not he intends to proceed, the court may grant such decree or make such order or finding as it thinks fit.

(2) The party who enrolled a motion under paragraph (1) shall forthwith serve a notice in Form 30.2 with a copy of the interlocutor pronounced under paragraph (1) to the party whose agent has withdrawn from acting.

#### **Consequences of failure to intimate intention to proceed**

**30.3.** Where a party on whom a notice and interlocutor has been served under rule 30.2(2) fails to intimate to the Deputy Principal Clerk within the period specified in the interlocutor that he intends to proceed, the court shall, on the motion of any other party where a certificate of service of the interlocutor has been lodged in process, grant such decree, order or finding as it thinks fit.

### *CHAPTER 31*

#### *MINUTES OF SIST AND TRANSFERENCE*

##### **Minutes of sist**

**31.1.**—(1) Where a party dies or comes under legal incapacity while a cause is in dependence, any person claiming to represent that party or his estate may apply to the court by minute to be sisted as a party to the cause.

(2) Intimation of such an application shall be made to each party.

##### **Minutes of transference**

**31.2.**—(1) Where a party dies or comes under legal incapacity while a cause is depending before the court and the provisions of rule 31.1 (minutes of sist) are not invoked, any other party may apply to the court 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.

(2) Where a minute of transference has been lodged in process, the court shall pronounce an interlocutor—

- (a) granting warrant for service of a copy of the minute of transference, a copy of the pleadings (including any adjustments and amendments) and a copy of that interlocutor on such person; and
- (b) allowing such person to lodge a minute of objection to the minute of transference within such period as the court thinks fit.

## CHAPTER 32

### TRANSMISSION AND REMIT OF CAUSES

#### Remits to sheriff court

**32.1.**—(1) An application by a party under section 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985<sup>(31)</sup> (remit from court to sheriff) shall be made by motion.

(2) Where an action is remitted to a sheriff under section 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, the Deputy Principal Clerk shall, within 4 days after the interlocutor remitting the cause has been pronounced, transmit the process to the sheriff clerk of the sheriff court specified in the interlocutor.

(3) When transmitting a process under paragraph (2), the Deputy Principal Clerk shall—

- (a) give written intimation of the transmission to the parties; and
- (b) certify on the interlocutor sheet that such written intimation has been given.

(4) Failure by the Deputy Principal Clerk to comply with paragraph (3) shall not affect the validity of a remit made under paragraph (1).

#### Transmissions on contingency

**32.2.**—(1) An application under section 33 of the Act of 1988<sup>(32)</sup> (transmission from sheriff on ground of contingency) shall be made—

- (a) by motion at the instance of a party to the cause depending before the court; or
- (b) by minute at the instance of any other person having an interest (including a party to the cause depending before the sheriff).

(2) A copy of the pleadings and the interlocutors in the cause depending before the sheriff, certified by the sheriff clerk, shall be lodged with any motion enrolled or any minute lodged under paragraph (1).

(3) A decision made on an application under paragraph (1) may not be reclaimed; but where an application has been refused, a subsequent application may be made where there has been a change of circumstances.

#### Intimation of receipt of process transmitted from sheriff court

**32.3.** On receipt of a process transmitted by a sheriff clerk by virtue of an order made under any enactment to remit a cause to the court, the Deputy Principal Clerk shall—

- (a) write the date of receipt on the interlocutor sheet of the sheriff court process; and
- (b) give written intimation of that date to each party.

#### Lodging of process and motion for further procedure

**32.4.**—(1) Within 14 days after the date of receipt of a process referred to in rule 32.3 (intimation of receipt of process transmitted from sheriff court)—

- (a) the party on whose motion the remit was made, or
  - (b) in a cause remitted by the sheriff at his own instance, the pursuer or first pursuer,
- shall make up and lodge in the General Department a process incorporating the sheriff court process.

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<sup>(31)</sup> 1985 c. 73.

<sup>(32)</sup> 1988 c. 36.

*Status: This is the original version (as it was originally made).*

(2) On lodging a process under paragraph (1), the party lodging it shall apply by motion for an order for such further procedure as he desires; and the cause shall proceed as if it had been an action in the court initiated by a summons.

(3) A motion under paragraph (2) shall be disposed of by the Lord Ordinary.

#### **Reponing against failure to comply with rule 32.4(1) or (2)**

**32.5.**—(1) Where—

(a) the party on whose motion the remit was made, or

(b) in a cause remitted by the sheriff at his own instance, the pursuer or first pursuer,

fails to comply with the requirements of rule 32.4(1) or (2) (lodging of process and motion for further procedure), he may, within 7 days after the expiry of the period specified in rule 32.4(1), apply by motion to be reponed.

(2) The party enrolling a motion under paragraph (1), where the failure is a failure to lodge a process under rule 32.4(1), shall on enrolling the motion, lodge such a process and shall apply by motion for an order for such further procedure as he desires.

(3) A motion under paragraph (1) shall be granted only on cause shown and on such conditions, if any, as to expenses or otherwise as the court thinks fit.

#### **Insistence in remit by another party**

**32.6.** Where—

(a) the party on whose motion the remit was made, or

(b) in a cause remitted by the sheriff at his own instance, the pursuer or first pursuer,

has failed to comply with the requirements of paragraphs (1) or (2) of rule 32.4 (lodging of process and motion for further procedure), any other party to the cause may, within 7 days after the expiry of the period specified in rule 32.4(1) comply with the requirements of those paragraphs himself and insist in the remit.

#### **Re-transmission to sheriff clerk**

**32.7.** Where, on the expiry of 21 days after the date of receipt of the process referred to in rule 32.3 (intimation of receipt of process transmitted from sheriff court), no motion has been enrolled under rule 32.5(1) (reponing against failure to comply with rule 32.4(1) or (2)) and no motion has been enrolled under rule 32.6 (insistence in remit by another party), the remit shall be deemed to be abandoned and the Deputy Principal Clerk shall—

(a) write on the interlocutor sheet the words “Re-ransmitted in respect that the remit has been abandoned.”;

(b) add his signature and the date; and

(c) transmit the process to the sheriff clerk.

### **CHAPTER 33**

#### **CAUTION AND SECURITY**

#### **Application of this Chapter**

**33.1.** Subject to any other provisions in these Rules, this Chapter applies to—

- (a) any cause in which the court has power to order a person to find caution or give other security; and
- (b) security for expenses ordered to be given under section 136 of the Representation of the People Act 1983<sup>(33)</sup> in an election petition.

### **Form of applications**

**33.2.**—(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 to find caution or other security**

**33.3.** Subject to section 726(2) of the Companies Act 1985<sup>(34)</sup> (order on company to find caution), 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.

### **Methods of finding caution or giving security**

**33.4.**—(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 Court of Session Consignations (Scotland) Act 1895<sup>(35)</sup> in the name of the Accountant of Court.

(2) The court 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 court 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) A bond of caution or consignment receipt lodged in process shall be accompanied by a copy of it.

### **Cautioners and guarantors**

**33.5.** A bond of caution or other security obtained from an insurance company shall be given only by a company authorised under section 3 or 4 of the Insurance Companies Act 1982<sup>(36)</sup> to carry on insurance business of class 15 in Schedule 2 to that Act.

### **Form of bonds of caution and other securities**

**33.6.**—(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 validly and in the same manner as the party and his heirs and successors, for whom he is cautioner, are obliged.

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<sup>(33)</sup> 1983 c. 2; section 136 was amended by the Representation of the People Act 1985 (c. 50), Schedule 4, paragraph 48.

<sup>(34)</sup> 1985 c. 6.

<sup>(35)</sup> 1895 c. 19.

<sup>(36)</sup> 1982 c. 50.

(2) A bond of caution or other security document given by an insurance company shall state whether the company is authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on insurance business of class 15 in Schedule 2 to that Act.

### **Sufficiency of caution or security and objections**

**33.7.**—(1) The Deputy Principal Clerk shall satisfy himself that any bond of caution or other document, lodged in process under rule 33.4(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 33.10 (failure to find caution or give security).

### **Juratory caution**

**33.8.**—(1) Where a pursuer in an action with a conclusion for suspension is ordered to find caution or give other security, he may offer to do so by juratory caution.

(2) Such an offer shall be made—

- (a) at the time the order for caution or other security is made; or
- (b) by enrolling a motion within the period allowed for finding caution or giving other security, as the case may be, or any prorogation of it, for the appointment of a commissioner.

(3) Where such an offer is made, the court shall—

- (a) appoint a commissioner to take the deposition of the pursuer at a time and place to be fixed by the commissioner;
- (b) ordain the pursuer to give notice of at least 7 days of the time and place so fixed by the commissioner to every other party to the action; and
- (c) where the offer has been made by motion under paragraph (2)(b), prorogate the time for finding caution or giving other security, as the case may be, by such period as it thinks fit.

(4) At the time and place fixed by the commissioner in accordance with paragraph (3)(a), the pursuer shall be examined as to the nature and extent of his whole estate wheresoever situated and the other parties to the action shall be entitled to cross-examine him.

(5) After his examination, the pursuer shall send to the Deputy Principal Clerk—

- (a) a bond of caution;
- (b) a full inventory of his whole estate;
- (c) a declaration attached to the inventory, stating that he will not dilapidate or dispose of any of his property or uplift any of the debts due to him, without the authority of the court (under pain of imprisonment or being otherwise punished as being guilty of fraud) or the consent of the party entitled to the benefit of the caution until the interlocutor disposing of the subject-matter of the action has become final and, where he has been found liable to pay any sum, including expenses, 12 weeks (and any further period that the court, on the motion of any party, may grant) have passed since the interlocutor became final;
- (d) the vouchers of any debts due to the pursuer;
- (e) the title deeds of any heritable property belonging to the pursuer, so far as in his possession or under his control; and
- (f) where required by the party entitled to the benefit of the caution—
  - (i) a standard security in favour of such party over any heritable property belonging to the pursuer, and
  - (ii) as assignation of all debts or other rights due to the pursuer,

prepared at the expense of the pursuer.

(6) Subject to rule 33.12(1) (bond of caution or consignment receipt transmitted to Accountant of Court), the Deputy Principal Clerk shall retain any documents lodged under paragraph (5) of this rule until further order of the court.

### **Insolvency or death of cautioner or guarantor**

**33.9.** 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 Bankruptcy (Scotland) Act 1985<sup>(37)</sup> (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 Insolvency Act 1986<sup>(38)</sup>) 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.

### **Failure to find caution or give security**

**33.10.** Where a party fails to find caution or give other security (such a party being 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 court thinks fit.

### **Interlocutors authorising uplifting of consignment receipts**

**33.11.** An interlocutor authorising a party to uplift a consignment receipt from the Accountant of Court shall state the name of the person entitled to any interest which has accrued on the sum consigned.

### **Accountant of Court**

**33.12.—**(1) A bond of caution or a consignment receipt lodged in any process shall be transmitted by the party lodging it, after the Deputy Principal Clerk has complied with rule 33.7(1), to the Accountant of Court.

(2) A bond of caution may be uplifted from the Accountant of Court on exhibition to him of the interlocutor granting discharge.

(3) A consignment receipt may be uplifted from the Accountant of Court on exhibition to him of a certified copy of the interlocutor authorising it.

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<sup>(37)</sup> 1985 c. 66; section 7 was amended by the Criminal Justice (Scotland) Act 1987 (c. 41), section 45(5)(b) and by the Criminal Justice Act 1988 (c. 33), Schedule 15, paragraph 108.

<sup>(38)</sup> 1986 c. 45.

(4) The form of book to be kept by the Accountant of Court under section 4 of the Court of Session Consignations (Scotland) Act 1895 (consignations to be entered in books kept by Accountant of Court) shall be in Form 33.12.

## *CHAPTER 34*

### *REPORTS TO INNER HOUSE*

#### **Report by Lord Ordinary to Inner House**

**34.1.**—(1) The Lord Ordinary may, at any stage of a cause on intimation to the parties, report the cause or any incidental matter which arises in the course of it, to the Inner House for a ruling.

(2) The Lord Ordinary shall give effect to the ruling of a Division of the Inner House on a report to the Inner House unless the Division decides the cause or incidental matter itself or remits to the Lord Ordinary with directions to proceed in a particular way.

#### **Fixing hearings for reports**

**34.2.**—(1) Where the Lord Ordinary reports a cause, or any incidental matter in a cause, under rule 34.1(1) to the Inner House, each party shall, within 7 days after the date on which the report of the Lord Ordinary is issued, inform the Keeper of the Rolls of the estimate of counsel or other person having a right of audience of the duration of the hearing before the Inner House.

(2) If a party fails to comply with paragraph (1), the Keeper of the Rolls may put the cause out on the By Order Roll before a Division of the Inner House.

(3) Where, at any time after an estimate has been given to the Keeper of the Rolls under paragraph (1), a party's estimate of the likely length of the hearing alters materially, that party shall inform the Keeper of the Rolls of the new estimated length.

(4) On the basis of the information provided to him under this rule, the Keeper of the Rolls shall—

- (a) put the cause out for hearing before a Division of the Inner House in the Single Bills or on the Summar Roll as he thinks fit; and
- (b) give written intimation of the date of the hearing to each party.

#### **Disposal of reports**

**34.3.**—(1) On considering the report of the Lord Ordinary and hearing parties, the Inner House may—

- (a) dispose of the cause or matter reported to it; or
- (b) remit to the Lord Ordinary with such directions as it thinks fit.

(2) The decision of the Inner House on a report to it under rule 34.1(1) shall be final.

(3) The Inner House may determine any question of expenses in respect of the matter reported to it or may reserve any such question.

(4) An interlocutor pronounced by the Lord Ordinary in obedience to directions given under paragraph (1) shall be deemed to be an interlocutor of the Inner House.



## CHAPTER 35

### RECOVERY OF EVIDENCE

#### **Application and interpretation of this Chapter**

**35.1.**—(1) This Chapter applies to the recovery of any evidence in a cause depending before the court.

(2) In this Chapter, “the Act of 1972” means the Administration of Justice (Scotland) Act 1972<sup>(39)</sup>.

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

**35.2.**—(1) An application by a party for—

- (a) a commission and diligence for the recovery of a document, or
- (b) an order under section 1 of the Act of 1972<sup>(40)</sup>,

shall be made by motion.

(2) At the time of enrolling 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.

(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 for an order under section 1(1) of the Act of 1972, any third party haver; and
- (c) where necessary, the Lord Advocate.

(4) Where the Lord Ordinary grants a motion made under paragraph (1), in whole or in part, in an action before calling of the summons, he may order the applicant to find such caution or give such other security as he thinks fit.

(5) The decision of the Lord Ordinary on a motion under paragraph (1) in an action before calling of the summons shall be final and not subject to review.

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

#### **Optional procedure before executing commission and diligence**

**35.3.**—(1) The party who has obtained a commission and diligence for the recovery of a document on an application made under rule 35.2(1)(a) may, at any time before executing it against a haver, serve on the haver an order in Form 35.3 (in this rule referred to as “the order”).

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<sup>(39)</sup> 1972 c. 59.

<sup>(40)</sup> 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.

*Status: This is the original version (as it was originally made).*

(2) The order and a copy of the specification referred to in rule 35.2(2), as approved by the court, shall be served on the haver or his known agent 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, and any document recovered is received from a haver by the Deputy Principal Clerk, he shall give written intimation of 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 Deputy Principal Clerk shall give written intimation of 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 Deputy Principal 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 Deputy Principal Clerk who shall—

- (a) give written intimation of the return of the document to every other party; and
- (b) 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—

- (a) that full compliance has been made with the order, or
- (b) that adequate reasons for non-compliance have been given,

he may execute the commission and diligence under rule 35.4.

(9) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the court 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 court 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 specification, notwithstanding the production of a certified extract from that book.

### **Execution of commission and diligence for recovery of documents**

**35.4.**—(1) The party who seeks to execute a commission and diligence for recovery of a document obtained on an application under rule 35.2(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;
- (b) fix a diet for the execution of the commission in consultation with every other party;
- (c) instruct the clerk and any shorthand writer; and
- (d) be responsible, in the first instance, for the fees of the commissioner, his clerk and any shorthand writer.

(2) The interlocutor granting such a commission and diligence shall be sufficient authority for citing a haver to appear before the commissioner.

(3) A haver shall be cited to appear at a commission for the recovery of documents by service on him of a citation in Form 35.4-A—

- (a) by registered post or the first class recorded delivery service; or
- (b) personally, by messenger-at-arms.

(4) A certificate of citation of a haver—

- (a) under paragraph (3)(a) shall be in Form 35.4-B; and
- (b) under paragraph (3)(b) shall be in Form 35.4-C.

(5) There shall be served on the haver with the citation 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).

(6) The agent for a party, or a party litigant, as the case may be, shall be personally liable, in the first instance, for the fees and expenses of a haver cited to appear at a commission for that party.

(7) The parties and the haver shall be entitled to be represented by counsel or other person having a right of audience, or an agent, at the execution of the commission.

(8) At the commission, the commissioner shall—

- (a) administer the oath *de fidei administratione* to the clerk and shorthand writer appointed for the commission; and
- (b) administer to the haver the oath in Form 35.4-D, or, where the haver elects to affirm, the affirmation in Form 35.4-E.

(9) 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 Deputy Principal Clerk.

(10) Not later than the day after the date on which such a report, any document recovered and an inventory of that document are received by the Deputy Principal Clerk, he shall give written intimation to the parties that he has received them.

(11) 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 (10).

(12) Where the party who served the order fails to uplift such a document within 7 days after the date of intimation under paragraph (11), the Deputy Principal Clerk shall give written intimation of that failure to every other party.

(13) Where no party has uplifted such a document within 14 days after the date of intimation under paragraph (12), the Deputy Principal Clerk shall return it to the haver.

(14) Where a party who has uplifted such a document does not wish to lodge it, he shall return it to the Deputy Principal Clerk who shall—

- (a) give written intimation of 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.

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

**35.5.**—(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) Rule 35.3 (optional procedure before executing commission and diligence) and rule 35.4 (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**

**35.6.**—(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 with or on, any such document or other property, as the case may be, subject to such conditions, if any, as the court 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 certified 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).

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

**35.7.**—(1) An order under section 1(1) of the Act of 1972 for the preservation, custody and detention of a document or other property 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 Deputy Principal Clerk for the further order of the court.

**Confidentiality**

**35.8.**—(1) Where confidentiality is claimed for any document or other property sought to be recovered under any of the following rules, such document or other property shall, where practicable, be enclosed in a sealed packet:—

- rule 35.3 (optional procedure before executing commission and diligence),
- rule 35.4 (execution of commission and diligence for recovery of documents),
- rule 35.5 (execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972),
- rule 35.7 (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 or such recovery allowed may be made by—

- (a) the party who obtained the commission and diligence; or
- (b) any other party after the date of intimation by the Deputy Principal Clerk under rule 35.3(5) or 35.4(12) (intimation of failure to uplift documents).

(3) In addition to complying with rule 23.3 (intimation of motions), the party enrolling such a motion shall intimate the terms of the motion to the person claiming confidentiality by registered post or the first class recorded delivery service.

- (4) The person claiming confidentiality may oppose a motion made under paragraph (2).

### **Warrants for production of original documents from public records**

**35.9.**—(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 court by motion.

(2) Written intimation of a motion under paragraph (1) shall be given to the keeper of the public record concerned at least 2 days before the motion is enrolled.

(3) Where it appears to the court that it is necessary for the ends of justice that a motion under this rule should be granted, authority shall be given to such keeper, on production of a certified copy of the interlocutor granting the motion, to produce or exhibit, as the case may be, the original register or deed to the court.

(4) 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).

### **Warrants for transmission of processes**

**35.10.**—(1) A party who seeks to lodge in process any process in the custody of the Keeper of the Records, or any process depending or which depended in any inferior court in Scotland, may apply by motion to the court for a warrant to authorise and direct the Keeper of the Records or the clerk of the inferior court, as the case may be, on production of a certified copy of the interlocutor granting the motion, to transmit that process to the Deputy Principal Clerk.

(2) A party who enrolls a motion under paragraph (1) shall give written intimation of the motion to the Keeper of the Records or the clerk of the inferior court, as the case may be, at least 2 days before the motion is enrolled.

(3) The Deputy Principal Clerk shall grant a receipt for any process transmitted to him under an order made under paragraph (1) and lodge it in the process of the cause.

(4) No process transmitted under paragraph (1) may be borrowed.

(5) After a process transmitted under paragraph (1) ceases to be required, the Deputy Principal Clerk shall return it to the Keeper of the Records or the clerk of the inferior court, as the case may be.

### **Commissions for examination of witnesses**

**35.11.**—(1) This rule applies to a commission—

- (a) to take the evidence of a witness on a ground mentioned in section 10(b) of the Act of 1988<sup>(41)</sup>;
- (b) in respect of the evidence of a witness which is in danger of being lost, to take the evidence to lie *in retentis*; or
- (c) on special cause shown, to take the evidence of a witness on a ground other than one referred to 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 court.

(3) Where a motion under paragraph (2) is made in an action before calling of the summons—

- (a) the applicant shall give written intimation of the motion to every other person named in the instance; and

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(41) 1988 c. 36.

*Status: This is the original version (as it was originally made).*

- (b) the decision of the Lord Ordinary shall be final and not subject to review.
- (4) The interlocutor granting such a commission shall be sufficient authority for citing the witness to appear before the commissioner.
- (5) A witness shall be cited to give evidence at a commission by service on him of a citation in Form 35.11–A–
  - (a) by registered post or the first class recorded delivery service; or
  - (b) personally, by a messenger-at-arms.
- (6) The certificate of citation of a witness–
  - (a) under paragraph (5)(a) shall be in Form 35.11–B; and
  - (b) under paragraph (5)(b) shall be in Form 35.11–C.
- (7) The agent for a party, or a party litigant, as the case may be, shall be personally liable, in the first instance, for the fees and expenses of a witness cited to appear at a commission for that party.
- (8) At the commission, the commissioner shall–
  - (a) administer the oath *de fidei administratione* to the clerk and any shorthand writer appointed for the commission; and
  - (b) administer to the witness the oath in Form 35.4–D, or, where the witness elects to affirm, the affirmation in Form 35.4–E.
- (9) In a cause involving the collision of ships, such an application shall be granted on condition, where necessary, that the applicant shall, at least 24 hours before the evidence is taken, lodge in process a preliminary act which the commissioner shall be entitled to open before the witness is examined.
- (10) Where a commission is granted for the examination of a witness, the court may, on the motion of any party and on cause shown, dispense with interrogatories.

### **Commissions on interrogatories**

- 35.12.**—(1) Where interrogatories have not been dispensed with, the party who obtained the commission to examine a witness under rule 35.11 shall lodge draft interrogatories to be adjusted at the sight of the clerk of court.
- (2) Any other party may lodge cross-interrogatories to be adjusted at the sight of the clerk of court.
  - (3) The interrogatories and any cross-interrogatories, when adjusted, shall be extended and returned to the clerk of court for approval.
  - (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 Deputy Principal 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 Deputy Principal Clerk, he shall give written intimation 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.

#### **Commissions without interrogatories**

**35.13.**—(1) Where interrogatories have been dispensed with, the party who has obtained a - commission to examine a witness under rule 35.11 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, in the first instance, for the fees of the commissioner, his clerk and any shorthand writer.

(2) All parties shall be entitled to be present and represented by counsel or other person having a right of audience, or agent, 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 Deputy Principal Clerk.

(4) Not later than the day after the date on which such report, any document and an inventory of that document are received by the Deputy Principal Clerk, he shall give written intimation 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**

**35.14.**—(1) Subject to the following paragraphs of this rule and to all questions of relevancy and admissibility, evidence taken on commission under rule 35.12 or 35.13 may be used as evidence at any proof or jury trial of the cause.

(2) Any party may object to the use of such evidence at a proof or jury trial; and the objection shall be determined by the court.

(3) Such evidence shall not be used at a proof or jury trial if the witness becomes available to attend the diet of proof or jury trial, as the case may be.

(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**

**35.15.**—(1) 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 Court of Session.

(2) An application to which paragraph (1) applies may be made in relation to a request—

- (a) for the examination of a witness,
- (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,

*Status: This is the original version (as it was originally made).*

- (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 in the Court of Session.

(3) Such an application shall be made by minute in Form 35.15—A with a proposed letter of request in Form 35.15—B.

(4) It shall be a condition of granting a letter or request that the agent for the applicant, or the 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 or haver who may be examined for the purpose; and he shall consign into court such sum in respect of such expenses as the court 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 Deputy Principle 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 35.12 and the translations (if any), shall be forwarded by the Deputy Principal Clerk to such person and in such manner as the Lord president may direct.

## *CHAPTER 36*

### *PROOFS*

#### **Hearing parts of proof separately**

**36.1.**—(1) In any cause, the court may—

- (a) at its own instance, or
- (b) on the motion of any party,

order that proof on liability or any other specified issue be heard separately from proof on any other issue and determine the order in which the proofs shall be heard.

(2) The court shall pronounce such interlocutor as it thinks fit at the conclusion of the first proof of any cause ordered to be heard in separate parts under paragraph (1).

#### **Citation of witnesses**

**36.2.**—(1) A witness shall be cited for a proof by service on him of a citation in Form 36.2—A—

- (a) by registered post or the first class recorded delivery service, by the agent for the party on whose behalf he is cited; or
- (b) personally, by a messenger-at-arms.

(2) A certified copy of the interlocutor allowing a proof shall be sufficient warrant to a messenger-at-arms to cite a witness on behalf of a party.

(3) A certificate of citation of a witness—

- (a) under paragraph (1)(a) shall be in Form 36.2—B; and



- (b) under paragraph (1)(b) shall be in Form 36.2–C.
- (4) The agent for a party, or a party litigant, as the case may be, shall be personally liable, in the first instance, for the fees and expenses of a witness cited by him to appear at a proof.
- (5) Where a party to a cause is a party litigant, he shall—
  - (a) not later than 12 weeks before the diet of proof, apply to the court by motion to fix caution for the expenses of witnesses in answering a citation in such sum as the court 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 messenger-at-arms to cite a witness, find the caution which has been fixed.
- (6) A party litigant who does not intend to cite all the witnesses referred to in his application under paragraph (5)(a) may apply by motion for variation of the amount of caution.

### **Lodging productions**

- 36.3.**—(1) Where a proof has been allowed, all productions which are intended to be used at the proof shall be lodged in process not later than 28 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 the leave of the court on cause shown and on such conditions, if any, as to expenses or otherwise as the court thinks fit.

### **Copy productions**

- 36.4.**—(1) A copy of every production, marked with the appropriate number of process of the principal production, shall be lodged for the use of the court 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.

### **Returning borrowed documents before proof**

- 36.5.** All steps of process and productions which have been borrowed shall be returned to process before 12.30 p.m. on the day preceding the diet of proof.

### **Notices to admit and notices of non-admission**

- 36.6.**—(1) At any time after a proof has been allowed, 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
  - (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 court, 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 court, on special cause shown, otherwise directs.

(5) The party intimating 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).

(7) The court may, at any time, allow a party to amend or withdraw an admission made by him on such conditions, if any, as it thinks fit.

### **Admissions by parties**

**36.7.—**(1) Where a party admits—

- (a) any matter of fact whether averred in the pleadings or not,
- (b) the authenticity of any document, or
- (c) the sufficiency of a copy or extract of such a document as equivalent to the original,

which has not been admitted in the pleadings or in respect of which a notice under rule 36.6(1) has not been intimated, a minute of admission signed by counsel or other person having a right of audience for the party making such admission, shall be lodged in process.

(2) An admission made in a minute of admission may be used in evidence at a proof if otherwise admissible in evidence.

(3) In taxing any account of expenses, the Auditor shall disallow the expenses of any evidence led on matters covered by a minute of admission, unless special cause is shown to him.

### **Conditions for receiving certain written statements in evidence**

**36.8.—**(1) Any written statement (including an affidavit) or report, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988<sup>(42)</sup>, may be received in evidence at a proof in any category of cause without being spoken to by a witness subject to the provisions of this rule.

(2) The following provisions of this rule do not apply to any such written statement or report in respect of which express provision is made in these Rules for its admissibility in evidence in relation to a particular category of cause.

(3) An application to the court to receive any such written statement or report in evidence without being spoken to by a witness shall be made by motion.

(4) Subject to paragraph (5), on enrolling any such motion, the applicant shall lodge in process—

- (a) the written statement or report as a production;

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(42) 1988 c. 32.

- (b) in any case where the other party or parties have not agreed to the written statement or report in question being received in evidence without being spoken to by a witness, an affidavit or affidavits in support of the motion stating—
  - (i) the name, designation, qualifications (if any) and address of the author of the statement or report in question;
  - (ii) the circumstances in which it was written; and
  - (iii) the reasons for the application.
- (5) Paragraph (4) does not apply to an application made in respect of a written statement or report in the form of an affidavit which includes the information specified in sub-paragraph (b) of paragraph (4).
- (6) Any such motion which is unopposed may be granted by the court without a hearing.
- (7) At a hearing of any such motion, the court may continue the motion to enable such further information to be obtained as it may require for the purpose of determining the application.
- (8) Expressions used in this rule which are used in the Civil Evidence (Scotland) Act 1988 shall have the same meaning as in that Act.

#### **Attendance, and lists, of witnesses**

- 36.9.**—(1) It shall be the duty of each party to ensure that his witnesses, if any, are—
- (a) in attendance in the vicinity of the courtroom; and
  - (b) available when called to give evidence.
- (2) Each party shall, before his case begins, give to the macer of the court a numbered list of any witnesses of his in the order in which it is proposed to call them.
- (3) No witness at a proof shall, except with leave of the court—
- (a) be present in the courtroom during the proceedings prior to the giving of his evidence; or
  - (b) leave the courtroom after giving evidence.
- (4) No party, other than the party citing a witness, shall have access to that witness while he is in attendance at court.

#### **Administration of oath or affirmation to witnesses**

**36.10.** The Lord Ordinary shall administer the oath to a witness in Form 36.10–A or, where the witness elects to affirm, the affirmation in Form 36.10–B.

#### **Recording of evidence**

- 36.11.**—(1) Subject to any other provision in these Rules, evidence at a proof shall be recorded by—
- (a) a shorthand writer to whom the oath *de fideli administratione officii* has been administered on his appointment as a shorthand writer in the Court of Session; or
  - (b) tape recording or other mechanical means approved by the Lord President.
- (2) 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.

(3) A transcript of the record of the evidence shall be made only on the direction of the court; and the cost shall, in the first instance, be borne—

- (a) in an undefended cause, by the agent for the pursuer; and
- (b) in a defended cause, by the agents for the parties in equal proportions.

(4) 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 or shorthand writers, if more than one, who recorded the evidence; or
- (b) where the evidence was recorded by tape recording or other mechanical means, the person who transcribed the record.

(5) The court may make such alterations to the transcript of the record of the evidence as appear to it to be necessary after hearing the parties; and, where such alterations are made, the Lord Ordinary shall authenticate the alterations.

(6) Where a transcript of the record of the evidence has been made for the use of the court, copies of it may be obtained by any party from the shorthand writer on payment of his fee.

(7) Except with leave of the court, 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 reclaim against the interlocutor of the court on the proof.

(8) Where a transcript of the record of the evidence is required for the purpose of a reclaiming motion but has not been directed to be transcribed under paragraph (3), the reclaimer—

- (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 agent for the reclaimer in the first instance; and
- (b) shall lodge the transcript in process;

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.

### **Finality of decision on sufficiency of stamp**

**36.12.** The decision of the Lord Ordinary that a document adduced in evidence is sufficiently stamped, or does not require to be stamped, shall be final and not subject to review.

### **Death, disability, retiral, etc., of Lord Ordinary**

**36.13.—**(1) Where the Lord Ordinary, before whom proof has been taken, in whole or in part, dies, retires or otherwise becomes unable to give judgment or to hear further proof, as the case may be, any party to the cause may apply by motion to the Inner House for directions—

- (a) that the cause shall be continued before, and shall be disposed of by, another Lord Ordinary;
- (b) that the notes of evidence already taken, as certified by the shorthand writer, shall be evidence in the cause; and
- (c) that the notes of the Lord Ordinary taken at the proof shall be made available to the Lord Ordinary before whom the cause is to be continued.

(2) On making directions under paragraph (1), the Inner House may make such other order as it thinks fit.

(3) On enrolling a motion under paragraph (1), the party enrolling it shall—

- (a) lodge in process four copies of the closed record (incorporating all interlocutors pronounced in the cause and amendments to the record allowed since the closing of the record); and

- (b) send one copy of that record to every other party.
- (4) It shall not be necessary for any documents to be lodged in support of such a motion unless the court otherwise directs.
- (5) The vacation judge may not hear or determine a motion under paragraph (1).

## CHAPTER 37

### JURY TRIALS

#### Applications for jury trial

**37.1.**—(1) Within 14 days after the date of an interlocutor allowing issues in an action, the pursuer shall lodge in process the proposed issue for jury trial and a copy of it for the use of the court.

(2) Where a pursuer fails to lodge a proposed issue for jury trial under paragraph (1), he shall, unless—

- (a) the court, on cause shown, otherwise orders, or
- (b) a proposed issue is lodged by another party under paragraph (3),

be held to have departed from his right to jury trial; and any other party may apply by motion for a proof.

(3) Where a pursuer fails to lodge a proposed issue under paragraph (1), any other party may, within 7 days after the expiry of the period specified in that paragraph, lodge in process a proposed issue for jury trial and a copy of it.

(4) Where a proposed issue has been lodged under paragraph (1) or (3), any other party may, within 7 days after the date on which the proposed issue has been lodged, lodge in process a proposed counter-issue and a copy of it.

(5) A proposed counter-issue lodged by a party under paragraph (4) may include any question of fact which is made the subject of a specific averment on record or is relevant to his pleas-in-law notwithstanding that it does not in terms meet the proposed issue.

(6) The party lodging a proposed issue under paragraph (1) or (3) shall, on the day after the date on which the period for lodging a proposed counter-issue under paragraph (4) expires, apply by motion for approval of the proposed issue.

(7) Any party who has lodged a proposed counter-issue under paragraph (4) shall, within 7 days after the enrolment of a motion for approval of a proposed issue under paragraph (6), apply by motion for approval of his proposed counter-issue.

(8) Where a proposed counter-issue has been lodged, the motion for approval of a proposed issue shall be heard at the same time as the motion for approval of the proposed counter-issue.

(9) The Lord Ordinary, on granting a motion for approval of a proposed issue or proposed counter-issue, shall authenticate with his signature the proposed issue or proposed counter-issue as lodged or as adjusted.

(10) Where an issue or counter-issue has been approved by the court, the party whose issue or counter-issue it is shall lodge 18 copies of the approved issue or counter-issue for the use of the court; and such copies need not contain the authentication of the Lord Ordinary.

#### Citation of jurors

**37.2.**—(1) Not less than 14 days before the diet for jury trial, the pursuer shall attend at the General Department and request the issue of a jury precept.

(2) Where the pursuer has failed to request the issue of a jury precept under paragraph (1), any other party may request a jury precept not less than 10 days before the diet for jury trial.

(3) A jury precept shall be in Form 37.2–A.

(4) Where a jury precept is issued, it shall be transmitted by a clerk of session to the sheriff principal of the sheriffdom of Lothian and Borders who shall cause a list of jurors to be prepared of an equal number of men and women in accordance with the precept.

(5) A citation of a person to attend as a juror shall be in Form 37.2–B and shall be executed by the sheriff clerk at Edinburgh (or a depute authorised by him) by post by the first class recorded delivery service.

(6) Where no party requests the issue of a jury precept under paragraph (1) or (2), each party shall be held to have departed from the application for a jury trial and inquiry into the facts of the cause shall be taken by proof.

### **Ineligibility for, and excusal from, jury service**

**37.3.**—(1) A person summoned to serve on a jury may, as soon as possible after receipt of his citation, apply in writing to the Deputy Principal Clerk to be released from his citation; and the Deputy Principal Clerk may, if he is satisfied that there are good and sufficient grounds for excusal, grant the application.

(2) The Lord Ordinary to preside at the jury trial may, at any time before the jury is empanelled, excuse any person summoned to attend as a juror from attendance if he is satisfied that there are good and sufficient grounds for doing so.

### **Application of certain rules relating to proofs**

**37.4.** The following provisions of these Rules shall apply in relation to an action in which issues have been approved for jury trial as they apply to a cause in which a proof has been allowed:—

- rule 36.2 (citation of witnesses),
- rule 36.3 (lodging productions),
- rule 36.4 (copy productions),
- rule 36.5 (returning borrowed documents before proof),
- rule 36.6 (notices to admit and notices of non-admission),
- rule 36.7 (admissions by parties),
- rule 36.8 (conditions for receiving certain written statements in evidence),
- rule 36.9 (attendance, and lists, of witnesses),
- rule 36.10 (administration of oath or affirmation to witnesses),
- rule 36.11 (recording of evidence).

### **Failure of party to appear at jury trial**

**37.5.** Where a party does not appear at the diet for jury trial, then—

- (a) if the party appearing is the pursuer or the party on whom the burden of proof lies, he shall be entitled to lead evidence, and go to the jury for a verdict;
- (b) if the party appearing is the defender or the party on whom the burden of proof does not lie, he shall be entitled to obtain a verdict in his favour without leading evidence.

### **Administration of oath or affirmation to jurors**

**37.6.**—(1) Subject to paragraph (2), the clerk of court shall administer the oath collectively to the jury in Form 37.6–A.

(2) Where a juror elects to affirm, the clerk shall administer the affirmation to that juror in Form 37.6–B.

### **Exceptions to judge’s charge**

**37.7.**—(1) Where a party seeks to take exception to a direction on a point of law given by the Lord Ordinary in his charge to the jury or to request the Lord Ordinary to give a direction differing from or supplementary to the directions in the charge, he shall, immediately on the conclusion of the charge, so intimate to the Lord Ordinary, who shall hear counsel for the parties in the absence of the jury.

(2) The party dissatisfied with the charge to the jury shall formulate in writing the exception taken by him or the direction sought by him; and the exception or direction, as the case may be, and the judge’s decision on it, shall be recorded in a note of exception under the direction of the Lord Ordinary and shall be certified by him.

(3) After the note of exception has been certified by the Lord Ordinary, he may give such further or other directions to the jury in open court as he thinks fit before the jury considers its verdict.

### **Further questions for jury**

**37.8.** The Lord Ordinary may, after the evidence has been led, submit to the jury in writing along with the issue and any counter-issue such further questions as he thinks fit.

### **Verdicts**

**37.9.** After a verdict has been returned by a jury, the verdict shall be written on the issue and dated and signed by the clerk of court.

### **Application of verdicts**

**37.10.** Any party may, after the expiry of 7 days after the date on which the verdict was written on the issue and signed, apply by motion to apply the verdict, grant decree in accordance with it and make any award in relation to expenses.

## *CHAPTER 38*

## *RECLAIMING*

### **Interpretation of this Chapter**

**38.1.** In this Chapter, “reclaiming days” means the days within which an interlocutor may be reclaimed against.

### **Reclaiming**

**38.2.** Subject to any other provision in these rules or any other enactment, any party to a cause who is dissatisfied with an interlocutor pronounced by—

- (a) the Lord Ordinary,
- (b) the Lord Ordinary in Exchequer Causes, or
- (c) the vacation judge,

and who seeks to submit that interlocutor to review by the Inner House shall do so by reclaiming in accordance with the provisions of this Chapter.

### **Reclaiming days**

**38.3.**—(1) This rule applies subject to any other provision in these Rules or any other enactment.

(2) An interlocutor disposing, either by itself or taken along with a previous interlocutor, of—

- (a) the whole subject matter of the cause, or
- (b) the whole merits of the cause whether or not the question of expense is reserved or not disposed of,

may be reclaimed against, without leave, within 21 days after the date on which the interlocutor was pronounced.

(3) An interlocutor disposing of the merits of an action and making an award of provisional damages under section 12(2)(a) of the Administration of justice Act 1982<sup>(43)</sup> may be reclaimed against, without leave, within 21 days after the date on which the interlocutor was pronounced.

(4) An interlocutor—

- (a) disposing of part of the merits of a cause,
- (b) allowing or refusing proof, proof before answer or jury trial (but, in the case of refusal, without disposing of the whole merits of the cause),
- (c) limiting the mode of proof,
- (d) adjusting issues for jury trial,
- (e) granting, refusing, recalling, or refusing to recall, interim interdict or interim liberation,
- (f) in relation to an exclusion order under section 4 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981<sup>(44)</sup>,
- (g) granting, refusing or recalling a sist of execution or procedure,
- (h) loosing, restricting or recalling an arrestment or recalling in whole or in part an inhibition used on the dependence of an action or refusing to loose, restrict or recall such arrestment or inhibition,
- (i) granting authority to move an arrested vessel or cargo,
- (j) deciding (other than in a summary trial) that a reference to the European Court should be made,

may be reclaimed against, without leave, within 14 days after the date on which the interlocutor was pronounced.

(5) An interlocutor (other than a decree in absence or an interlocutor mentioned in paragraph (2), (3) or (4) of this rule) may be reclaimed against, with leave, within 14 days after the date on which the interlocutor was pronounced.

### **Leave to reclaim etc. in certain cases**

**38.4.**—(1) An interlocutor granting or refusing a motion for summary decree may be reclaimed against only with the leave of the Lord Ordinary within 14 days after the date on which the interlocutor was pronounced.

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<sup>(43)</sup> 1982 c. 53.

<sup>(44)</sup> 1981 c. 59; section 4 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 13(5).



(2) In the application of section 103(3) of the Debtors (Scotland) Act 1987<sup>(45)</sup> (appeals on questions of law arising from making, variation or recall of time to pay directions)–

- (a) leave to appeal shall be sought within 14 days after the date of the decision of the Lord Ordinary appealed against; and
- (b) an appeal shall be made by motion to the Inner House within 14 days after the date on which leave was granted.

(3) An interlocutor pronounced under rule 43.24 (diet roll in optional procedure cases) which does not, either by itself or taken along with a previous interlocutor, dispose of the whole merits of the action whether or not the question of expenses is reserved or not disposed of, may be reclaimed against, only with the leave of the Lord Ordinary, within 14 days after the date on which the interlocutor was pronounced.

(4) An interlocutor, other than an interlocutor determining the application, pronounced under Chapter 58 (applications for judicial review) may be reclaimed against only with the leave of the Lord Ordinary within 14 days after the date on which the interlocutor was pronounced.

(5) The decision of the Lord Ordinary on a note of objection to the report of the Auditor under rule 42.4 may be reclaimed against only with the leave of the Lord Ordinary within 7 days after the date on which the decision was made.

### **Applications for leave to reclaim**

**38.5.**—(1) An application for leave to reclaim against an interlocutor shall be made by motion.

(2) A motion under paragraph (1) shall be brought–

- (a) before the Lord Ordinary who pronounced the interlocutor;
- (b) where that Lord Ordinary is, for whatever reason, unavailable, before another Lord Ordinary; or
- (c) before the vacation judge.

(3) Where a motion under paragraph (1) is brought before a judge under paragraph (2)(b) or (c), that judge shall–

- (a) continue the motion until the Lord Ordinary who pronounced the interlocutor is available; or
- (b) where the matter is of such urgency that a continuation would not be appropriate, grant or refuse leave, as the case may be.

(4) Any period during which a motion under paragraph (1) is continued by virtue of an order under paragraph (3)(a) shall not be taken into account in calculating the reclaiming days under rule 38.3(5) (reclaiming days with leave) or rule 38.4 (leave to reclaim etc. in certain cases).

(5) In granting leave to reclaim, the Lord Ordinary may impose such conditions, if any, as he thinks fit.

(6) The decision of the Lord Ordinary or the vacation judge to grant or refuse leave to reclaim shall be final and not subject to review.

(7) Leave to reclaim against an interlocutor shall not excuse obedience to or implement of the interlocutor unless by order of the Lord Ordinary, the Inner House or the vacation judge.

### **Method of reclaiming**

**38.6.**—(1) A party who seeks to reclaim against an interlocutor shall mark a reclaiming motion by enrolling a motion for review in Form 38.6 before the expiry of the reclaiming days.

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<sup>(45)</sup> 1987 c. 18.

(2) On enrolling a motion for review under paragraph (1), the reclaimer shall lodge a reclaiming print which complies with rule 38.18.

### **Leave to reclaim out of time**

**38.7.**—(1) In a case of mistake or inadvertance, the Inner House may, on an application to it, allow a motion for review to be received outwith the reclaiming days and to proceed out of time on such conditions as to expenses or otherwise as the court thinks fit.

(2) An application under paragraph (1) shall be made by motion included in the motion for review made under rule 38.6(1).

### **Effect of reclaiming**

**38.8.**—(1) Subject to paragraph (2), a reclaiming motion shall have the effect of submitting to the review of the Inner House all previous interlocutors of the Lord Ordinary, not only at the instance of the party reclaiming, but also at the instance of any other party who appeared in the cause, and without the necessity of any counter-reclaiming motion.

(2) Where an interlocutor, either by itself or taken along with a previous interlocutor, has disposed of the whole merits of the cause, a reclaiming motion against a subsequent interlocutor dealing with expenses shall have the effect of submitting to review only that interlocutor and any other interlocutor in so far as it deals with expenses.

(3) After a reclaiming motion has been enrolled, the reclaimer shall not be at liberty to withdraw it without the consent of the other parties who have appeared in the cause; and if he does not insist on the reclaiming motion, any other party may do so in the same way as if the motion had been enrolled at his instance.

(4) An unopposed motion by a party to refuse a reclaiming motion shall be treated as if all parties consented to it.

(5) Where an interlocutor contains an award of custody, access or aliment, the marking of a reclaiming motion shall not excuse obedience to or implement of the award of custody, access or aliment, as the case may be, unless by order of the court.

### **Effect of extracted interlocutor**

**38.9.** Review by the Inner House of an interlocutor shall not be prevented by reason only that extract has been issued before the expiry of the reclaiming days.

### **Appeals treated as reclaiming motions**

**38.10.** In respect of the following appeals, the rules in this Chapter shall apply to those appeals as they apply to reclaiming:—

- (a) an appeal from a decision of the Lord Ordinary under section 6 of, and Article 37 or 41 of the convention in Schedule 1 or 3C to, the Civil Jurisdiction and Judgments Act 1982<sup>(46)</sup> (appeals in relation to decisions on enforcement); and
- (b) an appeal from a decision of the Lord Ordinary under section 103(3) of the Debtors (Scotland) Act 1987 (appeals on questions of law).

<sup>(46)</sup> 1982 c. 27; section 6 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2, paragraph 3, Schedule 1 to the Act of 1982 was substituted by S.I. 1990/2591 and Schedule 3C to the 1982 Act was inserted by the Act of 1991, section 1(3).

### **Reclaiming against decree by default**

**38.11.**—(1) Where decree by default has been granted against a party in respect of his failure to lodge a step of process or other document, a motion for review by that party of the interlocutor granting such decree shall be refused unless the document is lodged on or before the date on which the motion is enrolled.

(2) A decree by default may, if reclaimed against, be recalled on such conditions, if any, to expenses or otherwise as the court thinks fit.

### **Reclaiming against interlocutor adjusting issues**

**38.12.**—(1) A party who reclaims against an interlocutor adjusting issues for jury trial shall, on enrolling the motion for review—

- (a) lodge in process the issue or counter-issue proposed by him showing the amendment to the issues, as adjusted, sought to be made; and
- (b) send a copy of the issue or counter-issue, as the case may be, to every other party.

### **Early disposal of reclaiming motion**

**38.13.**—(1) A party who seeks early disposal of a reclaiming motion shall—

- (a) where he is the reclaimer, include in his motion under rule 38.6(1) (method of reclaiming) the words “and for early disposal”; or
- (b) where he is the respondent—
  - (i) within the period allowed for opposing the motion, endorse on the motion of the reclaimer made under rule 38.6(1), or send by post or facsimile transmission a notice of opposition in Form 23.4 including the words “The respondent (*name*) seeks early disposal.”; or
  - (ii) add, to his opposition under rule 38.14(1) (objections to competency of reclaiming motion), the words “and for early disposal”.

(2) Where early disposal is sought under paragraph (1), the Keeper of the Rolls shall put the cause out for hearing in the Single Bills before a Division of the Inner House on the earliest available day, having given written intimation of the diet to each party.

(3) Grounds of appeal which comply with rule 38.16(2) shall be lodged with three copies of them by—

- (a) the reclaimer, and
- (b) any respondent seeking to bring any interlocutor under review or to challenge the grounds on which the Lord Ordinary has pronounced the interlocutor under review,

on the sederunt day before the day of the hearing in the Single Bills arranged under paragraph (2).

(4) At the hearing in the Single Bills, the court may determine the reclaiming motion or, after consultation with the Keeper of the Rolls, make such order as it thinks fit.

### **Objections to competency of reclaiming motion**

**38.14.**—(1) After a reclaiming motion has been marked by a reclaimer, any other party may oppose the motion on the ground that the reclaiming motion is incompetent.

(2) Where a reclaiming motion has been opposed under paragraph (1), the cause shall be put out for hearing in the Single Bills before a Division of the Inner House.

(3) At the hearing in the Single Bills arranged under paragraph (2), the Inner House may—

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- (a) dispose of the objection to competency and, where it repels the objection, order grounds of appeal to be lodged;
  - (b) appoint the cause to the Summar Roll for a hearing on the objection;
  - (c) reserve the objection until grounds of appeal have been lodged and order such grounds to be lodged;
  - (d) reserve the objection for hearing with the merits and order grounds of appeal to be lodged.
- (4) Where the Deputy Principal Clerk considers that a reclaiming motion may be incompetent, whether or not any other party has opposed the reclaiming motion under paragraph (1), he may, before the cause is brought before the Inner House, refer it to a single judge in accordance with paragraph (5).
- (5) Any referral by the Deputy Principal Clerk under paragraph (4) shall be made to a judge nominated for that purpose by the Lord President.
- (6) Where a referral is made under paragraph (4), the judge may—
- (a) order any party to make representations to him in respect of the competency of the reclaiming motion;
  - (b) refuse the reclaiming motion on the ground that it is incompetent;
  - (c) direct that the reclaiming motion is to proceed as if the referral had not been made;
  - (d) make such order as to expenses or otherwise as he thinks fit.
- (7) Any decision of a judge in respect of a reclaiming motion referred to him under paragraph (4) shall be final and not subject to review.

#### **Procedure where no objection to competency**

**38.15.**—(1) Subject to paragraph (2), where a reclaiming motion is not opposed on the ground of competency, the Inner House shall, without hearing parties, order grounds of appeal to be lodged.

(2) This rule shall not apply where an application is made under rule 38.13(1) (early disposal of reclaiming motion).

#### **Grounds of appeal in reclaiming motions**

**38.16.**—(1) An order for grounds of appeal shall require—

- (a) the claimer, and
- (b) any respondent seeking to bring an interlocutor under review or to challenge the grounds on which the Lord Ordinary has pronounced the interlocutor under review,

to lodge grounds of appeal in process within 28 days after the date of the interlocutor making the order.

(2) Grounds of appeal shall consist of brief specific numbered propositions stating the grounds on which it is proposed to submit that the reclaiming motion should be allowed or as the case may be.

(3) On lodging grounds of appeal, the party lodging them shall—

- (a) lodge three copies of them in process; and
- (b) send a copy of them to every other party.

(4) A party who has lodged grounds of appeal may at any time apply for leave to amend his grounds of appeal on cause shown.

(5) Where a claimer fails to lodge grounds of appeal in accordance with paragraph (2) within the period prescribed under paragraph (1), the Inner House may, at its own instance or on the motion of a respondent, refuse the reclaiming motion.

### **Orders for hearing**

**38.17.**—(1) Subject to rule 38.13 (early disposal of reclaiming motion), on lodging grounds of appeal—

- (a) the reclaimer who has lodged grounds of appeal, or
- (b) where the reclaimer no longer insists in his reclaiming motion, a respondent who has lodged grounds of appeal,

shall apply by motion to the Inner House for an order for hearing.

(2) On a motion under paragraph (1), the Inner House may—

- (a) appoint the cause to the Summar Roll for hearing; or
- (b) direct that the cause be heard in the Single Bills.

(3) In a cause in which an objection to competency has been reserved under rule 38.14(3)(c), the motion under paragraph (1) of this rule shall require the attendance of counsel or other person having a right of audience, and, at the hearing of that motion in the Single Bills, the Inner House may—

- (a) dispose of the objection, and, where it repels the objection, either dispose of the merits in the Single Bills or appoint the cause to the Summar Roll for hearing;
- (b) appoint the cause to the Summar Roll for hearing on the objection; or
- (c) reserve the objection for hearing with the merits and appoint the cause to the Summar Roll for hearing.

### **Reclaiming prints**

**38.18.** A reclaiming print shall be in the form of a record and shall contain—

- (a) the whole pleadings and interlocutors in the cause;
- (b) where the reclaiming motion is directed at the refusal of the Lord Ordinary to allow the pleadings to be amended in terms of a minute of amendment and answers, the text of such minute and answers; and
- (c) where available, the opinion of the Lord Ordinary.

### **Lodging of appendices in reclaiming motions**

**38.19.**—(1) Where, in a reclaiming motion—

- (a) the opinion of the Lord Ordinary has not been included in the reclaiming print, or
- (b) it is sought to submit notes of evidence or documents for consideration by the court,

the reclaimer shall lodge an appendix incorporating such documents within three months after the cause has been appointed to the Summar Roll.

(2) Where the reclaimer considers that an appendix is not necessary, the reclaimer shall, by the date specified in paragraph (1)—

- (a) give written intimation of that fact to the Deputy Principal Clerk; and
- (b) send a copy of that intimation to the respondent.

(3) Where a respondent in a reclaiming motion seeks to submit notes of evidence or documents for consideration by the court which the reclaimer has given written intimation to the respondent he does not intend to include in his appendix, the respondent shall incorporate such notes or documents in an appendix which he shall lodge within one month after the date on which intimation under paragraph (2) or this paragraph, as the case may be, was given.

(4) Where a reclaimer fails to lodge an appendix in accordance with paragraph (1), a respondent may apply by motion to the Inner House to have the reclaiming motion refused.

**Notes of evidence not extended when agreed**

**38.20.** Where, in a reclaiming motion, the parties are agreed that on any particular issue the interlocutor reclaimed against is not to be submitted to review, it shall not be necessary to reproduce the notes of evidence or documents relating to that issue.

**Amendment of pleadings in reclaiming motions**

**38.21.—**(1) Where, after a reclaiming motion has been marked, any party applies by motion to have the pleadings amended in terms of a minute of amendment and answers, he shall apply for a direction as to further procedure.

(2) Where it appears to the Inner House that the proposed amendment makes a material change to the pleadings, it may recall the interlocutor of the Lord Ordinary reclaimed against and remit the cause back to the Lord Ordinary for a further hearing.

*CHAPTER 39**APPLICATIONS FOR NEW TRIAL OR TO ENTER JURY VERDICTS***Applications for new trial**

**39.1.—**(1) An application under section 29(1) of the Act of 1988<sup>(47)</sup> (application for new trial) shall be made by motion within 7 days after the date on which the verdict of the jury was written on the issue and signed.

(2) A motion under paragraph (1) shall specify the grounds on which the application is made.

(3) An application under section 29(1)(a) or (b) of the Act of 1988 may not be made unless—

- (a) in the case of an application under section 29(1)(a) (misdirection of judge), the procedure in rule 37.7 (exceptions to judge's charge) has been complied with; or
- (b) in the case of an application under section 29(1)(b) (undue admission or rejection of evidence), objection was taken to the admission or rejection of the evidence at the trial and recorded in the notes of evidence under direction of the judge presiding at the trial.

(4) On enrolling a motion for a new trial under paragraph (1), the party enrolling it shall lodge—

- (a) a print of the whole pleadings and interlocutors in the cause incorporating the issues and counter issues;
- (b) the verdict of the jury; and
- (c) any exception and the determination on it of the judge presiding at the trial.

(5) Rule 38.8 (effect of reclaiming) shall, with the necessary modifications, apply to an application for a new trial under section 29 of the Act of 1988 as it applies to a reclaiming motion.

**Applications out of time**

**39.2.—**(1) Where an application for a new trial under section 29(1) of the Act of 1988 is made outwith the period specified in rule 39.1(1) the motion made in accordance with that rule shall include an application to allow the motion to be received and for leave to proceed out of time.

(2) Where the court grants an application under paragraph (1), it shall—

- (a) where the motion has been opposed as incompetent, make such order as may be made under rule 39.3(2); or

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(47) 1988 c. 36.

- (b) where no such opposition has been marked, appoint the cause to the Summar Roll for hearing or dispose of the motion in the Single Bills.

### **Objections to competency of application**

**39.3.**—(1) Where an application for a new trial under section 29(1) of the Act of 1988 is made by a party, any other party may oppose the motion on the ground that it is incompetent.

- (2) At the hearing in the Single Bills of the motion referred to in paragraph (1), the court may—
  - (a) dispose of the objection to competency; and, where it repels the objection, appoint the cause to the Summar Roll for hearing or determine the motion in the Single Bills;
  - (b) appoint the cause to the Summar Roll for a hearing on the objection; or
  - (c) reserve the objection for hearing with the merits and appoint the cause to the Summar Roll for hearing.

### **Procedure where no objections to competency**

**39.4.** Where an application for a new trial under section 29(1) of the Act of 1988 is—

- (a) made timeously, and
- (b) not opposed on the ground of competency,

the court shall, without hearing parties, appoint the cause to the Summar Roll or direct that it be put out in the Single Bills for hearing.

### **Lodging of appendix**

**39.5.** Rule 38.19 (lodging of appendices in reclaiming motions) shall, with the necessary modifications, apply to an application for a new trial under section 29(1) of the Act of 1988 as it applies to a reclaiming motion.

### **Applications to enter jury verdict**

**39.6.**—(1) An application under section 31(1) of the Act of 1988 (verdict returned subject to opinion of Inner House on point reserved) shall be made by motion.

(2) On enrolling a motion under paragraph (1), the party enrolling it shall lodge in process four copies of the closed record incorporating—

- (a) all interlocutors pronounced in the cause and any amendments to the record allowed;
- (b) the issues and counter issues;
- (c) any exception taken during the trial and the determination on it of the judge presiding at the trial; and
- (d) the verdict of the jury;

and send one copy of it to every other party.

(3) Unless the court otherwise directs, it shall not be necessary for the purposes of such a motion to print the notes of evidence, but the notes of the judge presiding at the trial may be produced at any time if required.

(4) In a case of complexity or difficulty, the Inner House may appoint an application referred to in paragraph (1) to the Summar Roll for hearing.

## CHAPTER 40

### APPEALS FROM INFERIOR COURTS

#### **Application and interpretation of this Chapter**

**40.1.**—(1) This Chapter applies to an appeal to the court from any decision pronounced by an inferior court which may be appealed to the court.

(2) In this Chapter—

- (a) “appeal process” means—
  - (i) the process of the inferior court; or
  - (ii) where the cause is recorded in an official book of an inferior court, a copy of the record in that book certified by the clerk of the inferior court;
- (b) “decision” includes interlocutor, judgment or other determination;
- (c) “inferior court” means—
  - (i) the Lyon Court;
  - (ii) the sheriff; or
  - (iii) the Employment Appeal Tribunal.

#### **Applications for leave to appeal from inferior court**

**40.2.**—(1) Where leave to appeal is required, an application for such leave shall be made in the first instance, to the inferior court unless the enactment allowing the appeal requires the application to be made to the court.

(2) Where—

- (a) the inferior court has refused leave to appeal and such refusal is not final, or
- (b) leave to appeal is required from the court and not the inferior court,

any application to the court for leave to appeal shall be made in Form 40.2 to the Inner House.

(3) An application to the court under paragraph (2) for leave to appeal shall be lodged in the General Department—

- (a) within the period prescribed by the enactment by virtue of which it is made; or
- (b) where no such period is prescribed, within 14 days after the date specified in paragraph (4).

(4) The date referred to in paragraph (3)(b) is—

- (a) the date on which the decision of the inferior court refusing leave to appeal was intimated to the appellant; or
- (b) where the application for leave to appeal is required to be made to the court and not the inferior court—
  - (i) the date on which the decision of the inferior court complained of was issued; or
  - (ii) where the inferior court issued reasons for its decision later than the decision, the date of issue of the reasons.

(5) An application to the court for leave to appeal shall include a statement setting out the proposed grounds of appeal and the grounds on which leave to appeal is sought.

(6) There shall be lodged with an application to the court under paragraph (3)—

- (a) a process in accordance with rule 4.4 (steps of process);
- (b) where applicable—



- (i) evidence that leave to appeal has been refused by the inferior court;
- (ii) a copy of the grounds of appeal intimated to the inferior court; and
- (iii) any note by the inferior court setting out the reasons for its refusal;
- (c) a copy of the decision of the inferior court complained of and any reasons for that decision; and
- (d) where the inferior court itself exercised an appellate function, a copy of the decision of the tribunal from which that appeal was taken and any reasons given for that decision.

### **Determination of applications for leave to appeal from inferior court**

**40.3.**—(1) On lodging an application for leave to appeal under rule 40.2, the applicant shall apply by motion to the Inner House for an order for intimation and service.

(2) On expiry of the period within which answers may be lodged, the applicant may apply by motion to the Inner House for the application to be granted.

### **Time and method of appeal**

**40.4.**—(1) An appeal from an inferior court shall be made—

- (a) within the period prescribed by the enactment by virtue of which the appeal is made; or
- (b) where no such period is prescribed, within 21 days after—
  - (i) the date on which the decision appealed against was given;
  - (ii) where the inferior court issued written reasons for its decision later than the decision, the date on which the written reasons were issued; or
  - (iii) where leave to appeal was granted by the inferior court or application for leave to appeal was made to the court under rule 40.2(2), the date on which leave was granted by the inferior court or the court, as the case may be.

(2) A party seeking to appeal from an inferior court shall mark an appeal by writing a note of appeal—

- (a) in Form 40.4 on the interlocutor sheet, minute of court or other written record containing the decision appealed against; or
  - (b) where such a decision is not available or the proceedings of the inferior court are recorded in an official book, on a separate sheet lodged with the clerk of the inferior court.
- (3) A note of appeal shall—
- (a) be signed by the appellant or his agent;
  - (b) bear the date on which it is signed; and
  - (c) where the appellant is represented, specify the name and address of the agent who will be acting for him in the appeal.

### **Leave to appeal out of time**

**40.5.**—(1) An application to allow an appeal to be received outwith the time prescribed for marking an appeal and to proceed out of time shall be included in the note of appeal.

(2) Within 14 days after the date of receipt by the Deputy Principal Clerk of the appeal process from the clerk of the inferior court under rule 40.6(1), the appellant shall apply by motion to allow the appeal to be received outwith the time prescribed for marking an appeal and for leave to proceed out of time.

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(3) The decision of the Inner House on a motion under paragraph (2) shall be final and not subject to review.

(4) Where a motion under paragraph (2) is refused, the Deputy Principal Clerk shall—

- (a) give written intimation to the clerk of the inferior court that leave to appeal out of time has been refused; and
- (b) transmit the appeal process and note of appeal to him.

### **Transmission of appeal process**

**40.6.**—(1) Within 4 days after an appeal has been marked, the clerk of the inferior court shall—

- (a) give written intimation of the appeal to every other party and certify on the interlocutor sheet, other record or separate note of appeal, as the case may be, that he has done so; and
- (b) transmit—
  - (i) the appeal process, and
  - (ii) any separate note of appeal,
 to the Deputy Principal Clerk.

(2) On receipt of an appeal process sent to him under paragraph (1), the Deputy Principal Clerk shall—

- (a) mark the date of receipt on the interlocutor sheet, other record or separate note of appeal, as the case may be; and
- (b) give written intimation of that date to the appellant.

(3) Where the clerk of the inferior court or the Deputy Principal Clerk fails to comply with a provision of this rule, the appeal shall not be invalidated; but the court may give such remedy for any disadvantage or inconvenience occasioned thereby as it thinks fit.

### **Procedure following transmission of appeal process**

**40.7.**—(1) Within 14 days after the date of receipt by the Deputy Principal Clerk of the appeal process, each party seeking to appear in the appeal shall—

- (a) give written intimation to the Deputy Principal Clerk of, or,
- (b) state by note written on the interlocutor sheet, minute of court, or other record containing the decision appealed against or on the separate note of appeal, as the case may be,

his name and address and that of his agent (if any).

(2) Subject to rule 40.9(2) (appeals deemed abandoned), within 28 days after the date of receipt by the Deputy Principal Clerk of the appeal process, or the date of the interlocutor granting a motion made under rule 40.5(2) (leave to appeal out of time), whichever is the later, the appellant shall—

- (a) lodge—
  - (i) a process, including each part of the appeal process, in accordance with rule 4.4 (steps of process); and
  - (ii) an appeal print; and
- (b) send a copy of the appeal print in accordance with rule 4.6(1) (intimation of steps of process).

(3) Subject to rule 40.11 (early disposal of appeal), on lodging in process the documents required under paragraph (2), the appellant shall apply by motion to the Inner House for an order for grounds of appeal to be lodged.

### **Sist of process of appeal**

**40.8.**—(1) Within 14 days after the date of receipt by the Deputy Principal Clerk of the appeal process, the appellant may apply by motion to the Inner House for a sist of process.

(2) On enrolling a motion under rule 40.5(2) (leave to appeal out of time) or under paragraph (1) of this rule, the appellant shall lodge a motion sheet and a fi n interlocutor sheet, if not already lodged.

(3) Where the court grants a motion under paragraph (1), the period of 28 days mentioned in rule 40.7(2) shall not run during any period in which the appeal is sisted.

### **Appeals deemed abandoned**

**40.9.**—(1) If an appellant fails—

- (a) to apply by motion in accordance with rule 40.5(2) (leave to appeal out of time), or
- (b) to comply with the requirements of rule 40.7(2) (lodging process etc.),

he shall be deemed to have abandoned his appeal on the expiry of the period for marking an appeal or for complying with the requirements of rule 40.7(2), as the case may be.

(2) Where an appeal has been deemed to be abandoned by reason of paragraph (1)(b), a respondent may, within 7 days after the date on which the appeal is deemed to be abandoned, comply with the requirements of rule 40.7(2) (lodging process etc.) and thereafter insist in the appeal as if it had been marked by him; and the following provisions of this Chapter applying to an appellant shall, with the necessary modifications, apply to an appeal by a respondent under this paragraph.

(3) Where a respondent insists in an appeal under paragraph (2), the appellant shall be entitled to insist in the appeal notwithstanding that his appeal has been deemed to be abandoned.

(4) If, on the expiry of 7 days after the date on which an appeal is deemed to be abandoned by virtue of paragraph (1)—

- (a) the appellant has not been reponed under rule 40.10, and
- (b) the respondent does not insist in the appeal under paragraph (2) of this rule,

the decision appealed against shall be treated in all respects as if no appeal had been marked, and the Deputy Principal Clerk shall transmit the appeal process to the clerk of the inferior court in accordance with paragraph (5) of this rule.

(5) Where an appeal process falls to be transmitted to the inferior court under paragraph (4), the Deputy Principal Clerk shall—

- (a) write on the interlocutor sheet, minute of court or other record containing the decision appealed against or on the separate note of appeal, as the case may be, a certificate in Form 40.9;
- (b) send the appeal process to the clerk of the inferior court; and
- (c) give written intimation to each party to the appeal of the date on which the appeal process was transmitted.

(6) Where an appeal—

- (a) is deemed to be abandoned under paragraph (1) and has been transmitted to an inferior court under paragraph (5), the respondent in the appeal may apply by motion to that court for an award of the expenses of the abandoned appeal; and
- (b) the inferior court shall on such motion grant decree for payment to that respondent of those expenses as taxed by the Auditor of the Court of Session.

**Reponing against deemed abandonment**

**40.10.**—(1) An appellant may, within 7 days after the date on which the appeal has been deemed to be abandoned under rule 40.9(1), apply by motion to be reponed.

(2) The court may grant a motion under paragraph (1) on such conditions as to expenses or otherwise as it thinks fit.

(3) On enrolling a motion under paragraph (1), the appellant shall lodge a process (or such necessary steps of process as have not already been lodged) and an appeal print.

**Early disposal of appeal**

**40.11.**—(1) A party who seeks early disposal of an appeal shall—

(a) where he is the appellant, instead of enrolling for an order for grounds of appeal under rule 40.7(3), apply by motion to the Inner House for early disposal of the appeal; or

(b) where he is the respondent—

(i) within the period allowed for opposing the motion, endorse, on the motion of the appellant made under rule 40.7(3), the words “The respondent ( name) seeks early disposal.”;

(ii) who is insisting in an appeal deemed abandoned by virtue of rule 40.9(1), instead of enrolling for an order for grounds of appeal under rule 40.7(3) (by virtue of rule 40.9(2)), apply by motion to the Inner House for early disposal of the appeal; or

(iii) add, to his opposition under rule 40.12(1) (objections to competency of appeals), the words “and for early disposal”.

(2) Where early disposal is sought under paragraph (1), the Keeper of the Rolls shall put the cause out in the Single Bills before a Division of the Inner House on the earliest available day, having given written intimation of the diet to each party.

(3) Grounds of appeal which comply with rule 40.14(2) shall be lodged with three copies of them by the appellant before the hearing on the Single Bills arranged under paragraph (2).

(4) At the hearing on the Single Bills, the court may determine the appeal or, after consultation with the Keeper of the Rolls, may make such order as it thinks fit.

**Objections to competency of appeals**

**40.12.**—(1) Where a motion for grounds of appeal under rule 40.7(3) has been enrolled by an appellant, any other party may oppose the motion on the ground that the appeal is incompetent.

(2) Where a motion has been opposed under paragraph (1), the cause shall be put out for hearing in the Single Bills before a Division of the Inner House.

(3) At the hearing in the Single Bills arranged under paragraph (2), the court may—

(a) dispose of the objection to competency and, where it repels the objection, order grounds of appeal to be lodged;

(b) appoint the cause to the Summar Roll for a hearing on the objection;

(c) reserve the objection until grounds of appeal have been lodged and order such grounds to be lodged;

(d) reserve the objection for hearing with the merits and order grounds of appeal to be lodged.

(4) Where the Deputy Principal Clerk considers that an appeal may be incompetent, whether or not any other party has opposed the motion for grounds of appeal under paragraph (1), he may, before the cause is brought before the Inner House, refer it to a single judge in accordance with paragraph (5).

(5) Any referral by the Deputy Principal Clerk under paragraph (4) shall be made to a judge nominated for that purpose by the Lord President.

(6) Where a referral is made under paragraph (4), the judge may—

- (a) order any party to make representations to him in respect of the competency of the appeal;
- (b) refuse the appeal on the ground that it is incompetent;
- (c) direct that the appeal is to proceed as if the referral had not been made;
- (d) make such order as to expenses or otherwise as he thinks fit.

(7) Any decision of a judge in respect of an appeal referred to him under paragraph (4) shall be final and not subject to review.

### **Procedure where no objection to competency of appeal**

**40.13.**—(1) Subject to paragraph (2), where an appeal is not opposed on the ground of competency, the Inner House shall, without hearing parties, order grounds of appeal to be lodged.

(2) This rule shall not apply where an application is made under rule 40.11(1) (early disposal of appeal).

### **Grounds of appeal**

**40.14.**—(1) An order for grounds of appeal shall require—

- (a) the appellant, and
- (b) any respondent seeking to appeal against any interlocutor or challenge the grounds on which the inferior court has made its decision,

to lodge grounds of appeal within 28 days after the date of the interlocutor making the order.

(2) Grounds 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.

(3) On lodging grounds of appeal, the party lodging them shall send a copy of them to every other party to the appeal.

(4) A party who has lodged grounds of appeal may at any time apply for leave to amend his grounds of appeal on cause shown.

(5) Where an appellant fails to lodge grounds of appeal in accordance with paragraph (2) within the period prescribed under paragraph (1), the Inner House may, at its own instance or on the motion of a respondent, refuse the appeal.

### **Orders for hearing of appeal**

**40.15.**—(1) Within 7 days after the expiry of the period prescribed for lodging grounds of appeal—

- (a) the appellant who has lodged grounds of appeal, or
- (b) where the appellant no longer insists in his appeal, a respondent who has lodged grounds of appeal,

shall apply by motion to the Inner House for an order for hearing.

(2) On a motion under paragraph (1), the court may—

- (a) appoint the cause to the Summar Roll for hearing; or
- (b) direct that the cause be heard in the Single Bills.

(3) In a cause in which an objection to competency has been reserved under rule 40.12(3)(c), the motion under paragraph (1), of this rule shall require the attendance of counsel or other person having a right of audience, and, at the hearing of that motion in the Single Bills, the court may—

- (a) dispose of the objection and, where it repels the objection, either dispose of the merits on the Single Bills or appoint the cause to the Summar Roll for hearing;
- (b) appoint the cause to the Summar Roll for hearing on the objection; or
- (c) reserve the objection for hearing with the merits and appoint the cause to the Summar Roll for hearing.

### **Appeal prints**

**40.16.** An appeal print shall be in the form of a record and shall contain—

- (a) the whole pleadings and interlocutors in the cause;
- (b) where the appeal is directed at the refusal of the inferior court to allow the pleadings to be amended, the text of the proposed amendment; and
- (c) where available, the judgment of the inferior court (including in an appeal in a summary cause under the Summary Cause Rules of the Sheriff Court<sup>(48)</sup>, the stated case of the sheriff).

### **Lodging of appendices in appeals**

**40.17.**—(1) Where, in an appeal—

- (a) the judgment of the inferior court has not been included in the appeal, or
- (b) it is sought to submit notes of evidence or other documents for consideration by the court,

the appellant shall lodge an appendix incorporating such documents within three months after the cause had been appointed to the Summar Roll.

(2) Where the appellant considers that an appendix is not necessary, the appellant shall, by the date specified in paragraph (1)—

- (a) give written intimation of that fact to the Deputy Principal Clerk; and
- (b) send a copy of that intimation to the respondent.

(3) Where a respondent in an appeal seeks to submit notes of evidence or other documents for consideration by the court which the appellant has given written intimation to the respondent he does not intend to include in his appendix, the respondent shall incorporate such notes or documents in an appendix which he shall lodge within one month after the date on which intimation under paragraph (2) or this paragraph, as the case may be, was given.

(4) Where an appellant fails to lodge an appendix in accordance with paragraph (1), a respondent may apply by motion to the Inner House to have the appeal refused.

### **Notes of evidence not extended when agreed in appeals**

**40.18.** Where, in an appeal, the parties are agreed that on any particular issue the decision appealed against is not to be submitted to review, it shall not be necessary to reproduce the notes of evidence or documents relating to that issue.

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(48) These are contained in the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976 (S.I. 1976/476).

### **Amendment of pleadings in appeals**

**40.19.**—(1) Where, after an appeal has been marked, a party applies by motion to have the pleadings amended in terms of a minute of amendment and answers, he shall apply for a direction as to further procedure.

(2) Where it appears to the Inner House that the proposed amendment makes a material change to the pleadings, it may set aside the decision, or recall the interlocutor, as the case may be, of the inferior court appealed against and remit the cause back to the inferior court for a further hearing.

## *CHAPTER 41*

### *APPEALS UNDER STATUTE*

#### **PART I GENERAL PROVISIONS**

### **Application and interpretation of this Chapter**

**41.1.**—(1) This Chapter applies to an appeal to the court from a decision of a tribunal other than a decision in the Outer House or a court to which Chapter 40 (appeals from inferior courts) applies.

(2) In this Chapter, unless the context otherwise requires—

“appeal” includes stated case, case, special case (other than a special case under section 27 of the Act of 1988<sup>(49)</sup>), reference or submission;

“case” means stated case, special case (other than a special case under section 27 of the Court of Session Act 1988), reference or submission;

“decision” includes determination or assessment;

“party” means the person appearing before the tribunal against the decision of which appeal is taken;

“tribunal” means court, Secretary of State, Minister, Department, statutory tribunal, referee, authority or arbiter, as the case may be, against whose decision the appeal is taken.

### **Applications for leave to appeal**

**41.2.**—(1) Where leave to appeal is required, an application for such leave shall be made, in the first instance, to the tribunal which made the decision sought to be appealed against unless the enactment allowing the appeal requires the application to be made to the court.

(2) Where—

(a) the tribunal has refused leave to appeal and such refusal is not final, or

(b) leave to appeal is required from the court and not the tribunal,

any application to the court for leave to appeal shall be made in Form 40.2 to the Inner House.

(3) An application to the court under paragraph (2) for leave to appeal shall be lodged in the General Department—

(a) within the period prescribed by the enactment by virtue of which it is made; or

(b) where no such period is prescribed, within 14 days after the date specified in paragraph (4).

(4) The date referred to in paragraph (3)(b) is—

(a) the date on which the decision of the tribunal refusing leave to appeal was intimated to the appellant; or

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(49) 1988 c. 36.

- (b) where the application for leave to appeal is required to be made to the court and not the tribunal—
  - (i) the date on which the decision of the tribunal complained of was intimated to the appellant; or
  - (ii) where the tribunal issued a statement of its reasons for its decision later than the decision, the date of intimation of the statement of reasons to the appellant.
- (5) An application to the court for leave to appeal shall include a statement setting out the proposed grounds of appeal and the grounds on which leave to appeal is sought.
- (6) There shall be lodged with an application to the court under paragraph (3)—
  - (a) a process in accordance with rule 4.4 (steps of process);
  - (b) where applicable—
    - (i) evidence that leave to appeal has been refused by the tribunal;
    - (ii) a copy of the grounds of appeal submitted to the tribunal; and
    - (iii) any note by the tribunal setting out the reasons for its refusal;
  - (c) a copy of the document issued by the tribunal setting out the decision complained of and any reasons for that decision; and
  - (d) where the tribunal itself exercised an appellate function, a copy of the decision of the tribunal from which that appeal was taken and any reasons given for that decision.

### **Determination of applications for leave to appeal**

- 41.3.**—(1) On lodging an application for leave to appeal under rule 41.2, the applicant shall apply by motion to the Inner House for an order for intimation and service.
- (2) On expiry of the period within which answers may be lodged, the applicant may apply by motion to the Inner House for the application to be granted.
- (3) In an appeal by stated case, where an application for leave to appeal has been granted—
- (a) the Deputy Principal Clerk shall send a certified copy of the interlocutor granting the application to the tribunal; and
  - (b) within 14 days after the date on which the certified copy of the interlocutor was sent to it, the tribunal shall state a case in accordance with rule 41.9 (preparation and issue of case).
- PART IIA APPEALS BY STATED CASE ETC.

### **Application and interpretation of this Part**

- 41.4.** Subject to the provisions of the enactment providing for appeal and to Parts III to X, this Part shall regulate the procedure in—
- (a) an appeal by stated case, special case, case, reference or submission against the decision of a tribunal;
  - (b) a case stated by an arbiter;
  - (c) all statutory proceedings for obtaining the opinion of the court on a question before the issue of a decision by a tribunal or by appeal against such a decision; and
  - (d) a case required to be stated by a tribunal referred to in subsection (1), as modified by subsection (7), of section 11 of the Tribunals and Inquiries Act 1992(50).

(50) 1992 c. 53; section 11 was amended by the Sea Fish (Convention) Act 1992 (c. 60), section 9.



### **Applications for case**

**41.5.**—(1) An application for a case for the opinion of the court on any questions shall be made by minute setting out the question on which the case is applied for.

(2) A minute under paragraph (1) shall be sent to the clerk of the tribunal—

(a) where the application must be made before the issue of the decision of the tribunal, at any time before the issue of the decision; or

(b) where the application may be made—

(i) after the issue of the decision of the tribunal, or

(ii) in a cause in which a statement of the reasons for the decision was given later than the issue of the decision, after the issue of that statement,

within 14 days after the issue of the decision or statement of reasons, as the case may be.

### **Additional questions by other parties**

**41.6.**—(1) On receipt of an application under rule 41.5 (applications for case), the clerk of the tribunal shall send a copy of the minute to every other party.

(2) Within 14 days after the date on which the clerk of the tribunal complied with paragraph (1), any other party may lodge with the clerk a minute setting out any additional question he proposes for the case; and on so doing he shall send a copy of it to every other party.

### **Consideration of application by tribunal**

**41.7.**—(1) Within 21 days after the expiry of the period allowed for lodging a minute under rule 41.6(2) (additional questions by other parties), the tribunal shall—

(a) decide to state a case on the basis of the questions set out in the application for a case under rule 41.5(1) and any minute under rule 41.6(2);

(b) where it is of the opinion that the proposed question—

(i) does not arise,

(ii) does not require to be decided for the purposes of the appeal, or

(iii) is frivolous,

refuse to state a case on that question; or

(c) where the application under rule 41.5(1) is made before the facts have been ascertained and the tribunal is of the opinion that it is necessary or expedient that the facts should be ascertained before the application is disposed of, defer further consideration of the application until the facts have been ascertained by it.

(2) Where the tribunal has deferred a decision under paragraph (1)(c), it shall, within 14 days after it has ascertained the facts, decide whether to state or refuse to state a case.

(3) Where the tribunal makes a decision under paragraph (1) or (2), the clerk of the tribunal shall intimate that decision to each party.

(4) Where the tribunal has refused to state a case on any question, there shall be sent to the applicant with the intimation under paragraph (3)—

(a) a certificate specifying—

(i) the date of the decision of the tribunal; and

(ii) the reasons for refusal; and

(b) where the refusal has been made after the facts have been ascertained, a note of the proposed findings-in-fact on which the tribunal proposes to base its decision; or

*Status: This is the original version (as it was originally made).*

- (c) where the refusal has been made before the facts have been ascertained, a note of, or sufficient reference to, the averments of the parties in the appeal on which the refusal is based.

#### **Procedure for ordaining tribunal to state a case**

**41.8.**—(1) Where the tribunal has refused to state a case on any question, the party whose application has been refused may, within 14 days after the date on which intimation of such refusal was made under rule 41.7(3), lodge in the General Department—

- (a) an application by note to the Inner House for an order to require the other party to show cause why a case should not be stated;
  - (b) the certificate and any note issued under rule 41.7(4); and
  - (c) a process in accordance with rule 4.4 (steps of process).
- (2) A note under paragraph (1)(a) shall—
- (a) state briefly the grounds on which the application is made; and
  - (b) specify the order and any incidental order sought.
- (3) An application under paragraph (1) shall be put out in the Single Bills before the Inner House on the first available day after the date on which the note under paragraph (1)(a) was lodged for an order for service of the note on—
- (a) the tribunal; and
  - (b) every other party.
- (4) After the period for lodging answers has expired, the Inner House shall, on a motion by the noter, without hearing parties—
- (a) appoint the note to the Summar Roll for hearing; or
  - (b) direct that the note be heard in the Single Bills.
- (5) The noter shall intimate the decision of the Inner House on the note to the tribunal.

#### **Preparation and issue of the case**

**41.9.**—(1) Where the tribunal has decided, or is ordered under rule 41.8, to state a case, the tribunal shall, within 14 days after the date of intimation of its decision to the parties, cause the case to be prepared in Form 41.9 and copies of it to be submitted in draft to each party.

- (2) The case shall—
  - (a) specify the relevant provision of the enactment under which it is prepared;
  - (b) state in numbered paragraphs the facts and circumstances out of which the case arises, as agreed or found, or as the case may be, the decision of the tribunal and the reasons for the decision; and
  - (c) set out the question for answer by the court.
- (3) Within 21 days after the date on which the draft case is submitted under paragraph (1), each party shall—
  - (a) return a copy of it to the clerk of the tribunal with a note of any amendments which he seeks to have made; and
  - (b) intimate such amendments to every other party.
- (4) Within 28 days after the expiry of the period for return of the case under paragraph (3), the tribunal—
  - (a) shall adjust and settle the case; and

- (b) may, when so doing, add such further or additional findings-in-fact and such additional questions as it thinks necessary for the disposal of the subject-matter of the case.
- (5) Where the tribunal does not accept any amendment sought by a party, it shall append to the case a note of—
  - (a) the terms of the amendment proposed by the party and any statement by that party in support of the proposal; and
  - (b) its reasons for rejecting the proposed amendment.
- (6) When the case has been settled by the tribunal, the case shall be authenticated by the clerk of the tribunal who shall send it to the party, or first party, who applied for it.

### **Intimation of intention to proceed**

- 41.10.**—(1) The party to whom the case has been sent under rule 41.9(6) or paragraph (3) of this rule shall, within 14 days after the date of receipt of it—
- (a) intimate to every other party a notice stating whether or not he intends to proceed with the case; and
  - (b) send a copy of the case to every other party.
- (2) Where the party to whom the case has been sent under rule 41.9(6) does not intend to proceed with it, he shall, on intimating that fact to every other party under paragraph (1), send the case back to the clerk of the tribunal.
- (3) On receipt of the case sent back under paragraph (1), the clerk of the tribunal shall send it to any other party who had applied for a case.

### **Lodging of case in court**

- 41.11.**—(1) The party who applied for the case shall, within the period mentioned in paragraph (2)—
- (a) lodge in the General Department—
    - (i) the case; and
    - (ii) a process in accordance with rule 4.4 (steps of process) including any productions to be referred to in the appeal;
  - (b) on giving written intimation to every other party of the lodging of the case, send four copies of the case to every other party; and
  - (c) endorse and sign a certificate on the case that the requirements of rule 4.6 (intimation of steps of process) have been complied with.
- (2) The period referred to in paragraph (1) shall be—
- (a) the period prescribed by the enactment under or by virtue of which the appeal is brought; or
  - (b) where no such period is prescribed, within 28 days after the date on which the case was received by him from the clerk of the tribunal by virtue of rule 41.9(6) or 41.10(3), as the case may be.

### **Abandonment of appeal**

- 41.12.**—(1) If a party—
- (a) fails to comply with a requirement of rule 41.11(1) (lodging of case in court), and
  - (b) does not apply to be reponed under rule 41.13 (reponing against deemed abandonment),
- he shall be deemed to have abandoned his appeal.

(2) Where a party is deemed to have abandoned his appeal under paragraph (1) and another party has also applied for a case and has had no opportunity of proceeding with his appeal, the party deemed to have abandoned his appeal shall—

- (a) intimate to that other party that his appeal is abandoned, and
- (b) send the case to that other party;

and that other party shall be entitled to proceed in accordance with rule 41.11.

(3) In the application of rule 41.11 to a party entitled to proceed by virtue of paragraph (2) of this rule, for the words “on which the case” to “rule 41.9(6) or 41.10(3), as the case may be” in paragraph (2)(b) of that rule, there shall be substituted the words “of intimation of abandonment under rule 41.12 (2)”.

### **Reponing against deemed abandonment**

**41.13.** A party may apply by motion to the Inner House within 7 days after the expiry of the period specified in rule 41.11(2) (period for lodging of case in court), to be reponed against a failure to comply with a requirement of rule 41.11(1).

### **Procedure on abandonment**

**41.14.—**(1) On the abandonment of the appeal by all parties entitled to proceed, the case shall be sent to the Deputy Principal Clerk.

(2) On receiving a case sent to him under paragraph (1), the Deputy Principal Clerk shall—

- (a) endorse the case with a certificate in Form 41.14; and
- (b) transmit the case to the clerk of the tribunal.

(3) Where a case has been transmitted under paragraph (2), the tribunal shall, on a motion being made to it to that effect—

- (a) dispose of the cause; and
- (b) where one party only has applied for a stated case, find him liable for payment to the other party in the appeal of the expenses of the abandoned appeal as taxed by the Auditor of the Court of Session.

### **Motions for hearing of appeals**

**41.15.—**(1) On lodging a case under rule 41.11 (lodging of case in court), the party lodging it shall apply by motion to the Inner House for an order for a hearing.

(2) The Inner House shall, on a motion under paragraph (1), without hearing parties—

- (a) appoint the cause to the Summar Roll for hearing; or
- (b) direct that the cause be heard in the Single Bills.

### **Amendment or re-statement of case**

**41.16.** The Inner House may, at any time before the final determination of the case—

- (a) allow the case to be amended with the consent of the parties; or
- (b) remit the case for restatement, or further statement, in whole or in part by the tribunal.

### **Remit to reporter**

**41.17.**—(1) Where, in order to determine the case, any inquiry into matters of fact may be made, the Inner House may remit to a reporter, the Lord Ordinary or one of its own number to take evidence and to report to the court.

(2) On completion of a report made under paragraph (1), the reporter shall send his report and three copies of it, and a copy of it for each party, to the Deputy Principal Clerk.

(3) On receipt of such a report, the Deputy Principal Clerk shall—

- (a) cause the report to be lodged in process; and
- (b) given written intimation to each party that this has been done and that he may uplift a copy of the report from the process.

(4) After the lodging of such a report, any party may apply by motion for an order in respect of the report or for further procedure.

PART III APPEALS IN FORM 41.19

### **Application of this Part**

**41.18.** Subject to the provisions of the enactment providing for appeal, this Part applies to an appeal against a decision of a tribunal other than an appeal to which Part II (appeals by stated case etc.) applies.

### **Form of appeal**

**41.19.**—(1) An appeal to which this Part applies shall be made in Form 41.19 presented to the Inner House.

(2) An appeal referred to in paragraph (1) shall—

- (a) specify the relevant provision of the enactment under the authority of which the appeal is brought;
- (b) specify the decision complained of, the date on which the decision was made and on which it was intimated to the appellant, and any other necessary particulars;
- (c) where the appeal is against only a part of such a decision, specify or distinguish that part;
- (d) set out the decision appealed against or refer to the decision (a copy of which shall be appended to the appeal);
- (e) fi state, in brief numbered propositions, the grounds of appeal; and
- (f) set out in a schedule the names and addresses of the respondents in the appeal and the name and address, so far as known to the appellant, of any other person who may have an interest in the appeal.

### **Lodging of appeal in court**

**41.20.**—(1) Subject to paragraph (2), the appeal shall be lodged in the General Department—

- (a) within the period prescribed by the enactment under which it is brought; or
- (b) where no such period is prescribed, within 42 days after—
  - (i) the date on which the decision appealed against was intimated to the appellant;
  - (ii) where the tribunal issued a statement of reasons for its decision later than the decision, the date of intimation of that statement of reasons to the appellant; or

- (iii) where leave to appeal was granted by the tribunal or application for leave to appeal was made to the court under rule 41.2(2), the date on which leave was granted by the tribunal or the court, as the case may be.
- (2) There shall be lodged with the appeal under paragraph (1)–
  - (a) a process in accordance with rule 4.4 (steps of process), unless an application has already been made to the court for leave to appeal;
  - (b) where appropriate, evidence that leave to appeal has been granted by the tribunal;
  - (c) the documents mentioned in rule 41.2(6)(c) and (d) (copies of decisions of tribunal) unless already lodged; and
  - (d) such other documents founded on by the appellant so far as in his possession or within his control.

### Orders for service and answers

- 41.21.**—(1) The appeal shall, without a motion being enrolled–
- (a) during session, appear in the Single Bills on the first available day after being lodged for an order for–
    - (i) service of the appeal on the respondent and such other person as the court thinks fit; and
    - (ii) any person on whom the appeal has been served, to lodge answers, if so advised, within the period of notice; and
  - (b) during vacation, be brought before the vacation judge for such an order.
- (2) In the application of paragraph (1) to an appeal under section 9(5) of the Transport Act 1985<sup>(51)</sup> (appeal from decision of the Secretary of State), the order for service under that paragraph shall include a requirement to serve the appeal on–
- (a) the Secretary of State; and
  - (b) to every person who had, or if aggrieved would have had, a right to appeal to the Secretary of State, whether or not he has exercised that right.
- (3) In the application of paragraph (1) to an appeal under section 24(1) of the Social Security Administration Act 1992<sup>(52)</sup> (appeal from Social Security Commissioner), the order for service under that paragraph shall include a requirement to serve the appeal on–
- (a) the Secretary of State for Social Services; and
  - (b) if it appears to the court that a person has been appointed by the Secretary of State to pursue a claim for benefit to which the appeal relates, that person.
- (4) In the application of paragraph (1) to an appeal from a tribunal referred to in subsection (1), as modified by subsection (7), of section 11 of the Tribunals and Inquiries Act 1992<sup>(53)</sup>, the order for service pronounced under that paragraph shall include a requirement to serve the appeal on every other party to the proceedings before the tribunal and on the clerk of the tribunal.
- (5) In the application of paragraph (1) to an appeal to which subsection (6), as modified by subsection (7), of section 11 of the Tribunal and Inquiries Act 1992 (which relates to an appeal from a decision under section 41 of the Consumer Credit Act 1974<sup>(54)</sup>) applies–

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<sup>(51)</sup> 1985 c. 67.

<sup>(52)</sup> 1992 c. 5.

<sup>(53)</sup> 1992 c. 53; section 11 was amended by the Sea Fish (Convention) Act 1992 (c. 60), section 9.

<sup>(54)</sup> 1974 c. 39.

- (a) the order for service under that paragraph shall include a requirement to serve the appeal on—
  - (i) the Secretary of State; and
  - (ii) where the appeal is by a licensee under a group licence against compulsory variation, suspension or revocation of that licence, the original applicant, if any; and
- (b) the court may remit to the Secretary of State for him to provide the court with such further information as the court may require.

### **Motion for further procedure**

**41.22.**—(1) Within 14 days after the expiry of the period allowed for lodging answers to an appeal, whether or not answers have been lodged, the appellant shall apply by motion to the Inner House for—

- (a) such order for further procedure as is sought; or
  - (b) an order for a hearing.
- (2) The Inner House shall, on a motion under paragraph (1)—
- (a) in relation to a motion under paragraph (1)(a), make such order as it thinks fit; or
  - (b) in relation to a motion under paragraph (1)(b), without hearing parties—
    - (i) appoint the cause to the Summar roll for hearing; or
    - (ii) direct that the cause be heard in the Single Bills.

### **PART IV EXCHEQUER APPEALS**

#### **Revenue appeals by stated case**

**41.23.**—(1) This rule applies to an appeal to the court as the Court of Exchequer in Scotland under any of the following provisions:—

- (a) section 13(1) of the Stamp Act 1891<sup>(55)</sup> (appeal from Commissioners of Inland Revenue);
- (b) section 56 of the Taxes Management Act 1970<sup>(56)</sup> (case for opinion of court from General or Special Commissioners);
- (c) section 225 Inheritance Tax Act 1984<sup>(57)</sup> (case for opinion of court from Special Commissioners); and
- (d) regulation 10 of the Stamp Duty Reserve Tax Regulations 1986<sup>(58)</sup> (case for opinion of court from Special Commissioners).

(2) Subject to paragraph (4), Part II (appeals by stated case etc.) shall apply to any appeal to which paragraph (1) applies.

(3) On the case being stated, signed and sent to the party requesting it, that party shall, within the period prescribed by the enactment under which the appeal is made—

- (a) give written intimation to every other party that a case has been stated on his application and that he intends or does not intend, as the case may be, to proceed with the appeal; and
- (b) where he intends to proceed with the appeal—

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<sup>(55)</sup> 1891 c. 39.

<sup>(56)</sup> 1970 c. 9; section 56 was amended by the Finance (No.2) Act 1975 (c. 45), section 45(3), by the Finance Act 1984 (c. 43), Schedule 22, paragraph 6 and by the Finance Act 1989 (c. 26), section 156(3).

<sup>(57)</sup> 1984 c. 51; citation of the Act amended by the Finance Act 1986 (c. 41), section 100(1)(a). Section 225 was amended by the Statute Law (Repeals) Act 1986 (c. 12), Schedule 1, Part III.

<sup>(58)</sup> S.I. 1986/1711.

- (i) endorse and sign a certificate on the case of compliance with sub-paragraph (a) above; and
  - (ii) lodge the case with the Deputy Principal Clerk.
- (4) The following provisions of Part II shall not apply to an appeal to which this rule applies:—
- rule 41.5 (applications for case),
  - rule 41.6 (additional questions by other parties),
  - rule 41.7 (consideration of application by tribunal),
  - rule 41.8 (procedure for ordaining tribunal to state a case),
  - rule 41.9 (preparation and issue of the case),
  - rule 41.10 (intimation of intention to proceed),
  - rule 41.11 (lodging of case in court).

### **Revenue appeals from Special Commissioners**

**41.24.**—(1) This rule applies to an appeal to the court as the Court of Exchequer in Scotland under or by virtue of regulations made under section 56B of the Taxes Management Act 1970<sup>(59)</sup>.

(2) Part III (appeals in Form 41.19) shall apply to an appeal to which paragraph (1) applies.

### **Appeals relating to penalties**

**41.25.**—(1) This rule applies to an appeal to the court as the Court of Exchequer in Scotland under any of the following provisions:—

- (a) section 53(2) of the Taxes Management Act 1970<sup>(60)</sup> (appeals from General or Special Commissioners in relation to penalties);
- (b) section 100B(3) or 100C(4) of that Act<sup>(61)</sup> (appeals from General or Special Commissioners in relation to penalties); and
- (c) section 249(3) or 251(2) of the Inheritance Tax Act 1984 (appeals from Special Commissioners in relation to penalties).

(2) Part III (appeals in Form 41.19) shall apply to an appeal to which paragraph (1) applies.

### **Appeals relating to certain determinations of the Commissioners of Inland Revenue**

**41.26.**—(1) This rule applies to an appeal against a determination of the Commissioners of Inland Revenue specified in a notice to the appellant under section 221 of the Inheritance Tax Act 1984<sup>(62)</sup> or regulation 6 of the Stamp Duty Reserve Tax Regulations 1986<sup>(63)</sup>.

(2) Where the Inner House grants leave to appeal under rule 41.3(2) in an application to it under section 222(3) of the said Act or regulation 8(3) of the said Regulations, as the case may be, or it is agreed between the appellant and the Commissioners of Inland Revenue that the appeal is to be to the court, the appellant shall, within 30 days after the date on which leave to appeal is granted, or, as the case may be, after the date on which the Board intimates its agreement to the appellant—

<sup>(59)</sup> Section 56B of the Taxes Management Act 1970 (“the Act of 1970”) was inserted by the Finance Act (No.2) Act 1992 (c. 48), Schedule 16, paragraph 4.

<sup>(60)</sup> Section 53 of the Act of 1970 was amended by the Finance Act 1972 (c. 41), section 129 and by the Finance Act 1989, section 168(3)(b) and Schedule 17, Part VIII.

<sup>(61)</sup> Sections 100B and 100C of the Act of 1970 were inserted by the Finance Act 1989, section 167.

<sup>(62)</sup> 1984 c. 51; citation of the Act amended by the Finance Act 1986 (c. 41), section 100(1)(a).

<sup>(63)</sup> S.I. 1986/1711.



- (a) lodge a statement of facts and grounds of appeal in Form 41.19, and a process unless a process has already been lodged under rule 41.2(6) (lodging process in applications for leave to appeal), in which case the statement of facts and grounds of appeal shall be lodged in that process; and
  - (b) on so doing, apply by motion for an order for service in accordance with rule 41.21 (orders for service and answers).
- (3) The appellant shall—
- (a) following the lodging of answers or on the expiry of any period of adjustment allowed, or
  - (b) where no answers have been lodged, on the expiry of the period allowed for lodging answers,
- apply by motion to the Inner House for an order for a hearing.
- (4) A motion under paragraph (3) shall be intimated to the solicitor to the Commissioners of Inland Revenue whether or not answers have been lodged by the Commissioners.
- (5) Rule 41.22(2)(b) shall apply to a motion under paragraph (3) of this rule as it applies to a motion under paragraph (1)(b) of that rule.
- (6) If an appellant fails to comply with any time-limit imposed by this rule, he shall be deemed to have abandoned his appeal.
- (7) Where it appears to the Inner House in an appeal under this rule that any question as to the value of land in the United Kingdom requires to be determined, the court shall remit the cause—
- (a) where the land is in Scotland, to the Lands Tribunal for Scotland,
  - (b) where the land is in England and Wales, to the Lands Tribunal,
  - (c) where the land is in Northern Ireland, to the Lands Tribunal for Northern Ireland,
- to determine that question and remit back to the Inner House for further procedure.
- PART VAPPEALS UNDER THE PENSIONS APPEAL TRIBUNAL ACT 1943

### **Form of appeal under the Act of 1943**

**41.27** An appeal from a Pensions Appeal Tribunal under section 6(2) of the Pensions Appeal Tribunal Act 1943<sup>(64)</sup> shall be by a case, stated by the chairman of the tribunal, to which Part II (appeals by stated case etc.) shall apply.

PART VIAPPEALS UNDER SECTION 50 OF THE SOCIAL WORK (SCOTLAND) ACT 1968

### **Application of Part II to this Part**

**41.28** Part II (appeals by stated case etc.) shall apply to an appeal to the court by stated case under section 50(1) of the Act of 1968 (appeal against decision of sheriff) subject to the following provisions of this Part.

### **Interpretation of this Part**

**41.29.** In this Part—

“the Act of 1968” means the Social Work (Scotland) Act 1968<sup>(65)</sup>;

“reporter” means the reporter to the children’s panel.

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<sup>(64)</sup> 1943 c. 39.

<sup>(65)</sup> 1968 c. 49.

**Lodging of reports and statements with sheriff**

**41.30.**—(1) Where, on an application being made to the sheriff to state a case for the opinion of the court—

(a) it appears to the sheriff that any report or statement lodged under section 49(2) or (3) of the Act of 1968 in the appeal to him is relevant to any issue which is likely to arise in the stated case, and

(b) the report or statement has been returned to the reporter,

the sheriff may require the reporter to lodge the report or statement with the sheriff clerk.

(2) On the stated case being sent to the party who applied for it, the sheriff clerk shall return any report or statement required by the sheriff under paragraph (1) to the reporter.

**Lodging etc. of reports and statements in court**

**41.31.**—(1) Within 7 days after the date on which the case is lodged under rule 41.11(1) (lodging of case in court), the reporter shall send to the Deputy Principal Clerk the principal and three copies of every report or statement which he was required by the sheriff to lodge under rule 41.30(1).

(2) Neither the principal nor any copy of any such report or statement lodged by the reporter shall be made available to any of the other parties unless the court otherwise orders.

(3) Subject to any order made by the court, any report or statement, and any copies, sent to the Deputy Principal Clerk under paragraph (1) shall remain in his custody until the appeal has been determined or abandoned.

(4) On the determination or abandonment of the appeal, the Deputy Principal Clerk shall return all such documents to the reporter.

**Hearing in private**

**41.32.** The court may direct that all or any part of the appeal shall be heard in private.

**Expenses**

**41.33.**—(1) No expenses shall be awarded to or against any party in respect of the appeal.

(2) Rule 41.14(3)(b) (award of expenses in abandoned appeal) shall not apply to an appeal to which this Part applies.

**PART VII APPEALS UNDER THE REPRESENTATION OF THE PEOPLE ACT 1983****Application of this Part**

**41.34.** This part applies to an appeal under section 56, as applied by section 57, of the Representation of the People Act 1983<sup>(66)</sup> (registration appeals).

**Form of appeal under this Part**

**41.35.** An appeal to which this Part applies shall be made by stated case to which Part II (appeals by stated case etc.) shall apply subject to the following provisions of this Part.

<sup>(66)</sup> 1983 c. 2; section 56 was amended by the Representation of the People Act 1985 (c. 50), Schedule 2, paragraph 1, Schedule 4, paragraph 16 and Schedule 5.

### **Consolidated appeals**

**41.36.**—(1) Where several persons have applied for a stated case and it appears to the sheriff that such applications, or any two or more of them, raise the same question of law, he may consolidate the appeals into one stated case and, where he does so, he shall—

- (a) state in the case the reasons why he has consolidated the appeals; and
- (b) name one of the appellants as the appellant.

(2) Where appeals have been consolidated under paragraph (1), the appellant named under paragraph (1)(b), on receiving the stated case from the sheriff clerk, shall send a copy of it to every other appellant on request.

### **Hearing before Registration Appeal Court**

**41.37.**—(1) On the stated case being lodged in accordance with rule 41.11, the appeal shall be put out for hearing before the Registration Appeal Court on the earliest available day.

(2) Rule 41.15 (motions for hearing of appeals) shall not apply to an appeal to which this Part applies.

### **Decision of Registration Appeal Court**

**41.38.**—(1) The Registration Appeal Court shall, in its decision, specify any alteration or correction to be made on the register in pursuance of such decision.

(2) The Deputy Principal Clerk shall send a copy of the decision of the Registration Appeal Court to the registration officer within 4 days after the date of the decision.

PART VIII STATED CASES UNDER SECTION 11(3) OF THE TRIBUNALS AND INQUIRIES ACT 1992

### **Case stated by tribunal at its own instance**

**41.39.**—(1) A tribunal referred to in subsection (1), as modified by subsection (7), of section 11 of the Tribunals and Inquiries Act 1992<sup>(67)</sup> may, at its own instance, state a case for the opinion of the court on any question arising in the course of proceedings before it.

(2) Part II (appeals by stated case etc.) shall apply to a case stated under paragraph (1) subject to the following provisions of this Part.

### **Modifications of Part II to appeals under this Part**

**41.40.**—(1) The following rules shall apply to a case to which this Part applies subject to the following provisions of this rule:—

- rule 41.9 (preparation and issue of the case),
- rule 41.11 (lodging of case in court),
- rule 41.15 (motions for hearing of appeals).

(2) For paragraph (1) of rule 41.9 there shall be substituted the following paragraph:—

“(1) Where the tribunal decides to state a case at its own instance, it shall intimate that decision to each party.”.

(3) For paragraph (6) of rule 41.9 there shall be substituted the following paragraphs:—

“(6) When the case has been settled by the tribunal, the case shall be authenticated by the clerk of the tribunal who shall—

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(67) 1992 c. 53.

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- (a) send a copy of the case to each party; and
- (b) transmit to the Deputy Principal Clerk the case with a certificate endorsed on it and signed by him certifying that sub-paragraph (a) has been complied with.
- (7) The Deputy Principal Clerk shall endorse the case with the date on which he received it from the clerk of the tribunal and return it to the clerk.”.
- (4) For rule 41.11 there shall be substituted the following rule:–
  - “**41.11.** Not earlier than 7 days and not later than 14 days after the date on which the case was received by the Deputy Principal Clerk, the clerk of the tribunal shall–
    - (a) lodge in the General Department–
      - (i) the case, and
      - (ii) a process in accordance with rule 4.4 (steps of process) including any productions to be referred to in the appeal;
    - (b) on giving written intimation to every other party of the lodging of the case, send five copies of the case to every such party; and
    - (c) endorse and sign a certificate on the case that the requirements of rule 4.6 (intimation of steps of process) have been complied with.”.
- (5) Rule 41.15 shall apply to the clerk of the tribunal in a cause to which this Part applies as it applies to the party lodging a case under rule 41.11.

## PART IX APPEALS UNDER SOCIAL SECURITY ACTS

### Form of appeal under certain Social Security Acts

**41.41.** A reference or appeal under any of the following provisions shall be made by stated case to which Part II (appeals by stated case etc.) shall apply:–

- (a) a reference by the Secretary of State under section 18(1), or under regulations made by virtue of section 58(8), of the Social Security Administration Act 1992<sup>(68)</sup>;
- (b) an appeal by an aggrieved person under section 18(3), or under regulations made by virtue of section 58(8), of the Social Security Administration Act 1992;
- (c) a reference by the Pensions Ombudsman under section 150(7), or the Occupational Pensions Board under section 173(1), of the Pension Schemes Act 1993<sup>(69)</sup>; and
- (d) an appeal under section 151(4), or section 173(3), of the Pension Schemes Act 1993.

### Modifications of Part II to appeals under this Part

**41.42.**—(1) The following rules shall apply to a cause to which this Part applies subject to the following provisions of this rule:–

- rule 41.9 (preparation and issue of the case),
- rule 41.11 (lodging of case in court),
- rule 41.15 (motions for hearing of appeals).

- (2) For paragraph (1) of rule 41.9 there shall be substituted the following paragraph:–

“(1) Where the tribunal decides to state a case at its own instance, it shall intimate that decision to each party.”.

- (3) For paragraph (6) of rule 41.9 there shall be substituted the following paragraphs:–

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<sup>(68)</sup> 1992 c. 5.

<sup>(69)</sup> 1993 c. 48.

“(6) When the case has been settled by the tribunal, the case shall be authenticated by the clerk of the tribunal who shall—

- (a) send a copy of the case to each party; and
- (b) transmit to the Deputy Principal Clerk the case with a certificate endorsed on it and signed by him certifying that sub-paragraph (a) has been complied with.

(7) The Deputy Principal Clerk shall endorse the case with the date on which he received it from the clerk of the tribunal and return it to the clerk.”

(4) For rule 41.11 there shall be substituted the following rule:—

“**41.11.** Not earlier than 7 days and not later than 14 days after the date on which the case was received by the Deputy Principal Clerk, the clerk of the tribunal shall—

- (a) lodge in the General Department—
  - (i) the case; and
  - (ii) a process in accordance with rule 4.4 (steps of process) including any productions to be referred to in the appeal;
- (b) on giving written intimation to every other party of the lodging of the case, send five copies of the case to every such party; and
- (c) endorse and sign a certificate on the case that the requirements of rule 4.6 (intimation of steps of process) have been complied with.”.

(5) Rule 41.15 shall apply to the clerk of the tribunal in a cause to which this Part applies as it applies to the party lodging a case under rule 41.11.

#### PART XAPPEALS TO LORD ORDINARY

#### Application of Parts II and III to this Part

**41.43.** Unless otherwise provided in these Rules, in an appeal to the court which is directed by these Rules or any other enactment to be made to a single judge of the court, the Outer House or the Lord Ordinary, Part II (appeals by stated case etc.) or Part III (appeals in Form 41.19), as the case may be, shall apply to that appeal subject to the following modifications:—

- (a) for references to the Inner House there shall be substituted references to the Lord Ordinary;
- (b) for references to the Single Bills there shall be substituted references to the Motion Roll; and
- (c) for references to the Summar Roll there shall be substituted references to a hearing.

### CHAPTER 42

#### TAXATION OF ACCOUNTS AND FEES OF SOLICITORS

#### PART ITAXATION OF ACCOUNTS

#### Remit to the Auditor

**42.1.**—(1) Where expenses are found due to a party in any cause, the court shall—

- (a) pronounce an interlocutor finding that party entitled to expenses and, subject to rule 42.6(1) (modification of expenses awarded against assisted persons), remitting to the Auditor for taxation; and
- (b) without prejudice to rule 42.4 (objections to report of the Auditor), unless satisfied that there is special cause shown for not doing so, pronounce an interlocutor decerning against the party found liable in expenses as taxed by the Auditor.

- (2) The party found entitled to expenses shall—
- (a) lodge an account of expenses in process within a period of 4 months after a final interlocutor in which a finding for expenses is made or within such further period as the court may allow on special cause shown; and
  - (b) give written intimation of the lodging of the account, and send a copy of it, to the party found liable to pay those expenses.
- (3) Rule 4.6(1) (intimation of steps of process) shall not apply to the lodging of an account of expenses.

### **Diet of taxation**

- 42.2.**—(1) On receipt of the process of the cause, the Auditor shall—
- (a) fix a diet for taxation; and
  - (b) intimate the diet to—
    - (i) the party found entitled to expenses; and
    - (ii) the party found liable in expenses.
- (2) At the diet of taxation, the party found entitled to expenses shall make available to the Auditor all vouchers, documents, drafts or copies of documents sought by the Auditor and relevant to the taxation.

### **Report of taxation**

- 42.3.**—(1) The Auditor shall—
- (a) prepare a report of the taxation of the account of expenses, stating the amount of expenses as taxed;
  - (b) transmit the process of the cause and the report to the appropriate department of the Office of Court; and
  - (c) on the day on which he transmits the process, intimate that fact and the date of his report to each party to whom he intimated the diet of taxation.
- (2) The party found entitled to expenses shall, within 7 days after the date of the report prepared under paragraph (1), exhibit the taxed account, or send a copy of it, to the party found liable to pay the expenses.

### **Objections to report of the Auditor**

- 42.4.**—(1) Any party to a cause who has appeared or been represented at the diet of taxation may state any objection to the report of the Auditor by lodging in process a note of objection within 14 days after the date of the report.
- (2) A party lodging a note of objection shall—
- (a) intimate a copy of the note to the party liable in expenses and to the Auditor;
  - (b) apply by motion for an order—
    - (i) allowing the note to be received; and
    - (ii) ordaining the Auditor to state by minute, within 14 days after intimation under sub-paragraph (c), the reasons for his decision in relation to the items to which objection is taken in the note; and
  - (c) intimate forthwith to the Auditor a copy of the interlocutor pronounced on a motion under sub-paragraph (b).

(3) After the minute of the Auditor has been lodged in process, the party who lodged the note of objection shall, in consultation with any other party wishing to be heard, arrange with the Keeper of the Rolls for a diet of hearing before the appropriate court.

(4) At the hearing on the note of objection, the court may—

(a) sustain or repel any objection in the note or remit the account of expenses to the Auditor for further consideration; and

(b) find any party liable in the expenses of the procedure on the note.

(5) In the event of an objection being sustained, the court shall ordain the Auditor to amend his report to give effect to the decision of the court.

### **Modification or disallowance of expenses**

**42.5.**—(1) In any cause where the court finds a party entitled to expenses, the court may direct that expenses shall be subject to such modification as the court thinks fit.

(2) Where it appears to the Auditor that a party found entitled to expenses—

(a) was unsuccessful, or

(b) incurred expenses through his own fault,

in respect of a matter which would otherwise be included in those expenses, the Auditor may disallow the expenses in respect of that matter in whole or in part.

### **Modification of expenses awarded against assisted persons**

**42.6.**—(1) In a cause in which the court finds an assisted person liable in expenses, the court may, on the motion of any party to the cause, instead of remitting the account of expenses of the party in whose favour the finding is made to the Auditor for taxation, determine to what extent the liability of the assisted person for such expenses shall be modified under—

(a) section 2(6)(e) of the Legal Aid (Scotland) Act 1967<sup>(70)</sup>; or

(b) section 18(2) of the Legal Aid (Scotland) Act 1986<sup>(71)</sup>.

(2) Where a remit is made to the Auditor for taxation in a cause in which an assisted person is found liable in expenses, an application for modification under a statutory provision mentioned in paragraph (1) may be made by motion within 14 days after the date of the report of the Auditor made under rule 42.3 (report of taxation).

### **Taxation of solicitors' own accounts**

**42.7.**—(1) Subject to section 61A(1) of the Solicitors (Scotland) Act 1980<sup>(72)</sup>, the court may remit to the Auditor the account of a solicitor to his client—

(a) where the account is for work done in relation to a cause in the Court of Session, on the motion of the solicitor or the client; or

(b) in an action in which the solicitor or his representative sues the client for payment of the account.

(2) A motion under paragraph (1)(a) may be enrolled notwithstanding that final decree in the cause has been extracted.

(3) The account referred to in paragraph (1) shall—

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<sup>(70)</sup> 1967 c. 43.

<sup>(71)</sup> 1986 c. 47; section 18(2) was amended by the Legal Aid Act 1988 (c. 34), Schedule 4, paragraph 7.

<sup>(72)</sup> 1980 c. 46; section 61A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 36(3).

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- (a) be in such form as will enable the Auditor to establish the nature and extent of the work done to which the account relates;
  - (b) detail the outlays incurred by the solicitor; and
  - (c) be accompanied by such supporting material as is necessary to vouch the items in the account.
- (4) The Auditor shall—
- (a) fix a diet of taxation not earlier than 14 days after the date on which he receives the account; and
  - (b) intimate the diet to the solicitor.
- (5) On receipt of intimation of the diet of taxation from the Auditor, the solicitor shall forthwith send to his client by registered post or the first class recorded delivery service—
- (a) a copy of the account to be taxed;
  - (b) a copy of the interlocutor remitting the account; and
  - (c) a notice in Form 42.7 of the date, time and place of the diet of taxation.
- (6) In taxing an account remitted to him under paragraph (1), the Auditor—
- (a) shall allow a sum in respect of such work and outlays as have been reasonably incurred;
  - (b) shall allow, in respect of each item of work and outlay, such sum as may be fair and reasonable having regard to all the circumstances of the case;
  - (c) shall, in determining whether a sum charged in respect of an item of work is fair and reasonable, take into account any of the following factors:—
    - (i) the complexity of the cause and the number, difficulty or novelty of the questions raised;
    - (ii) the skill, labour, and specialised knowledge and responsibility required, of the solicitor;
    - (iii) the time spent on the item of work and on the cause as a whole;
    - (iv) the number and importance of any documents prepared or perused;
    - (v) the place and circumstances (including the degree of expedition required) in which the work of the solicitor or any part of it has been done;
    - (vi) the importance of the cause or the subject-matter of it to the client;
    - (vii) the amount or value of money or property involved in the cause; and
    - (viii) any informal agreement relating to fees;
  - (d) shall presume (unless the contrary is demonstrated to his satisfaction) that—
    - (i) an item of work or outlay was reasonably incurred if it was incurred with the express or implied approval of the client;
    - (ii) the fee charged in respect of an item of work or outlay was reasonable if the amount of the fee or the outlay was expressly or impliedly approved by the client; and
    - (iii) an item of work or outlay was not reasonably incurred, or that the fee charged in respect of an item of work or outlay was not reasonable if the item of work, outlay or fee charged, was unusual in the circumstances of the case, unless the solicitor informed the client before carrying out the item of work or incurring the outlay that it might not be allowed (or that the fee charged might not be allowed in full) in a taxation in a cause between party and party; and
  - (e) may disallow any item of work or outlay which is not vouched to his satisfaction.
- (7) The Auditor shall—



- (a) prepare a report of the taxation of the account remitted to him under paragraph (1);
- (b) transmit his report to the appropriate department of the Office of Court; and
- (c) send a copy of his report to the solicitor and the client.

(8) The solicitor or his client may, where he or a representative attended the diet of taxation, state any objection to the report of the Auditor; and rule 42.4 (objections to report of the Auditor) shall apply to such objection as it applies to an objection under that rule.

#### PART IIFEES OF SOLICITORS

#### **Application and interpretation of this Part**

**42.8.**—(1) This Part applies to fees of solicitors in a cause other than fees—

- (a) provided for by regulations made by the Secretary of State under section 14A of the Legal Aid (Scotland) Act 1967<sup>(73)</sup>; or
- (b) for which the Secretary of State may make regulations under section 33 of the Legal Aid (Scotland) Act 1986<sup>(74)</sup>.

(2) In this Part, “the Table of Fees” means the Table of Fees in rule 42.16.

#### **Form of account of expenses**

**42.9.** An account of expenses presented to the Auditor in accordance with an order of the court shall set out in chronological order all items in respect of which fees are claimed and shall be taxed as if the whole work in the cause had been carried out by one solicitor.

#### **Basis of charging**

**42.10.**—(1) Only such expenses as are reasonable for conducting the cause in a proper manner shall be allowed.

(2) Where the work can properly be performed by a solicitor local to the party, the Auditor in taxing an account shall allow such expenses as would have been incurred if the work had been done by the nearest local solicitor, including reasonable fees for instructing and corresponding with him, unless the Auditor is satisfied that it was in the interests of the client that the solicitor in charge of the cause should attend personally.

(3) Subject to paragraph (4), a solicitor may charge an account either on the basis of Chapter I or on the basis of Chapter III of the Table of Fees, but he may not charge partly on one basis and partly on the other.

(4) Where the inclusive fees set out in Chapter III of the Table of Fees are not conveniently applicable or do not properly cover the work involved, an account may be charged on the basis of Chapter I of that Table.

(5) The Auditor may increase or reduce an inclusive fee in Chapter III of the Table of Fees in appropriate circumstances whether or not those circumstances fall under Part IX of that Chapter.

#### **Posts and incidental expenses**

**42.11.**—(1) Subject to paragraph (3), to all accounts of expenses there may be added a sum to cover posts and incidental expenses.

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<sup>(73)</sup> 1967 c. 43; section 14A was inserted by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), section 3.

<sup>(74)</sup> 1986 c. 47; section 33 was amended by the Legal Aid Act 1988 (c. 34), Schedule 4, paragraph 5.

(2) Subject to the approval of the Auditor in each case, such sum shall be equivalent to 12 per cent of the total fees of the solicitor in the account whether in Chapter I or III of the Table of Fees.

(3) Where a solicitor elects to charge the inclusive fee in paragraph 1 of Chapter III of the Table of Fees, the minute of election shall include as outlays the posts and incidental expenses actually

#### **Value added tax**

**42.12.**—(1) Where work done by a solicitor constitutes a supply of services in respect of which value added tax is chargeable by him, there may be added to the amount of fees an amount equal to the amount of value added tax chargeable.

(2) An account of expenses or a minute of election to charge the inclusive fee in paragraph 1 of Chapter III of the Table of Fees shall contain a statement as to whether or not the party entitled to the expenses is registered for the purposes of value added tax.

#### **Charges for witnesses**

**42.13.**—(1) Charges for the attendance at a proof or jury trial of a witness—

- (a) present but not called to give evidence, or
- (b) who is held as concurring with another witness who has been called,

may be allowed if the name of that witness is noted in the minute of proceedings in the cause.

(2) Subject to paragraph (3), where it was necessary to employ a skilled person to make investigations before a proof or jury trial in order to qualify him to give evidence, charges for such investigations, and for any attendance at the proof or jury trial, shall be allowed in addition to the ordinary witness fees of such person at such rate which the Auditor shall determine is fair and reasonable.

(3) The Auditor may make no determination under paragraph (2) unless the court has granted a motion, not later than the time at which it awarded expenses—

- (a) certifying that the witness was a skilled witness who made investigations, attended or gave evidence at the proof or jury trial, as the case may be; and
- (b) recorded the name of that witness in the interlocutor pronounced by the court.

#### **Additional fee**

**42.14.**—(1) An application for the allowance of an additional fee shall be made by motion to the court.

(2) The court may, on such an application to it—

- (a) determine the application itself; or
- (b) remit the application to the Auditor for him to determine whether an additional fee should be allowed.

(3) In determining whether to allow an additional fee under paragraph (2), the court or the Auditor, as the case may be, shall take into account any of the following factors:—

- (a) the complexity of the cause and the number, difficulty or novelty of the questions raised;
- (b) the skill, time and labour, and specialised knowledge required, of the solicitor;
- (c) the number or importance of any documents prepared or perused;
- (d) the place and circumstances of the cause or in which the work of the solicitor in preparation for, and conduct of, the cause has been carried out;
- (e) the importance of the cause or the subject-matter of it to the client;

- (f) the amount or value of money or property involved in the cause;
  - (g) the steps taken with a view to settling the cause, limiting the matters in dispute or limiting the scope of any hearing.
- (4) In fixing an additional fee, the Auditor shall take into account any of the factors mentioned in paragraph (3).

**Fees of a reporter**

- 42.15.** Subject to any other provision in these Rules, any order of the court or agreement between a party and his solicitor, where any matter in a cause is remitted by the court, at its own instance or on the motion of a party, to a reporter or other person to report to the court—
- (a) the solicitors for the parties shall be personally liable, in the first instance, to the reporter or other person for his fee and outlays unless the court otherwise orders; and
  - (b) where—
    - (i) the court makes the remit at its own instance, the party ordained by the court, or
    - (ii) the court makes the remit on the motion of a party, that party,shall be liable to the reporter or other person for his fee and outlays.

**Table of fees**

- 42.16.**—(1) The Table of Fees shall regulate the fees of a solicitor charged in an account in any cause between party and party.
- (2) In the Table of Fees, “sheet” means a page of 250 or more words or numbers.
- (3) The Table of Fees is as follows.

“TABLE OF FEES

CHAPTER I

TABLE OF DETAILED CHARGES

Paragraph	
<b>Framing documents</b>	£7.00
(a) Framing precognitions and other papers (but not including affidavits), per sheet	
(b) Framing formal documents such as inventories, title pages and accounts of expenses, etc., per sheet ... ..	£2.90
(c) Framing affidavits, per sheet ... ..	£10.30
<b>Notes.</b>	
Each solicitor shall be entitled to charge for copies of a precognition for his own use and the use of counsel.	
Charges for the precognition of a witness—	
(a) present at a proof or jury trial but not called to give evidence, or	

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(b) who is held as concurring with a witness who has been called to give evidence, may be allowed, if a motion to this effect is made at the close of the proof or jury trial and the court granted the motion and the name of that witness is noted in the minute of proceedings in the cause.

Where a skilled witness prepares his own precognition or report, the solicitor shall be allowed half drawing fees for revising and adjusting it.

**Copying paper by any means (including facsimile transmission) £1.03**

- (a) First copy, per sheet ... ..
- (b) Additional copies, per sheet ... .. £0.41
- (c) Where copies are by photostatic or similar process, each page shall be charged as one sheet.

**Revising £2.90**

3. Papers drawn by counsel, open and closed records, etc., for each five sheets or part of a sheet ... ..

**Citation of parties, witnesses, havers and instructions to messenger-at-arms £7.00**

- (a) Each party ... ..
- (b) Each witness or haver ... .. £7.00
- (c) Instructing messenger-at-arms including examining, execution and settling fee £7.00

**Time charge £13.90**

- (a) Preparation for proof, jury trial or any other hearing at court, per quarter hour or such other sum as in the opinion of the Auditor is justified.
- (b) Attendance at meetings, proof, jury trial or any other hearing at court including waiting time, or consultation with counsel, per quarter hour ... .. £13.90

or such other sum as in the opinion of the Auditor is justified.

- (c) Perusal of documents per quarter hour or such other sum as in the opinion of the Auditor is justified. £13.90

- (d) Allowance for time of clerk, one-half of the above. £7.00

## (e) Attendance at Office of Court–

(i) for making up and lodging process

(ii) for lodging all first steps of process ... .. £7.00

(iii) for performance of formal work (other than work under head (ii)) ... .. £2.90

**Notes.**

Time necessarily occupied in travelling is to be regarded as if occupied on business. Reasonable travelling and maintenance expenses are to be allowed in addition. In the event of a party in a proof or jury trial being represented by one counsel only, allowance may be made to the solicitor should the case warrant it, for the attendance of a clerk at one half the rate chargeable for the attendance of the solicitor.

**Correspondence** £7.00

(a) Letters including instruction to counsel (whether sent by hand, post, telex or facsimile transmission), each page of 125 words ... ..

(b) Formal letters ... .. £1.40

(c) Telephone calls (except under sub-paragraph (d)) ... .. £2.90

(d) Telephone calls (lengthy), to be charged at attendance rate.

**Note.**

In relation to sub-paragraph (d), whether a telephone call is “lengthy” will be determined by the Auditor.

*CHAPTER II**WITNESSES' FEES*

**Managers, executives and officers in HM Forces and merchant shipping** £140.00

1. A person in managerial or similar executive position, officer in Her Majesty's Forces or in a merchant ship who is cited to give evidence, maximum per half day (including travelling time) ... ..

**Professional persons** £ 98.00

2. A professional person who is a witness to matters of fact–

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- (a) if cited to give evidence and in consequence–
  - (i) requires to be absent from his practice, maximum per half day (including travelling time) ... ..
- (ii) necessarily employs a locum or other substitute to act for him in his absence whom he requires to remunerate, maximum per half day ... .. £ 56.00
- (iii) examines papers for the purpose of giving evidence, maximum ... .. £168.00
- (b) if cited to give evidence but where the citation is cancelled– £168.00
  - (i) more than 48 hours but less than 7 days before the date for which he has been cited, maximum ... ..
  - (ii) less than 48 hours before that date, the sum he would have been paid under sub-paragraph (a) if he had been called to give evidence.

**Other persons** £52.00

- (a) A person not included in paragraph 1 or 2 of this Chapter of this Table who is cited to give evidence and in consequence incurs loss of wages or the payment of a substitute–
  - (i) in respect of lost wages, maximum per half day ... ..
- (ii) in respect of payment of a substitute, maximum per half day ... .. £29.00
- (b) A person not included in paragraph 1, 2 or 3(a) of this Chapter of this Table who is cited to give evidence and attends at court, maximum per day ... .. £14.00

**Travelling allowance**

4. In respect of a witness there shall be allowed a travelling allowance being such sum as the Auditor may determine to have been reasonably incurred by the witness in travelling from and to his residence or place of business and the court.

**Subsistence allowance** £ 7.00

5. In respect of a witness there shall be allowed a subsistence allowance being such sum as the Auditor may determine to have been reasonably incurred by the witness for the extra cost of subsistence during his absence from his home or place of business, as the case may be,

for the purpose of giving evidence, and, where the witness is necessarily detained overnight, for the cost of board and lodging—

- (a) where absence is not more than 4 hours, maximum ... ..
- (b) where absence is more than 4 hours, £14.00 maximum ... ..
- (c) in addition where absence extends £70.00 overnight, maximum per night ... ..

### **Maritime witness**

6. Where a witness who is a seaman or off-shore worker is detained ashore to give evidence, provided reasonable notice of intention to detain has been given to the party found liable in expenses, charges for no longer than detention of 28 days shall be allowed.

### **Value added tax**

7. In the case of a witness who is a taxable person in terms of the Value Added Tax Act 1983 the maximum amounts specified in the preceding paragraphs of this Chapter of this Table may be exceeded by such amount as appears to the Auditor appropriate having regard to the value added tax for which the witness is liable.

### **Receipts and vouchers**

8. Receipts and detailed vouchers for all payments claimed in respect of a witness shall be produced on request to the party found liable in expenses, before the taxation of the account of expenses, and to the Auditor if required by him.

### **Account of fees of witnesses**

9. The fees charged for a witness shall be stated in the account of expenses in a lump sum and the details of the charges shall be entered in a separate schedule appended to the account as follows:—

Name and designation	Where from	Days charged	Rate per day	Travelling and subsistence allowance	Total	Taxed off

## **CHAPTER III**

### **PART I UNDEFENDED CAUSES (other than consistorial actions)**

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<b>Inclusive fee</b>	£124.70
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1. In all undefended causes where no proof is led, the pursuer's solicitor may at his option elect to charge an inclusive fee to cover all work from taking instructions up to and including obtaining extract decree. The option shall be exercised by the solicitor for the pursuer endorsing a minute of election to the above effect on the principal summons or petition before decree is taken.

- (a) All work up to and obtaining extract decree ... ..
  - (b) Outlays to an amount not exceeding £200 (exclusive of value added tax) shall also be allowed.
- 

PART II UNDEFENDED CONSISTORIAL ACTIONS (other than by affidavit procedure in Part III of this Chapter)

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<b>1. All work</b> (other than precognitions) up to and including the calling of the summons in court ... ..	£175.70
--------------------------------------------------------------------------------------------------------------	---------

**Note.** Precognitions to be charged as in paragraph 5 of Part V of this Chapter of this Table.

<b>Incidental procedure</b>	£100.20
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2. Fixing diet, enrolling action, preparing for proof, citing witnesses, etc. ... ..

<b>Amendment</b>	£25.70
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- (a) Where summons amended, re-service is not ordered and motion is not starred
- (b) Where summons amended, re-service is not ordered and motion is starred ... .. £37.20
- (c) Where summons amended and re-service is ordered ... .. £46.10

<b>Commission to take evidence on interrogatories</b>	£45.00
-------------------------------------------------------	--------

- (a) All work up to and including lodging of completed interrogatories, but excluding attendance at execution of commission ... ..
- (b) Attendance at execution of commission (if required), per quarter hour ... .. £13.90
- (c) In addition a fee per sheet for completed interrogatories, including all copies, of £ 7.60



**Commission to take evidence on open commission** £41.70

- (a) All work up to and including lodging of report of commission, but excluding attendance at execution of commission ... ..
- (b) Attendance at execution of commission, £13.90 per quarter hour ... ..

**Other matters**

6. Where applicable, charges under paragraphs 6, 7, 10, 14, 16 and 21 of Part V of this Chapter of this Table.

**Proof and completion fee** £124.70

7. All work to and including sending extract decree, but excluding account of expenses

**Accounts** £38.50

8. Framing and lodging account and attending taxation ... ..

## PART III UNDEFENDED CONSISTORIAL ACTIONS (affidavit procedure)

- 1.—(1) This paragraph applies to any undefended action of divorce or separation where—
- the facts set out in section 1(2)(a) (adultery) or 1(2)(b) (unreasonable behaviour) of the Divorce (Scotland) Act 1976(75) (“the 1976 Act”) are relied on;
  - there are no conclusions relating to any ancillary matters; and
  - the pursuer seeks to prove those facts by means of affidavits.

(2) The solicitor for the pursuer may, in respect of the work specified in column 1 of Table A below, charge the inclusive fee specified in respect of that work in column 2 of that Table.

(3) Where the pursuer has been represented in respect of work specified in column 1 of Table A below by an Edinburgh solicitor and a solicitor outside Edinburgh, the Auditor may, where he is satisfied that it was appropriate for the pursuer to be so represented, allow the inclusive fee specified in column 3 instead of the inclusive fee specified in column 2 of that Table.

**TABLE A**

Column 1 Work done	Column 2 Inclusive fee  £	Column 3 Discretionary inclusive fee Edinburgh solicitor and solicitor outside Edinburgh £
1. All work to and including calling of the summons	253.20	289.10

(75) 1976 c. 39.

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Column 1 Work done	Column 2 Inclusive fee  £	Column 3 Discretionary inclusive fee Edinburgh solicitor and solicitor outside Edinburgh £
2. All work from calling to and including swearing affidavits	179.90	218.50
3. All work from swearing affidavits to and including sending extract decree	55.30	81.10
4. All work to and including sending extract decree	488.40	588.70
Add session fee	of 7½%	of 10%

2.—(1) This paragraph applies to any undefended action of divorce or separation where—

- (a) the facts set out in section 1(2)(c) (desertion), 1(2)(d) (two years' non-cohabitation and consent) or 1(2)(e) (five years' non-cohabitation) of the 1976 Act are relied on;
- (b) there are no conclusions relating to any ancillary matters; and
- (c) the pursuer seeks to prove those facts by affidavit.

(2) The solicitor for the pursuer may, in respect of the work specified in column 1 of Table B below, charge the inclusive fee specified in respect of that work in column 2 of that Table.

(3) Where the pursuer has been represented in respect of work specified in column 1 of Table B below by an Edinburgh solicitor and a solicitor outside Edinburgh, the auditor may, where he is satisfied that it was appropriate for the pursuer to be so represented, allow the inclusive fee specified in respect of that work in column 3 instead of the inclusive fee specified in column 2 of that Table.

**TABLE B**

Column 1 Work done	Column 2 Inclusive fee  £	Column 3 Discretionary inclusive fee Edinburgh solicitor and solicitor outside Edinburgh £
1. All work to and including calling of the summons	208.20	244.20
2. All work from calling to and including swearing affidavits	100.20	127.20
3. All work from swearing affidavits to and including sending extract decree	55.30	81.10

Column 1 Work done	Column 2 Inclusive fee  £	Column 3 Discretionary inclusive fee Edinburgh solicitor and solicitor outside Edinburgh £
4. All work to and including sending extract decree	363.70	452.50
Add session fee	of 7½%	of 10%

**3. If–**

- (a) the solicitor for the pursuer charges an inclusive fee under either paragraph 1 or 2 of this Part, and
- (b) the action to which the charge relates includes a conclusion relating to an ancillary matter,

in addition to that fee he may charge in respect of the work specified in column 1 of Table C below the inclusive fee specified in respect of that work in column 2 of that Table.

**TABLE C**

Column 1 Work done	Column 2 Inclusive fee £
1. All work to and including calling of the summons	51.40
2. All work from calling to and including swearing affidavits	57.70
3. All work under items 1 and 2	109.10

**PART IV OUTER HOUSE PETITIONS****Unopposed petition** £259.70

- (a) All work including precognitions and all copyings, up to and obtaining extract decree ... ..
- (b) Where the party has been represented by an Edinburgh solicitor and a solicitor outside Edinburgh, the Auditor may, where he is satisfied that it was necessary for the party to be so represented, allow a fee of ... .. £359.90
- (c) Outlays including duplicating charges to be allowed in addition.

**Opposed petition** £176.00

- (a) All work (other than precognitions) up to and including lodging petition, obtaining and executing warrant for service ... ..

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(b) Outlays including duplicating charges to be allowed in addition.

(c) Where applicable, charges under paragraphs 2, 3 and 5 to 21 of Part V of this Chapter of this Table.

**Reports in opposed petitions** £31.40

(a) For each report by the Accountant of Court ... ..

(b) For any other report, as under paragraph 6 of part V of this Chapter of this Table.

**Obtaining bond of caution ... ..** £29.70

4

#### PART V DEFENDED ACTIONS

**Instruction fee** £244.20

(a) All work (apart from precognitions) until lodgment of open record ... ..

(b) Instructing re-service where necessary £ 26.30

(c) If counterclaim lodged, additional fee for each party ... .. £ 51.40

**Record fee** £259.70

(a) All work in connection with adjustment and closing of record including subsequent work in connection with By Order Adjustment Roll ... ..

(b) All work as above, so far as applicable, where cause settled or disposed of before record closed ... .. £160.60

(c) If consultation held before record closed, additional fees may be allowed as follows—

(i) arranging consultation ... ..

(ii) attendance at consultation, per quarter hour £ 13.90

(d) Additional fee to sub-paragraph (a) or (b) (to include necessary amendments) to the pursuer and existing defender, to be allowed for each pursuer, defender or third party brought in before the record is closed, each of ... .. £ 77.00

(e) If an additional pursuer, defender or third party is brought in after the record is closed, an additional fee shall be allowed £114.403.

to the existing pursuer and the existing  
defender or defenders, each of ... ..

**Procedure Roll or hearing** £51.40

- (a) Preparing for hearing including all  
work, incidental work and instruction  
of counsel ... ..
- (b) Attendance fee, per quarter hour ... .. £13.90
- (c) Advising and work incidental to it £38.50

**Adjustment of issues and counter-issues** £48.80

- (a) All work in connection with and  
incidental to the lodging of an issue,  
and adjustment and approval of it
- (b) If one counter-issue, additional fee to £13.90  
pursuer of ... ..
- (c) Where more than one counter-issue, an £ 7.00  
additional fee to pursuer for each additional  
counter-issue ... ..
- (d) All work in connection with lodging of £48.80  
counter-issue and adjustment and approval  
of it ... ..
- (e) Fee to defender or third party for £13.90  
considering issue where no counter-issue  
lodged ... ..
- (f) Fee to defender or third party for £ 7.00  
considering each additional counter-issue

**Precognitions** £25.00

5. Taking and drawing precognitions, per  
sheet ... ..

**Notes.**

- (1) In addition, each solicitor shall be entitled to  
charge for copies of the precognitions for his  
own use and the use of counsel.
- (2) Charges for the precognition of a witness—
  - (a) present at a proof or jury trial but not  
examined, or
  - (b) who is held as concurring with a witness  
who has been examined,
 may be allowed, if a motion to this effect is  
made at the close of the proof or jury trial and  
the court grants the motion and the name of that  
witness is noted in the minute of proceedings in  
the cause.
- (3) Where a skilled witness prepares his own  
precognition or report, the solicitor shall be

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allowed, for revising and adjusting it, half of the taking and drawing fee per sheet.

**Reports obtained under order of court  
excluding Auditor's report** £55.30

- (a) All work incidental to it ... ..
- (b) Additional fee for perusal of report, per £ 7.60  
quarter hour ... ..

or such other sum as in the opinion of the Auditor is justified.

**Specification of documents** £51.40

- (a) Instructing counsel, revising and lodging and all incidental procedure to obtain a diligence up to and including obtaining interlocutor ... ..
- (b) Fee to opponent ... .. £25.00
- (c) Attendance at execution of commission, £13.90  
per quarter hour, of ... ..
- (d) If alternative procedure adopted, a fee £20.50  
per person on whom order served, of

**Commission to take evidence on  
interrogatories** £104.10

- (a) Applying for commission to cover all work up to and including lodging report of commission with completed interrogatories and cross-interrogatories ... ..
- (b) Fee to opponent if cross-interrogatories £83.60  
lodged ... ..
- (c) Fee to opponent if no cross- £30.90  
interrogatories lodged ... ..
- (d) In addition to above, fee per sheet to each £ 7.60  
party for completed interrogatories or cross-interrogatories, including all copies, of

**Commission to take evidence on open  
commissions** £114.40

- (a) Applying for commission up to and including lodging report of commission, but excluding subparagraph (c) ... ..
- (b) Fee to opponent ... .. £ 51.40
- (c) Fee for attendance at execution of £ 13.90  
commission, per quarter hour, of ... ..

**Miscellaneous motions and minutes where  
not otherwise covered by this Part** £13.90

- (a) Where attendance of counsel and/  
or solicitor not required ... ..
- (b) Where attendance of counsel and/or £38.50  
solicitor required, inclusive of instruction of  
counsel, not exceeding half hour ... ..
- (c) Thereafter attendance fee, per additional £13.90  
quarter hour ... ..
- (d) Instructing counsel for a minute (other £38.50  
than a minute ordered by the court), revising  
and lodging as a separate step in process  
including any necessary action
- (e) Perusing a minute of admission or £13.90  
abandonment ... ..

**Incidental procedure** £145.30

**11.** (not chargeable prior to approval of issue  
or allowance of proof)

Fixing diet, obtaining note on the line of  
evidence, etc., borrowing and returning  
process, lodging productions, considering  
opponent's productions and all other work  
prior to the consultation on the sufficiency of  
evidence ... ..

**Amendment of record** £ 38.50

- (a) Amendment of conclusions only,  
fee to proposer ... ..
- (b) Amendment of conclusions only, fee to £ 13.90  
opponent ... ..
- (c) Amendment of pleadings after record £ 56.50  
closed, where no answers to the amendment  
are lodged, fee to proposer ... ..
- (d) In same circumstances, fee to opponent £ 26.00  
... ..
- (e) Amendment of pleadings after record £131.60  
closed, where answers are lodged, fee for  
proposer and each party lodging answers
- (f) Fee for adjustment of minute and £ 73.20  
answers, where applicable, to be allowed in  
addition to each party, of ... ..

**Preparation for proof or jury trial** £353.50

**13.** (to include fixing consultation on the  
sufficiency of evidence, fee-funding precept,

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citing witnesses, all work checking and writing up process and preparing for proof or jury trial)

- (a) If action settled before proof or jury trial, or lasts only one day, to include, where applicable, instruction of counsel ... ..
- (b) For each day or part of day after the first, £ 31.40 including instruction of counsel ... ..
- (c) Preparing for adjourned diets and all work incidental to it as in sub-paragraph (a), if adjourned for more than five days ... .. £ 64.30
- (d) If consultation held before proof or jury trial, attendance at it, per quarter hour £ 13.90

### Copyings

**14.** Productions, reports of commissions, duplicate inventory, jury list, list of witnesses, opinion of Lord Ordinary, etc., as paragraph 2 of Chapter I of this Table.

### Note.

Where copied by photostatic or similar process, each page to be charged as one sheet.

### Settlement £ 77.00

- (a) Settlement by tender
  - (i) Lodging or considering first tender ... ..
  - (ii) Lodging or considering each further tender £ 51.40
  - (iii) If tender accepted, an additional fee to each accepting party ... .. £ 51.40
- (b) Extrajudicial settlement – advising on, negotiating and agreeing extrajudicial settlement (not based on judicial tender) to include preparation and lodging of joint minute ... .. £128.50
- (c) The Auditor may allow a fee in respect of work undertaken with a view to settlement (whether or not settlement is in fact agreed), including offering settlement, of £218.40

### Hearing limitation fee £273.00

**16.** To include all work undertaken with a view to limiting the matters in dispute or limiting the scope of any hearing, and including exchanging documents, precognitions and expert reports, agreeing any fact, statement



or document, and preparing and lodging any joint minute ... ..

**Proof or jury trial** £13.90

17. Attendance fee, per quarter hour ... ..

**Accounts** £93.10

18. To include framing and lodging account, and attending taxation, uplifting account and noting taxations ... ..

**Ordering and obtaining extract** £20.50

19 ... ..

**Final procedure** £104.10

(a) If case goes to proof or jury trial, or is settled within 14 days before the diet of proof or jury trial, to include all work to close of cause so far as not otherwise provided for ... ..

(b) In any other case ... .. £31.40

#### **Session fee**

21. To cover communications with client and counsel, 7½% of total fees and copyings allowed on taxation, to be charged only on that part of the account charged under Part V of Chapter III of this Table. Where an Edinburgh solicitor has been involved, the Auditor may, where he is satisfied that it was necessary for such solicitor to have been involved, allow an additional session fee of not more than 2½% of total fees and copyings allowed on taxation charged only on that part of the account charged under Part V of Chapter III of this Table.

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### **PART VIINNER HOUSE BUSINESS**

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**Reclaiming motions** £77.00

(a) Fee for appellant for all work up to interlocutor sending cause to roll

(b) Fee for respondent ... .. £38.50

(c) Additional fee for each party for preparing or revising every 50 pages of Appendix £32.20

**Appeals from inferior courts** £93.10

(a) Fee for appellant ... ..

(b) Fee for respondent ... .. £46.10

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- (c) Additional fee for each party for £31.40  
preparing or revising every 50 pages of  
Appendix

**Summar Roll** £77.00

- (a) Preparing for discussion and  
instructing counsel ... ..
- (b) Attendance fee, per quarter hour ... .. £13.90

**Other matters**

4. Where applicable, charges under Part V of  
this Chapter of this Table.

**Special cases, Inner House petitions and  
appeals other than under paragraph 2 of this  
Part**

5. According to circumstances of the case.

**Obtaining bond of caution** £31.40

6 ... ..

*PART VII ADMIRALTY AND COMMERCIAL CAUSES, MERCANTILE SEQUESTRATIONS AND  
APPLICATIONS FOR SUMMARY TRIAL UNDER SECTION 26 OF THE ACT OF 1988 AND  
CAUSES REMITTED FROM THE SHERIFF COURT*

Charges under this Part shall be based on this Table according to the circumstances.

*PART VIII SOLICITORS EXERCISING RIGHTS OF AUDIENCE UNDER SECTION 25 OF THE  
SOLICITORS (SCOTLAND) ACT 1980*

1. The Auditor shall allow to a solicitor who exercises a right of audience by virtue of  
section 25A of the Solicitors (Scotland) Act 1980(76) such fee for each item of work done by  
the solicitor in the exercise of such right as he would allow to counsel for an equivalent item  
of work.

2. Where a solicitor exercises a right of audience by virtue of section 25A of the Solicitors  
(Scotland) Act 1980, and is assisted by another solicitor or a clerk, the Auditor may also allow  
attendance fees in accordance with Parts IV and V of this Chapter of this Table.

*PART IX GENERAL*

The Auditor shall have power to apportion the foregoing fees in this chapter between parties'  
solicitors in appropriate circumstances or to modify them in the case of a solicitor acting for more  
than one party in the same cause or in the case of the same solicitor acting in more than one cause  
arising out of the same circumstances or in the event of a cause being settled or disposed of at a stage  
when the work covered by an inclusive fee has not been completed.

(76) 1980 c. 46; section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 24.

*CHAPTER IV*  
*SHORTHAND WRITERS*

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**Attendance** £18.25

1. Attending proof, jury trial or commission,  
per hour, with a minimum fee of £54.75 per day

... ..

**Extending notes of evidence** £3.90

(a) Except where these are transcribed  
daily, per sheet ... ..

(b) Where these are transcribed daily, per £4.70  
sheet ... ..

(c) Where notes of evidence have been £0.30”  
directed to be supplied for the use of the  
court, copies may be made available to  
parties, payable to the shorthand writer by  
the solicitor for the parties obtaining the  
copies, per sheet ... ..

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**Notes.**

- (1) Transcripts of notes of evidence will be made only on directions from the court, and the cost of them in defended causes will, in the first instance, be payable by the solicitors for the parties in equal proportions. The daily transcripts of notes of evidence shall be made only if all compearing parties consent. When an undefended cause is continued, or where for other reasons the court considers it necessary that the notes should be extended for the use of the court and so directs, the cost will be borne by the solicitor for the pursuer in the first instance. In any cause where the notes of evidence have not been extended, but are required for a reclaiming motion, the solicitor for the reclamer may request the shorthand writer to extend the notes and the transcript of them will thereupon be lodged in process, the cost being payable in the first instance by the solicitor for the reclamer.
- (2) In any cause where the court on a motion enrolled for that purpose certifies that there is reasonable ground for reclaiming and that the reclamer is unable, for financial reasons, to meet the cost of the necessary transcript from which copies for the use of the Inner House are made, the cost of such transcript will be paid out of public funds.

**PART III FEES IN SPECULATIVE CAUSES**

**Fees of solicitors in speculative causes**

**42.17.—(1) Where—**

- (a) any work is undertaken by a solicitor in the conduct of a cause for a client,
- (b) the solicitor and client agree that the solicitor shall be entitled to a fee for the work only if the client is successful in the cause, and
- (c) the agreement is that the fee of the solicitor for all work in connection with the cause is to be based on an account prepared as between party and party,

the solicitor and client may agree that the fees element in that account shall be increased by a figure not exceeding 100 per cent.

**(2) The client of the solicitor shall be deemed to be successful in the cause where—**

- (a) the cause has been concluded by a decree which, on the merits, is to any extent in his favour;
- (b) the client has accepted a sum of money in settlement of the cause; or

- (c) the client has entered into a settlement of any other kind by which his claim in the cause has been resolved to any extent in his favour.
- (3) In paragraph (1), “the fees element” means all the fees in the account of expenses of the solicitor—
  - (a) for which any other party in the cause other than the client of the solicitor has been found liable as taxed or agreed between party and party;
  - (b) before the deduction of any award of expenses against the client; and
  - (c) excluding the sums payable to the solicitor in respect of—
    - (i) any fees payable for copying documents and the proportion of any session fee in the Table of Fees and posts and incidental expenses under rule 42.11;
    - (ii) any additional fee allowed under rule 42.14 to cover the responsibility undertaken by the solicitor in the conduct of the cause; and
    - (iii) any charges by the solicitor for his outlays.

*Special provisions in relation to particular proceedings*

*CHAPTER 43*

*ACTIONS OF DAMAGES*

PART I INTIMATION TO CONNECTED PERSONS IN CERTAIN ACTIONS OF DAMAGES

**Application and interpretation of this Part**

**43.1.**—(1) This Part applies to an action of damages in which, following the death of any person from personal injuries, damages are claimed—

- (a) by the executor of the deceased, in respect of the injuries from which the deceased died; or
  - (b) by any relative of the deceased, in respect of the death of the deceased.
- (2) In this Part—

“connected person” means a person, not being a party to the action, who has title to sue the defender in respect of the personal injuries from which the deceased died or in respect of his death;

“relative” has the meaning assigned to it in Schedule 1 to the Damages (Scotland) Act 1976<sup>(77)</sup>.

**Averments in actions to which this Part applies**

**43.2.** In an action to which this Part applies, the pursuer shall aver in the condescence, as the case may be—

- (a) that there are no connected persons;
- (b) that there are connected persons, being the persons specified in the warrant for intimation;
- (c) that there are connected persons in respect of whom intimation should be dispensed with on the ground that—
  - (i) the names or whereabouts of such persons are not known to, and cannot reasonably be ascertained by, the pursuer; or
  - (ii) such persons are unlikely to be awarded more than the sum of £200 each.

<sup>(77)</sup> 1976 c. 13; Schedule 1 was amended by the Administration of Justice Act 1982 (c. 53), section 14(4) and by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1, paragraph 15.

### **Warrants for intimation**

**43.3.**—(1) Where the pursuer makes averments under rule 43.2(b) (existence of connected persons), he shall insert a warrant for intimation in the summons in the following terms:— “Warrant to intimate (*name and address*) as a person who is believed to have title to sue the defender in an action in respect of the personal injuries from which the late (*name and last place of residence*) died [*or the death of the late (name and last place of residence)*].”.

(2) A notice of intimation in Form 43.3 shall be attached to the copy of the summons where intimation is given on a warrant under paragraph (1).

### **Applications to dispense with intimation**

**43.4.**—(1) Where the pursuer makes averments under rule 43.2(c) (dispensing with intimation to connected persons), he shall apply by motion for an order to dispense with intimation.

(2) In determining a motion under paragraph (1), the court shall have regard to—

- (a) the desirability of avoiding multiplicity of actions; and
- (b) the expense, inconvenience or difficulty likely to be involved in taking steps to ascertain the name or whereabouts of the connected person.

(3) Where the court is not satisfied that intimation to a connected person should be dispensed with, it may—

- (a) order intimation to a connected person whose name and whereabouts are known;
- (b) order the pursuer to take such further steps as it may specify in the interlocutor to ascertain the name or whereabouts of any connected person; and
- (c) order that such advertisement be made in such manner, in such place and at such times as it may specify in the interlocutor.

### **Subsequent disclosure of connected persons**

**43.5.** Where the name or whereabouts of a person, in respect of whom the court has dispensed with intimation on a ground specified in rule 43.2(c) (dispensing with intimation to connected persons), subsequently becomes known to the pursuer while the action is depending before the court, the pursuer shall apply by motion under rule 13.8(1) (warrants after signeting) for a warrant for intimation to such a person; and such intimation shall be made in accordance with rule 43.3(2).

### **Connected persons entering process**

**43.6.**—(1) A connected person may apply to the court by minute in the process of the action craving leave to be sisted as an additional pursuer to the action.

(2) Such a minute shall also—

- (a) crave leave of the court to adopt the existing grounds of action and to amend the conclusions, condescendence and pleas-in-law; or
- (b) set out separate conclusions, a statements of facts and appropriate pleas-in-law.

(3) Before lodging such a minute in process, the minuter shall intimate to every party a copy of the minute and the date on which it will be lodged.

(4) Any party may lodge answers to such a minute in process within 14 days after the minute has been lodged.

### **Failure to enter process**

**43.7.** Where a connected person to whom intimation is made in accordance with this Part—

- (a) does not apply to be sisted as an additional pursuer to the action,
  - (b) subsequently brings a separate action against the same defender in respect of the same personal injuries or death, and
  - (c) would, apart from this rule, be awarded the expenses or part of the expenses of that action,
- he shall not be awarded those expenses except on cause shown.
- PART IIIINTERIM PAYMENTS OF DAMAGES**

### **Application and interpretation of this Part**

**43.8.**—(1) This Part applies to an action of damages for personal injuries or the death of a person from personal injuries.

(2) In this Part—

- “defender” includes a third party against whom the pursuer has a conclusion for damages;
- “personal injuries” includes any disease or impairment of a physical or mental condition.

### **Applications for interim payment of damages**

**43.9.**—(1) In an action to which this Part applies, a pursuer may, at any time after defences have been lodged, apply by motion for an order for interim payment of damages to him by the defender or, where there are two or more of them, by any one or more of them.

(2) The pursuer shall give written intimation of a motion under paragraph (1) to every other party not less than 14 days before the date on which the motion is enrolled.

(3) On a motion under paragraph (1), the court may, if satisfied that—

- (a) the defender has admitted liability to the pursuer in the action, or
- (b) if the action proceeded to proof, the pursuer would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part, or on the part of any person in respect of whose injury or death the claim of the pursuer arises, and would obtain decree for damages against any defender,

ordain that defender to make an interim payment to the pursuer of such amount as it thinks fit, not exceeding a reasonable proportion of the damages which, in the opinion of the court, are likely to be recovered by the pursuer.

(4) Any such payment may be ordered to be made in one lump sum or otherwise as the court thinks fit.

(5) No order shall be made against a defender under this rule unless it appears to the court that the defender is—

- (a) a person who is insured in respect of the claim of the pursuer;
- (b) a public authority; or
- (c) a person whose means and resources are such as to enable him to make the interim payment.

(6) Notwithstanding the grant or refusal of a motion for an interim payment, a subsequent motion may be made where there has been a change of circumstances.

(7) Subject to Part IV (management of money payable to children), any interim payment shall be made to the pursuer unless the court otherwise directs.

(8) This rule shall, with the necessary modifications, apply to a counterclaim for damages for personal injuries made by a defender as it applies to an action in which the pursuer may apply for an order for interim payment of damages.

### **Adjustment on final decree**

**43.10.** Where a defender has made an interim payment ordered under rule 43.9(3), the court may make such order, when final decree is pronounced, with respect to the interim payment as it thinks fit to give effect to the final liability of that defender to the pursuer; and in particular may order—

- (a) repayment by the pursuer of any sum by which the interim payment exceeds the amount which that defender is liable to pay the pursuer; or
- (b) payment by any other defender or a third party of any part of the interim payment which the defender who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to, or connected with, the claim of the pursuer.

### **PART III PROVISIONAL DAMAGES FOR PERSONAL INJURIES**

#### **Application and interpretation of this Part**

**43.11.**—(1) This Part applies to an action of damages for personal injuries.

(2) In this part—

“the Act of 1982” means the Administration of Justice Act 1982<sup>(78)</sup>;

“further damages” means the damages referred to in section 12(4)(b) of the Act of 1982;

“provisional damages” means the damages referred to in section 12(4)(a) of the Act of 1982.

#### **Applications for provisional damages**

**43.12.** Any application under section 12(2)(a) of the Act of 1982 for provisional damages for personal injuries shall be made by including in the summons—

- (a) a conclusion in form 43.12;
- (b) averments in the condensation supporting the conclusion, including averments—
  - (i) that there is a risk that, at some definite or indefinite time in the future, the pursuer will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration of his physical or mental condition; and
  - (ii) that the defender was, at the time of the act or omission which gave rise to the cause of action, a public authority, public corporation or insured or otherwise indemnified in respect of the claim; and
- (c) an appropriate plea-in-law.

#### **Applications for further damages**

**43.13.**—(1) An application for further damages by a pursuer in respect of whom an order under section 12(2)(b) of the Act of 1982 has been made shall be made by minute and shall include—

- (a) a conclusion in Form 43.13–A;
- (b) averments in the statement of facts supporting that conclusion; and
- (c) appropriate pleas-in-law.

(2) On lodging such a minute in process, the pursuer shall apply by motion for warrant to serve the minute on—

- (a) every other party; and

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<sup>(78)</sup> 1982 c. 53.

- (b) where such other party is insured or otherwise indemnified, his insurer or indemnifier, if known to the pursuer.
- (3) A notice of intimation in Form 43.13–B shall be attached to the copy of the minute served on a warrant granted on a motion under paragraph (2).
- (4) Any such party, insurer or indemnifier may lodge answers to such a minute in process within 28 days after the date of service on him.

#### PART IV MANAGEMENT OF MONEY PAYABLE TO CHILDREN

##### Interpretation of this Part

**43.14.** In this Part “child” means a person under the age of 16 years.

##### Orders for payment and management of money

**43.15.—**(1) In an action of damages in which a sum of money becomes payable, by virtue of a decree or an extra-judicial settlement, to or for the benefit of a child, the court may make such order regarding the payment and management of that sum for the benefit of the child as it thinks fit.

(2) An order under paragraph (1) shall be made on the granting of decree for payment or of absolvitor.

##### Methods of management

**43.16.** Without prejudice to the generality of rule 43.15(1), in making an order under that rule the court may—

- (a) appoint a judicial factor to apply, invest or otherwise deal with the money for the benefit of the child;
- (b) order the money to be paid to—
  - (i) the Accountant of Court, or
  - (ii) a guardian of the child,
 as trustee, to be applied, invested or otherwise dealt with and administered, under the direction of the court, for the benefit of the child;
- (c) order the money to be paid to the sheriff clerk of the sheriff court district in which the child resides to be dealt with in accordance with Part IV of Chapter 36 of the Ordinary Cause Rules 1933<sup>(79)</sup> (management of damages payable to persons under legal disability); or
- (d) order the money to be paid directly to the child.

##### Subsequent orders

**43.17.—**(1) Where the court has made an order under rule 43.15, any person having an interest may apply to the court for an appointment or order under rule 43.16, or any other order for the payment or management of the money, by minute in the process of the cause to which the application relates.

(2) An application for directions under rule 43.16(b) may be made by any person having an interest by minute in the process of the cause to which the application relates.

#### PART V OPTIONAL PROCEDURE IN CERTAIN ACTIONS OF DAMAGES

<sup>(79)</sup> The Ordinary Cause Rules 1993 are in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c. 51); Schedule 1 was substituted by S.I. 1993/1956.



### **Application and election of optional procedure**

**43.18.**—(1) This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries in which the pursuer has made an election under paragraph (2).

(2) The pursuer may elect to adopt the procedure in this Part by bringing an action in Form 43.18.

### **Effect of election on right to jury trial**

**43.19.** Service of a summons in Form 43.18—

- (a) shall constitute a waiver by the pursuer of his right to jury trial;
- (b) shall not, subject to rule 43.22(2) (waiver by defender of right to jury trial), affect any right of a defender to apply for jury trial.

### **Proceedings before nominated judge**

**43.20.** All hearings on the Diet Roll shall be brought before a judge of the court nominated for that purpose by the Lord President or, where a nominated judge is not available, before any other judge of the court (including the vacation judge).

### **Defences in optional procedure action**

**43.21.** Defences to the action shall be in the form of brief answers to the condescendence and appropriate pleas-in-law.

### **Application by defender for jury trial**

**43.22.**—(1) Where a defender intends to apply for jury trial in the action, he shall, at the same time as lodging defences, lodge a minute in process stating his intention to apply for jury trial.

(2) Where a defender does not lodge a minute under paragraph (1), he shall be taken to have waived his right to jury trial.

(3) Where a defender lodges a minute under paragraph (1)—

- (a) the provisions of this Chapter and the waiver by the pursuer of his right to jury trial shall cease to have effect; and
- (b) the action shall proceed as an ordinary action.

### **Disapplication of requirement for open record**

**43.23.** An open record shall not be made up in, and Chapter 22 (making up and closing records) shall not apply to, the action unless otherwise ordered by the court.

### **Diet Roll**

**43.24.**—(1) Within 14 days after defences have been lodged, the action shall appear on the Diet Roll for a hearing on a specified date.

(2) The appearance of the action on the Diet Roll for a hearing on a specified date shall not affect the right of any party to apply by motion at any time under these Rules.

(3) Where an action appears on the Diet Roll, a motion (other than a motion for a commission and diligence for the recovery of medical records heard before the first hearing on the Diet Roll) which requires the attendance of counsel, or a motion mentioned in paragraph (5), shall be heard on the Diet Roll.

*Status: This is the original version (as it was originally made).*

(4) At any hearing on the Diet Roll, the court may, at its own instance or on the motion of a party, on special cause shown where it is satisfied that the difficulty or complexity of the action makes it unsuitable for procedure under this Chapter, order that the action shall proceed as an ordinary action and ordain the pursuer to make up an open record.

(5) At any hearing on the Diet Roll, the court may, on the motion of any party—

- (a) on special cause shown, allow a specified period of adjustment;
- (b) on special cause shown, allow an amendment of the instance or conclusions of the summons;
- (c) on special cause shown, ordain a party to give further specification of his case in his pleadings;
- (d) on cause shown, grant warrant for service of a third party notice: provided that—
  - (i) no such warrant may be granted after the final appearance on the Diet Roll unless on special cause shown; and
  - (ii) rule 43.21 (defences in optional procedure action) shall, with the necessary modifications, apply to answers by a third party as it applies to a defender;
- (e) remit to a man of skill.

(6) At any hearing on the Diet Roll where adjustment has not been allowed or the period for adjustment has expired, the court shall—

- (a) where necessary, continue the action on the Diet Roll;
- (b) on special cause shown, appoint the action to the Procedure Roll;
- (c) allow a proof or proof before answer, as appropriate—
  - (i) on the question of liability and the question of quantum of damages;
  - (ii) where liability is admitted, on the question of quantum of damages;
  - (iii) where quantum of damages is admitted or agreed, on the question of liability; or
  - (iv) where there is an issue between a defender and a third party, on that issue; or
- (d) make such other order, if any, as it considers necessary for the further progress of the action.

(7) Where the court allows a proof or proof before answer under paragraph 6(c)(i) or (iv), it shall determine whether—

- (a) the questions of liability and quantum of damages should be heard together or separately; and
- (b) any issue between a defender and a third party should be heard with or separately from any question of liability or quantum of damages.

(8) Where the court makes an order under paragraph (6)(b), it may ordain a party—

- (a) to lodge in process a concise note of argument consisting of numbered paragraphs stating the grounds on which he proposes to submit that any preliminary plea should be sustained, and
- (b) to send a copy of it to every other party concerned,

within such period as the court thinks fit.

(9) When making an order under paragraph (6)(b) or (c), the court shall determine whether a record should be made up.

(10) Where the court orders a record to be made up under paragraph (8), rule 22.3(2) and (3) (lodging, etc. of closed records) shall apply to the action as it applies to an ordinary action.

### **Inspection and recovery of documents in optional procedure**

**43.25.**—(1) Without prejudice to rule 43.27 (exchange of reports skilled witnesses), within 14 days after an order has been pronounced under rule 43.24(6)(c) (allowance of proof), each party to the action shall—

- (a) give written intimation to every other party of a list of the documents which are, or to the best of his knowledge have been, in his possession or control relating to the matters at issue between them;
- (b) where such documents have been in his possession or control, state in that list the place where and the person with whom, to the best of his knowledge, those documents may be found; and
- (c) lodge a copy of that list in process.

(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 within 14 days after the receipt of the list at a time and place which is reasonable to both parties.

(3) A party inspecting documents under paragraph (2) shall have the right to obtain a copy or copies of any such document on payment of a copying fee of not more than that prescribed in Chapter I of the Table of Fees in rule 42.16.

(4) Nothing in this rule shall affect—

- (a) the law relating to, 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 35.2 for a commission and diligence for recovery of documents or an order under section 1 of the Administration of Justice (Scotland) Act 1972<sup>(80)</sup>.

### **Exchange of lists of witnesses in optional procedure**

**43.26.**—(1) Within 28 days after an order has been pronounced under rule 43.24(6)(c) (allowance of proof), each party to the action shall—

- (a) give written intimation to every other party of a list containing the name, occupation (if known) and address of each person whom he intends to call as a witness; and
- (b) lodge a copy of that list in process.

(2) A party who seeks to call as a witness a person not on his list intimated under paragraph (1) shall, if any other party objects to such a witness being called, seek leave of the court to call that person as a witness; and such leave may be granted on such conditions, if any, as the court thinks fit.

### **Exchange of reports of skilled witnesses in optional procedure**

**43.27.**—(1) Not less than 28 days before the diet of proof, a party shall—

- (a) disclose to every other party in the form of a written report the substance of the evidence of any skilled person whom he intends to call as a witness; and
- (b) lodge a copy of that report in process.

(2) Except on special cause shown, a party may only call as a skilled witness any person the substance of whose evidence has been disclosed in accordance with paragraph (1).

(3) Except on cause shown, the number of skilled witnesses for any party shall be limited to one medical expert and one expert of any other kind.

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<sup>(80)</sup> 1972 c. 59; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 9 and Schedule 2, paragraph 15.

**Evidence generally in optional procedure**

**43.28.** Where possible, the parties shall agree photographs, sketch plans and any statement or document not in dispute.

**CHAPTER 44****TIME TO PAY DIRECTIONS****Application and interpretation of this Chapter**

**44.1.**—(1) This Chapter applies to an action in which a person may apply under section 1(1) of the Debtors (Scotland) Act 1987<sup>(81)</sup> for a time to pay direction.

(2) In this Chapter—

“the Act of 1987” means the Debtors (Scotland) Act 1987;

“time to pay direction” means a direction made under section 1(1) of the Act of 1987.

**Notice about time to pay directions**

**44.2.**—(1) In an action in which a defender may apply to the court for a time to pay direction, the pursuer shall serve on that defender a notice in Form 44.2–A and an application in Form 44.2–B at the same time as he serves a copy of the summons, or pleadings, as amended by a minute of amendment calling him as a defender.

(2) Before serving a notice and an application under paragraph (1), the pursuer shall insert in Form 44.2–A the date by which Form 44.2–B must be returned to the court by the defender (being the date on which the period of notice expires) and shall complete Part A of Form 44.2–B.

**Applications for time to pay directions where appearance not entered**

**44.3.**—(1) Where a defender—

- (a) does not enter appearance in an action,
- (b) intends to apply to the court for a time to pay direction, and
- (c) where appropriate, seeks recall or restriction of an arrestment,

he shall complete and send the application in Form 44.2–B to the Deputy Principal Clerk before the date specified in Form 44.2–A.

(2) On receipt of an application for a time to pay direction, the Deputy Principal Clerk shall—

- (a) cause the application to be lodged in the process to which it relates; and
- (b) give written intimation to the pursuer that he has received the application.

(3) Where the pursuer does not object to the application by a defender for a time to pay direction or the recall or restriction of an arrestment, he may apply by motion for decree in absence stating that he does not object to the application.

(4) Where the pursuer objects to the application by a defender for a time to pay direction or the recall or restriction of an arrestment, he shall intimate—

- (a) the motion for decree in absence, and
- (b) the grounds of objection to the application by the defender,

in Form 44.3 to the defender not less than 7 days before the date on which the motion is enrolled.

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(81) 1987 c. 18.

(5) On enrolling a motion for decree in absence, the pursuer shall lodge in process a copy of Form 44.3 intimated to the defender.

(6) The defender need not appear at the hearing of the motion for decree in absence and may send to the Deputy Principal Clerk written representations in response to the grounds of objection of the pursuer.

(7) A motion for decree in absence to which paragraph (4) applies shall require the appearance of counsel or other person having a right of audience.

#### **Applications for time to pay directions where appearance entered but defences not lodged**

**44.4.**—(1) Where a defender—

- (a) after entering appearance does not lodge defences,
- (b) intends to apply to the court for a time to pay direction, and
- (c) where appropriate, seeks recall or restriction of an arrestment,

then, notwithstanding the date specified in Form 44.2–A as the date by which Form 44.2–B must be returned, he shall complete and send the application in Form 44.2–B to the court not later than the day on which defences would have had to be lodged in process.

(2) Paragraphs (2) to (7) of rule 44.3 (applications for time to pay directions where appearance not entered) shall apply to an application under this rule as they apply to an application under that rule.

#### **Applications for time to pay directions where defences lodged**

**44.5.** An application for a time to pay direction by—

- (a) a defender in an action in which defences have been lodged by that defender, or
- (b) any other party,

shall be made by motion.

#### **Applications for variation or recall of time to pay directions or arrestments**

**44.6.**—(1) An application under section 3(1) of the Act of 1987 (variation or recall of time to pay direction or recall or restriction of arrestment) shall be made by motion.

(2) The applicant shall—

- (a) in a motion under paragraph (1), state briefly the grounds on which the order is sought; and
- (b) give written intimation of the motion to the debtor or creditor, as the case may be, not less than 14 days before the date on which the motion is enrolled.

(3) On enrolling a motion under paragraph (1), the applicant shall lodge in process—

- (a) a copy of the letter of intimation;
- (b) the Post Office receipt or certificate of posting of that letter; and
- (c) any document he intends to rely on at the hearing of the motion.

#### **Notice to debtor for payment of interest on decrees**

**47.7.** Where a creditor seeks to recover interest (other than interest awarded as a specific sum) under a decree containing a time to pay direction, the notice to be served under section 1(7) of the Act of 1987 shall be served on the debtor by the creditor—

- (a) in the case of a decree containing a time to pay direction for payment by instalments, not less than 14 days before the date on which the last instalment is due to be paid; and

- (b) in the case of a decree which includes a time to pay direction for payment by deferred lump sum, not less than 14 days before the date on which the lump sum is due to be paid.

## CHAPTER 45

### ACTIONS OF DIVISION AND SALE

#### Remit to reporter to examine property

**45.1.—**(1) In an action of division and sale of heritable property, the court shall, in accordance with paragraph (2), remit to a reporter to examine the property and to report to the court—

- (a) whether the property is capable of division in a manner equitable to the interests of the *pro indiviso* proprietors and, if so, how such division may be effected; and
- (b) in the event that the property is to be sold—
  - (i) whether the property should be sold as a whole or in lots and, if in lots, what those lots should be;
  - (ii) whether the property should be exposed for sale by public roup or private bargain;
  - (iii) whether the sale should be subject to any upset or minimum price and, if so, the amount;
  - (iv) the manner and extent to which the property should be advertised for sale; and
  - (v) any other matter which the reporter considers pertinent to a sale of the property.

(2) A remit under paragraph (1) shall be made—

- (a) where the action is undefended, on the motion of the pursuer at any time after the period for lodging defences has expired;
- (b) where the action is defended—
  - (i) at the closing of the record, on the motion of any party to the action;
  - (ii) on the court finding, after a hearing on the Procedure Roll or a proof, that the pursuer is entitled to bring and insist in the action of division and sale; or
  - (iii) at such other time as the court thinks fit.

(3) On completion of a report made under paragraph (1), the reporter shall send the report, with a copy for each party, to the Deputy Principal Clerk.

(4) On receipt of such a report, the Deputy Principal Clerk shall—

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that he may uplift a copy of the report from the process.

(5) After the lodging of such a report, any party may apply by motion for further procedure or for approval of the report.

(6) At the hearing of a motion under paragraph (5), the court may—

- (a) in the event of challenge to any part of the report, order a note of objection to the report and answers to the note to be lodged within such period as the court thinks fit; or
- (b) in the absence of such challenge, order that the property be divided or sold, as the case may be, in accordance with the recommendations of the reporter, subject to such modification, if any, as the court thinks fit.

(7) Where, in accordance with paragraph (6)(a), the lodging of a note of objection and answers has been ordered, the cause shall be put out on the By Order Roll before the Lord Ordinary after the

expiry of the period for lodging the note of objection and answers; and the court may make such order for further procedure as it thinks fit.

### **Division or sale of property**

**45.2.**—(1) Where the court orders the division or sale of heritable property, it shall direct that the division or sale, as the case may be, shall be conducted under the oversight and direction of the Deputy Principal Clerk or any other fit person whom it may appoint for that purpose.

(2) The Deputy Principal Clerk or person appointed under paragraph (1), as the case may be, may report any matter of difficulty arising in the course of the division or sale to the court.

(3) At a hearing on a report made under paragraph (2), the court may give such directions as it thinks fit, including authority to the Deputy Principal Clerk to sign, on behalf of any proprietor, a disposition of his interest in the property.

(4) On the conclusion of a sale of property—

- (a) the proceeds of the sale, under deduction of the expenses of the sale, shall be consigned into court; and
- (b) The Deputy Principal Clerk or the person appointed under paragraph (1), as the case may be, shall lodge in process a report of the sale and a proposed scheme of division of the proceeds of sale.

(5) At the hearing of a motion for approval of a report of the sale of property lodged under paragraph (4) and the proposed scheme of division, the court may—

- (a) approve the report and scheme of division, and direct that payment of the proceeds of sale be made in terms of the report;
- (b) deal with any question as to the expenses of process or of sale; and
- (c) make such other order as it thinks fit.

## *CHAPTER 46*

### *ADMIRALTY ACTIONS*

#### **Interpretation of this Chapter**

**46.1.** In this Chapter—

“Admiralty action” means an action having a conclusion appropriate for the enforcement of a claim to which section 47(2) of the Administration of Justice Act 1956<sup>(82)</sup> applies or in respect of a contract of *respondentia*

“ship” has the meaning assigned in section 48(f) of that Act.

#### **Forms of action**

**46.2.**—(1) An Admiralty action against the owners of, or parties interested in, a ship or cargo may be brought—

- (a) *in rem*, where the conclusion of the summons is directed to recovery in respect of a maritime lien against the ship or cargo or the proceeds of it as sold under order of the court or where arrestment *in rem* may be made under section 47(3) of the Administration of Justice Act 1956;

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(82) 1956 c. 46.

(b) *in personam*, where the conclusion of the summons is directed to a decree in common form against the defender; or

(c) both *in rem* and *in personam*, where sub-paragraphs (a) and (b) apply.

(2) When bringing an Admiralty action, the pursuer shall insert the words “Admiralty Action *in rem*”, “Admiralty Action *in personam*” or “Admiralty Action *in rem* and *in personam*”, as the case may be, immediately below the words “IN THE COURT OF SESSION” where they occur above the instance, and on the backing, of the summons and any copy of it.

### **Actions *in rem***

**46.3.**—(1) In an Admiralty action *in rem*—

(a) where the owners of, or parties interested in, the ship or cargo against which the action is directed are known to the pursuer, they shall be called as defenders by name;

(b) where such owners or parties are unknown to the pursuer—

(i) he may call them as defenders as “the owners of or parties interested in the ship (*name and identify by its port of registry*) [*or cargo*]”; and

(ii) the master, if known, shall also be called as a defender representing the owners.

(2) In an Admiralty action *in rem*, the ship or cargo shall be arrested *in rem* and a warrant for such arrestment shall be inserted in the summons in the form in Form 13.2–A.

### **Actions *in personam***

**46.4.**—(1) In an Admiralty action *in personam* directed against the owners of a ship or cargo, such owners shall, if known to the pursuer, be called as defenders by name.

(2) In such an action, where—

(a) the vessel is not a British ship, and

(b) the names of the owners are not known to the pursuer,

the master of the ship may be called as the defender representing the owners.

(3) In an action to which paragraph (2) applies, any warrant to arrest to found jurisdiction shall be executed against the master of the ship in his representative capacity.

(4) In an action to which paragraph (2) applies, any decree shall be pronounced against the master in his representative capacity.

(5) A decree in an Admiralty action *in personam* may be pronounced against an owner of, or a party interested in, the ship or cargo only where that owner or party interested, as the case may be, has been called or added as a defender.

### **Sale of ship or cargo**

**46.5.**—(1) This rule shall not apply to the sale of a cargo arrested on the dependence of an Admiralty action *in personam*

(2) Where, in an Admiralty action or an action of declarator and sale of a ship—

(a) the court makes a finding that the pursuer has a claim which falls to be satisfied out of an arrested ship or cargo, or

(b) a decree for a sum of money has been granted in an action in which a ship has been arrested on the dependence,

the pursuer may apply by motion for an order for the sale of that ship or a share in it, or the cargo, as the case may be, by public auction or private bargain.



(3) Before making such an order, the court shall remit to a reporter for the purpose of obtaining—

- (a) an inventory of,
- (b) a valuation and recommended upset price for, and
- (c) any recommendation as to the appropriate advertisement for the sale of,

the ship, share or cargo.

(4) Where a remit is made under paragraph (3), the pursuer shall instruct the reporter within 14 days after the date of the interlocutor making the remit and be responsible, in the first instance, for payment of his fee.

(5) On completion of a report following a remit under paragraph (3), the reporter shall send the report and a copy for each party to the Deputy Principal Clerk.

(6) On receipt of such a report, the Deputy Principal Clerk shall—

- (a) give written intimation to each party of receipt of the report;
- (b) request the pursuer to show to him a discharge in respect of the fee for which he is responsible under paragraph (4); and
- (c) after sight of such a discharge—
  - (i) lodge the report in process;
  - (ii) give written intimation to each party that this has been done and that he may uplift a copy of the report from process; and
  - (iii) cause the action to be put out on the By Order Roll before the Lord Ordinary.

(7) Where the court orders the sale of a ship, share or cargo, the conduct of the sale, including any advertisement of it, shall be under the direction of the Deputy Principal Clerk.

(8) Where such a sale is the sale of a ship or a share in it, the interlocutor ordering the sale shall include a declaration that the right to transfer the ship or share to the purchaser is vested in the Deputy Principal Clerk.

(9) Where, in such a sale, no offer to purchase the ship, share or cargo, as the case may be, has reached the upset price, the pursuer may apply by motion for authority to expose such ship, share or cargo for sale at a reduced upset price.

(10) The proceeds of such a sale shall be consigned into court, under deduction of all dues to the date the court adjudges the ship, share or cargo to belong to the purchaser under paragraph (11) (a), payable to Her Majesty's Customs and Excise or to the port or harbour authority within the jurisdiction of which the ship or cargo lies and in respect of which such port or harbour authority has statutory power to detain the ship or cargo.

(11) On consignment being made under paragraph (10), the court shall—

- (a) adjudge the ship, share or cargo, as the case may be, declaring the same to belong to the purchaser, freed and disburdened of all bonds, mortgages, liens, rights of retention and other incumbrances affecting it and ordering such ship, share or cargo to be delivered to the purchaser on production of a certified copy of the interlocutor pronounced under this sub-paragraph; and
- (b) order such intimation and advertisement, if any, for claims on the consigned fund as it thinks fit.

(12) The court shall, after such hearing or inquiry as it thinks fit—

- (a) determine all questions of expenses;
- (b) rank and prefer any claimants in order of preference; and
- (c) make such other order, if any, as it thinks fit.

**Ship collisions and preliminary acts**

**46.6.**—(1) Subject to rule 46.7 (applications to dispense with preliminary acts), this rule applies to an Admiralty action of damages arising out of a collision between ships at sea.

(2) An action to which this rule applies may be brought *in rem in personam* or *in rem* and *in personam*

(3) A summons in such an action shall not contain a condescendence or pleas-in-law.

(4) Where such an action is brought *in personam*, the conclusion of the summons shall contain sufficient detail to enable the defender to identify the date and place of, and the ships involved in, the collision.

(5) Within 7 days after the summons has called, the pursuer shall lodge in process a sealed envelope containing—

(a) a preliminary act in Form 46.6; and

(b) a brief condescendence and appropriate pleas-in-law.

(6) Within 28 days after the preliminary act for the pursuer has been lodged under paragraph (5), the defender shall lodge in process a sealed envelope containing a preliminary act in form 46.6.

(7) A party who lodges a preliminary act under paragraph (5) or (6) shall not send a copy of it to any other party.

(8) On the lodging of a preliminary act by the defender under paragraph (6), a clerk of session in the General Department shall—

(a) open both sealed envelopes;

(b) mark the contents of those envelopes with appropriate numbers of process; and

(c) give written intimation to each party that sub-paragraphs (a) and (b) have been complied with.

(9) On receipt of the written intimation under paragraph (8)(c), the pursuer and defender shall exchange copies of the contents of their respective envelopes.

(10) Within 7 days after the sealed envelopes have been opened up under paragraph (8), the defender may lodge defences to the action in process and any counterclaim on which he proposes to found.

(11) Within 7 days after a counterclaim has been lodged under paragraph (10), the pursuer may lodge answers to it in process.

(12) Within 14 days after defences have been lodged under paragraph (10) or answers have been lodged under paragraph (11), whichever is the earlier, the pursuer shall make up an open record with a copy of each of the preliminary acts appended to it; and Chapter 22 (making up and closing records) shall, subject to paragraph (13) of this rule, apply to the action as it applies to an ordinary action.

(13) No amendment, adjustment or alteration may be made to a preliminary act except by order of the court.

**Applications to dispense with preliminary acts**

**46.7.**—(1) Within 7 days after the date on which the summons has called, any party may apply for an order to dispense with preliminary acts in an action to which rule 46.6 applies.

(2) An application under paragraph (1) shall be made by minute craving the court to dispense with preliminary acts and setting out the grounds on which the application is made.

(3) Before lodging such a minute in process, the party making the application shall intimate a copy of the minute, and the date on which it will be lodged, to every other party.

(4) Any other party may lodge in process answers to such a minute within 14 days after such a minute has been lodged.

(5) After the expiry of the period mentioned in paragraph (4), the court may, on the motion of any party, after such further procedure, if any, as it thinks fit, dispense with preliminary acts.

(6) Where the court dispenses with preliminary acts, the pursuer shall lodge a condescendence with appropriate pleas-in-law within such period as the court thinks fit; and the action shall thereafter proceed in the same way as an ordinary action.

(7) Where the court refuses to dispense with preliminary acts, it shall ordain a party or parties, as the case may be, to lodge preliminary acts under rule 46.6 within such period as it thinks fit.

(8) An interlocutor dispensing or refusing to dispense with preliminary acts shall be final and not subject to review.

### **Ship collision and salvage actions**

**46.8.**—(1) Without prejudice to rule 36.3(1) (lodging productions for proof), in an Admiralty action arising out of a collision between ships at sea or salvage, the parties shall—

- (a) within 4 days after the interlocutor allowing proof,
- (b) within 4 days before the taking of evidence on commission, or
- (c) on or before such other date as the court, on special cause shown, shall determine,

lodge in process the documents, if any, mentioned in paragraph (2).

(2) The documents to be lodged under paragraph (1) are—

- (a) the log books, including scrap log books, of the ships concerned;
- (b) all *de recenti* written reports in connection with the collision or salvage, as the case may be, by the masters or mates of the vessels concerned to their respective owners; and
- (c) reports of any surveys of the ship in respect of which damage or salvage is claimed.

### **International Oil Pollution Compensation Fund**

**46.9.**—(1) In this rule—

“the Act of 1974” means the Merchant Shipping Act 1974<sup>(83)</sup>;

“the Fund” means the International Oil Pollution Compensation Fund referred to in section 1(1) of the Act of 1974.

(2) In an action in respect of liability under section 1 of the Merchant Shipping (Oil Pollution) Act 1971<sup>(84)</sup>, intimation of the action under section 6(2) of the Act of 1974 to the Fund shall be given by the pursuer in accordance with paragraphs (3) and (4) of this rule.

(3) Where intimation is to be made under paragraph (1), the pursuer shall insert a warrant for intimation in the summons in the following terms:— “Warrant to intimate to the International Oil Pollution Compensation Fund (*address*) as a person having an interest in this action.”.

(4) Intimation under paragraph (2) shall be given by a notice of intimation in Form 46.9 attached to a copy of the summons.

(5) Where the Fund is not a party to an action to which this rule applies, a defender may apply by motion for warrant to serve a third party notice on the Fund.

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<sup>(83)</sup> 1974 c. 43.

<sup>(84)</sup> 1971 c. 59; section 1 was substituted by the Merchant Shipping Act 1988 (c. 12), Schedule 4, paragraph 1.

(6) Where, in an action under section 4 of the Act of 1974<sup>(85)</sup> (compensation from Fund for persons suffering pollution damage), the court grants decree against the Fund, the clerk of court shall, within 14 days after the date of the decree, send a copy of it by first class post to the fund.

(7) Any notice under section 4A(3)(b) of the Act of 1974<sup>(86)</sup> (notification of whether amount of claim to be reduced) by the Fund to the court shall be sent to the Deputy Principal Clerk.

(8) An application by virtue of section 4A(3)(a) of the Act of 1974 for leave to enforce a decree against the Fund shall be made by motion.

## CHAPTER 47

### COMMERCIAL ACTIONS

#### Application and interpretation of this Chapter

**47.1.**—(1) This Chapter applies to a commercial action.

(2) In this Chapter, “commercial action” means an action—

(a) relating to—

- (i) the construction of a commercial or mercantile document,
- (ii) the sale or hire purchase of goods,
- (iii) the export or import of merchandise,
- (iv) the carriage of goods by land, air or sea (other than an Admiralty action within the meaning of rule 46.1),
- (v) insurance,
- (vi) banking,
- (vii) the provision of financial services,
- (viii) mercantile agency,
- (ix) mercantile usage or a custom of trade,
- (x) a building, engineering or construction contract,
- (xi) a commercial lease, or

(b) not falling within sub-paragraph (a) but relating to a dispute of a business or commercial nature,

in which an election has been made under rule 47.3 or which has been transferred under rule 47.7.

#### Proceedings before commercial judge

**47.2.** All proceedings in the Outer House in a commercial action shall be brought before a judge of the court nominated by the Lord President as a commercial judge or, where a commercial judge is not available, any other judge of the court (including the vacation judge); and “commercial judge” shall be construed accordingly.

#### Election of procedure for commercial actions

**47.3.** The pursuer may elect to adopt the procedure in this Chapter by bringing an action in which there are inserted the words “Commercial Action” immediately below the words “IN THE COURT

<sup>(85)</sup> Section 4 of the Act of 1974 was amended by the Merchant Shipping Act 1979 (c. 39), section 38 and Schedule 7 and by the Merchant Shipping Act 1988, section 34 and Schedule 4, paragraph 17.

<sup>(86)</sup> Section 4A of the Act of 1974 was inserted by the Merchant Shipping Act 1988 (c. 12), Schedule 4, paragraph 17(5).

OF SESSION” where they occur above the instance, and on the backing, of the summons and any copy of it.

#### **Disapplication of requirement for open record**

**47.4.** An open record shall not be made up in, and Chapter 22 (making up and closing records) shall not apply to, the action unless otherwise ordered by the court.

#### **Commercial Roll**

**47.5.—**(1) A commercial action shall appear on the Commercial Roll for a hearing on a specified date within 14 days after defences have been lodged.

(2) The appearance of a commercial action on the Commercial Roll for a hearing on a specified date shall not affect the right of any party to apply by motion at any time under these Rules.

(3) Where a commercial action appears on the Commercial Roll, a motion which requires the attendance of counsel or other person having a right of audience, or a motion mentioned in paragraph (4)(b), shall be heard on the Commercial Roll.

(4) At any hearing on the Commercial Roll, the court may—

- (a) make such further order as it considers necessary for the speedy determination of the question in dispute between the parties;
- (b) without prejudice to the foregoing generality—
  - (i) allow a specified period of adjustment;
  - (ii) allow an amendment;
  - (iii) ordain a party to give further specification of his case in his pleadings;
  - (iv) allow a counterclaim to be lodged;
  - (v) grant warrant for service of a third party notice; or
  - (vi) remit to a man of skill.

(5) At any hearing on the Commercial Roll, where adjustment has not been allowed or the period of adjustment has expired, the court shall—

- (a) where necessary, continue the action on the Commercial Roll;
- (b) appoint the action to the Procedure Roll;
- (c) allow a proof or a proof before answer, in respect of the whole or such part of the action as it thinks fit; or
- (d) make such other order as it considers necessary for the further progress of the action.

(6) Where the court makes an order under paragraph (5)(b), it may ordain a party—

- (a) to lodge in process a note of argument consisting of concise numbered paragraphs stating the grounds on which he proposes to submit that any preliminary plea should be sustained, and
- (b) to send a copy of it to every other party concerned,

within such period as the court thinks fit.

(7) Where the court makes an order under paragraph (5)(b) or (c), it may ordain the pursuer to make up a record.

(8) Where the court orders a record to be made up under paragraph (7), rule 22.3(2) and (3) (lodging etc. of closed records) shall apply to the action.

**Withdrawal of action from procedure in this Chapter**

**47.6.**—(1) The court may, at its own instance or on the motion of any party, where it thinks fit, withdraw a commercial action from the procedure under this chapter.

(2) Where the court pronounces an interlocutor under paragraph (1), the action shall proceed as an ordinary action.

(3) An interlocutor of a commercial judge withdrawing or refusing to withdraw an action from the procedure in this Chapter shall be final and not subject to review.

**Transfer of action to procedure in this Chapter**

**47.7.**—(1) In an action in which the pursuer has not elected to adopt the procedure in this Chapter, any party may apply by motion at any time to have the action appointed to be a commercial action.

(2) A motion enrolled under paragraph (1) shall be heard by a commercial judge.

(3) An interlocutor appointing or refusing to appoint an action to be a commercial action shall be final and not subject to review.

**Inspection and recovery of documents in commercial actions**

**47.8.**—(1) Within 28 days after an interlocutor allowing a proof or proof before answer, each party to a commercial action shall—

- (a) give written intimation to every other party of a list of the documents which are, or to the best of his knowledge have been, in his possession or control relating to the matters at issue between them;
- (b) where such documents have been in his possession or control, state in that list the place where and the person with whom, to the best of his knowledge, those documents may be found; and
- (c) lodge a copy of that list in process.

(2) A party who has received a list of documents under paragraph (1) may inspect those documents which are in the possession or control of the party intimating the list within 28 days after the receipt of the list at a time and place which is reasonable to both parties.

(3) A party inspecting documents under paragraph (2) shall have the right to obtain a copy or copies of any such document on payment of a copying fee of not more than that prescribed in Chapter I of the Table of Fees in rule 42.16.

(4) Nothing in this rule shall affect—

- (a) the law relating to, 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 35.2 for a commission and diligence for recovery of documents or an order under section 1 of the Administration of Justice (Scotland) Act 1972<sup>(87)</sup>.

**Exchange of lists of witnesses in commercial actions**

**47.9.**—(1) Within 28 days after an interlocutor allowing a proof or proof before answer, each party to a commercial action shall—

- (a) give written intimation to every other party of a list containing the names and addresses of the persons whom he intends to call as witnesses; and

<sup>(87)</sup> 1972 c. 59; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 9 and Schedule 2, paragraph 15.

(b) lodge a copy of that list in process.

(2) A party who seeks to call as a witness a person not on his list intimated under paragraph (1) shall, if any other party objects to such a witness being called, seek leave of the court to call that person as a witness; and such leave may be granted on such conditions, if any, as the court thinks fit.

### **Evidence generally in commercial actions**

**47.10.** Where possible, the parties shall agree any statement or document not in dispute.

### **Customs of trade**

**47.11.—**(1) This rule applies to a commercial action in which a custom of trade or commercial usage is pled.

(2) Where objection is taken, at any hearing on the Commercial Roll, to the legality or validity of a custom or usage pled, the court shall appoint a hearing on such an objection.

(3) At a hearing under paragraph (2), the court—

- (a) may sustain, repel or reserve the objection;
- (b) where the objection is repelled or reserved, may make a remit under paragraph (5) and, in any case in which disputed facts require to be ascertained for determining the legality of an alleged custom or usage, may include the determination of such disputed facts in the remit; and
- (c) shall make such other order as it considers necessary for the further progress of the action.

(4) Where no objection is taken, at any hearing on the Commercial Roll, to the legality or validity of the custom or usage pled, the court—

- (a) may make a remit under paragraph (5); and
- (b) shall, where it makes such a remit, make such other order as it considers necessary for the further progress of the action.

(5) A remit under this paragraph shall be made to one or more persons engaged in the particular trade in question to report on the existence and scope of the custom or usage, on which matters the report shall be conclusive.

(6) Where a remit is made under paragraph (5), the party who pleads the custom or usage shall instruct the reporter within 14 days after the date of the remit and be responsible, in the first instance, for payment of his fee.

(7) On completion of a report following a remit under paragraph (5), the reporter shall send the report and a copy for each party to the Deputy Principal Clerk.

(8) On receipt of such a report, the Deputy Principal Clerk shall—

- (a) give written intimation to each party of receipt of the report;
- (b) request the party responsible for payment of the fee under paragraph (6) to show to him a discharge in respect of that fee; and
- (c) after sight of such discharge—
  - (i) lodge the report in process; and
  - (ii) give written intimation to each party that this has been done and that he may uplift a copy of the report from process.

## CHAPTER 48

### EXCHEQUER CAUSES

#### Proceedings before Lord Ordinary in Exchequer Causes

**48.1.**—(1) Subject to Part IV of Chapter 41 (Exchequer appeals), all proceedings in an Exchequer cause shall be brought before the Lord Ordinary in Exchequer Causes.

(2) An application for the suspension of a decree, charge, threatened charge or diligence in an Exchequer cause shall be made to the Lord Ordinary in Exchequer Causes.

(3) Where another judge of the court acts in place of the Lord Ordinary in Exchequer Causes, any interlocutor pronounced by him shall state that he acted in the absence of the Lord Ordinary in Exchequer Causes.

#### Procedure in Exchequer causes

**48.2.** An Exchequer cause commenced by summons shall proceed as an ordinary action.

#### Precedence of extracts

**48.3.** The Extractor shall give priority to extracts in Exchequer causes over all other business.

## CHAPTER 49

### FAMILY ACTIONS

#### PART I GENERAL PROVISIONS

#### Interpretation of this Chapter

**49.1.**—(1) In this Chapter, “family action” means—

- (a) an action of divorce;
- (b) an action of separation;
- (c) an action of declarator of nullity of marriage;
- (d) an action of declarator of marriage;
- (e) an action of declarator of legitimacy;
- (f) an action of declarator of illegitimacy;
- (g) an action of declarator of parentage;
- (h) an action of declarator of non-parentage;
- (i) an action of declarator of legitimation;
- (j) an action of, or application for, any parental rights;
- (k) an action of, or application for or in respect of, aliment;
- (l) an action or application for financial provision after a divorce or annulment in an overseas country within the meaning of Part IV of the Matrimonial and Family Proceedings Act 1984<sup>(88)</sup>;
- (m) an action or application for an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981<sup>(89)</sup>.

<sup>(88)</sup> 1984 c. 42; Part IV was amended by the Family Law (Scotland) Act 1985 (c. 37), Schedule 1, paragraphs 12 and 13.

<sup>(89)</sup> 1981 c. 59.



(2) In this Chapter, unless the context otherwise requires—

“the Act of 1975” means the Children Act 1975<sup>(90)</sup>;

“the Act of 1976” means the Divorce (Scotland) Act 1976<sup>(91)</sup>;

“the Act of 1981” means the Matrimonial Homes (Family Protection) (Scotland) Act 1981;

“the Act of 1985” means the Family Law (Scotland) Act 1985<sup>(92)</sup>;

“child” means a person under the age of 16 years;

“local authority” means a regional or islands council;

“mental disorder” means mental illness or mental handicap however caused or manifested;

“order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas divorce or annulment), an order mentioned in section 8(1) of the Act of 1985;

“parental rights” has the meaning assigned in section 8 of the Law Reform (Parent and Child) (Scotland) Act 1986<sup>(93)</sup>.

(3) For the purposes of rule 49.2 (averments in certain family actions about other proceedings) and rule 49.3 (averments where custody sought) and, in relation to proceedings in another jurisdiction, Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973<sup>(94)</sup> (sisting of consistorial actions in Scotland), proceedings are continuing at any time after they have commenced and before they are finally disposed of.

#### **Averments in certain family actions about other proceedings**

**49.2.**—(1) This rule applies to an action of divorce, separation, declarator of marriage or declarator of nullity of marriage.

(2) In an action to which this rule applies, the pursuer shall state in the condescendence of the summons—

(a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the marriage to which the summons relates or are capable of affecting its validity or subsistence; and

(b) where such proceedings are continuing—

(i) the court, tribunal or authority before which the proceedings have been commenced;

(ii) the date of commencement;

(iii) the names of the parties;

(iv) the date, or expected date of any proof (or its equivalent), in the proceedings; and

(v) such other facts as may be relevant to the question of whether or not the action in the Court of Session should be sisted under Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973.

(3) Where—

(a) such proceedings are continuing;

(b) the action in the Court of Session is defended; and

(c) either—

(i) the summons does not contain the statement referred to in paragraph (2)(b), or

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<sup>(90)</sup> 1975 c. 72.

<sup>(91)</sup> 1976 c. 39.

<sup>(92)</sup> 1985 c. 37.

<sup>(93)</sup> 1986 c. 9.

<sup>(94)</sup> 1973 c. 45; Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraphs 19 and 20.

- (ii) the particulars mentioned in sub-paragraph (2)(b) as set out in the summons are incomplete or incorrect,
- any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(b).

#### **Averments where custody sought**

**49.3.**—(1) A party to a family action, who makes an application in that action for a custody order (within the meaning assigned in section 1(1)(b) of the Family Law Act 1986<sup>(95)</sup>) in respect of a child, shall include in his pleadings—

- (a) where that action is an action of divorce, separation or declarator of nullity of marriage, averments giving particulars of any other proceedings known to him, whether in Scotland or elsewhere and whether concluded or not, which relate to the child in respect of whom the custody order is sought;
- (b) in any other family action—
  - (i) the averments mentioned in sub-paragraph (a); and
  - (ii) averments giving particulars of any proceedings known to him which are continuing, whether in Scotland or elsewhere, and which relate to the marriage of the parents of that child.

(2) Where such other proceedings are continuing or have taken place and the averments of the applicant for such a custody order—

- (a) do not contain particulars of the other proceedings, or
- (b) contain particulars which are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the family action shall include such particulars or such further or correct particulars as are known to him.

(3) In paragraph (1)(b)(ii), “child” includes a child of the family within the meaning assigned in section 42(4) of the Family Law Act 1986<sup>(96)</sup>.

#### **Averments where identity or address of person not known**

**49.4.** In a family action, where the identity or address of any person referred to in rule 49.8 as a person in respect of whom a warrant for intimation requires to be applied for is not known and cannot reasonably be ascertained, the party required to apply for the warrant shall include in his pleadings an averment of that fact and averments setting out what steps have been taken to ascertain the identity or address, as the case may be, of that person.

#### **Averments about maintenance orders**

**49.5.** In a family action in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall contain an averment stating whether and, if so, when and by whom a maintenance order (within the meaning of section 106 of the Debtors (Scotland) Act 1987<sup>(97)</sup>) has been granted in favour of or against that party or any other person in respect of whom the order is sought.

<sup>(95)</sup> 1986 c. 55; section 1(1)(b) was amended by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 1, paragraph 44.

<sup>(96)</sup> Section 42(4) was amended by the Children Act 1989 (c. 41), Schedule 13, paragraph 71.

<sup>(97)</sup> 1987 c. 18; section 106 was amended by the Child Support Act 1991 (c. 48), Schedule 5, paragraph 8(7).

### **Averments where aliment sought for a child**

#### **49.6.—(1) In this rule—**

“the Act of 1991” means the Child Support Act 1991<sup>(98)</sup>;

“child” has the meaning assigned in section 55 of the Act of 1991;

“conclusion relating to aliment” means—

- (a) for the purposes of paragraph (2), a conclusion for decree of aliment in relation to a child or for recall or variation of such a decree; and
- (b) for the purposes of paragraph (3), a conclusion for decree of aliment in relation to a child or for recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child;

“maintenance assessment” has the meaning assigned in section 54 of the Act of 1991.

(2) A family action containing a conclusion relating to aliment to which section 8(6), (7), (8) or (10) of the Act of 1991 (top up maintenance orders) applies shall—

(a) include averments stating, where appropriate—

- (i) that a maintenance assessment under section 11 of that Act is in force;
- (ii) the date of the maintenance assessment;
- (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance assessment; and
- (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of that Act; and

(b) unless the court on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance assessment referred to in sub-paragraph (a).

(3) A family action containing a conclusion relating to aliment to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include averments stating—

- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom;
- (b) that the child is not a child within the meaning of section 55 of that Act; or
- (c) the grounds on which the court retains jurisdiction.

(4) In an action for declarator of non-parentage or illegitimacy—

- (a) the summons shall include an article of condescendence stating whether the pursuer previously has been alleged to be the parent in an application for a maintenance assessment under section 4, 6 or 7 of the Act of 1991 (applications for maintenance assessment); and
- (b) where an allegation of paternity has been made against the pursuer, the Secretary of State shall be named as a defender in the action.

(5) A family action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—

- (a) include averments stating that such a decision has been made and giving details of that decision; and
- (b) unless the court on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

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<sup>(98)</sup> 1991 c. 48.

**Warrants for arrestment or inhibition on dependence**

**49.7.**—(1) A warrant for inhibition or arrestment on the dependence in a family action or in respect of a claim to which section 19 of the Act of 1985 (action for aliment or claim for order for financial provision) applies shall be applied for by motion.

(2) A certified copy of the interlocutor granting warrant for diligence applied for under paragraph (1) shall be sufficient authority for execution of the diligence.

(3) A certified copy of the interlocutor containing a warrant for inhibition granted under this rule and an execution of service of it may be registered in the Register of Inhibitions and Adjudications.

(4) A notice of the certified copy of the interlocutor containing a warrant for inhibition granted under this rule may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868<sup>(99)</sup> (inhibitions to take effect from date of registration of notice); and such registration shall have the same effect as registration of a notice under that section.

**Warrants for intimation in family actions**

**49.8.**—(1) In the summons in a family action, the pursuer shall insert a warrant for intimation—

(a) in an action where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, to—

(i) every child of the marriage between the parties who has reached the age of 16 years, and

(ii) one of the next-of-kin of the defender who has reached that age,

unless the address of such a person is not known to the pursuer and cannot reasonably be ascertained, in the following terms:— “Warrant to intimate to (*name and address*) as a child of the marriage [*or to (name and address) the (relationship to defender)*], as one of the next-of-kin of the defender.”;

(b) in an action where the pursuer alleges that the defender has committed adultery with another person, to that person, unless—

(i) that person is not named in the summons and, if the adultery is relied on for the purposes of section 1(2)(a) of the Act of 1976 (irretrievable breakdown of marriage by reason of adultery), the summons contains an averment that his or her identity is not known to the pursuer and cannot reasonably be ascertained, or

(ii) the pursuer alleges that the defender has been guilty of rape upon or incest with, that named person,

in the following terms:— “Warrant to intimate to (*name and address*) as a person with whom the defender is alleged to have committed adultery.”;

(c) in an action where the defender is a person who is suffering from a mental disorder, to—

(i) those persons mentioned in sub-paragraph (a)(i) and (ii), unless the address of such person is not known to the pursuer and cannot reasonably be ascertained, and

(ii) the curator *bonis* to the defender, if one has been appointed,

in the following terms:— “Warrant to intimate to (*name and address*) as a child of the marriage, (*name and address*) the (*relationship to defender*) as one of the next-of-kin of the defender and (*name and address*), curator *bonis* to the defender.”;

(d) in an action relating to a marriage which was entered into under a law which permits polygamy where—

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(99) 1868 c. 101.

- (i) one of the decrees specified in section 2(2) of the Matrimonial Proceedings (Polygamous Marriages) Act 1972(100) is sought; and
- (ii) either party to the marriage in question has any spouse additional to the other party, to any such additional spouse in the following terms:– “Warrant to intimate to (*name and address*) as an additional spouse of the pursuer [*or* defender].”;
- (e) in an action of divorce, separation or declarator of nullity of marriage where the court may make an order for any parental rights in respect of a child–
  - (i) who is in the care of a local authority, to that local authority in the following terms:– “Warrant to intimate to the chief executive of (*name and address of local authority*) as the local authority having care of (*name and address of child*).”;
  - (ii) who, being a child of one party to the marriage who has been accepted as a child of the family by the other party to the marriage and who is liable to be maintained by a third party, to that third party in the following terms:– “Warrant to intimate to (*name and address*) as a person liable to maintain (*name and address of child*).”;
  - (iii) in respect of whom a third party exercises such rights *de facto*, to that third party in the following terms:– “Warrant to (*name and address*) as a person who in fact exercises parental rights in respect of (*name and address of child*).”;
- (f) in an action where the pursuer concludes for the custody of a child, to any parent or guardian of the child who is not a party to the action in the following terms:– “Warrant to intimate to (*name and address*) as a parent [*or* guardian].”;
- (g) in an action where the pursuer concludes for the custody of a child and he is–
  - (i) not a parent of that child, and
  - (ii) resident in Scotland when the summons is presented for signeting,
 to the local authority within which area the pursuer resides in the following terms:– “Warrant to intimate to the chief executive of (*name and address of local authority*) as the local authority within which area the pursuer, not being a parent of (*name and address of child*), resides.”;
- (h) in an action which affects a child, to that child, if not a party to the action, in the following terms:– “Warrant to intimate to (*name and address*) as a child who may be affected by the action.”;
  - (i) in an action where the pursuer makes an application for an order under section 8(1) (aa) of the Act of 1985(101) (transfer of property) and–
    - (i) the consent of a third party to such a transfer is necessary by virtue of an obligation, enactment or rule of law, or
    - (ii) the property is subject to a security,
 to the third party or creditor, as the case may be, in the following terms:– “Warrant to intimate to (*name and address*) as a person the consent of whom is required in respect of the transfer sought [*or* as a person who is believed to be a creditor of (*name of party*) in respect of the property sought to be transferred] in the (*number*) conclusion of this summons.”;
  - (j) in an action where the pursuer makes an application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions), to–

(100) 1972 c. 38; section 2(2) was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraph 13, by the Law Reform (Husband and Wife) (Scotland) Act 1984 (c. 15), Schedule 1, paragraph 6, by the Family Law (Scotland) Act 1985, Schedule 1, paragraph 8 and by the Statute Law (Repeals) Act 1986 (c. 12), Schedule 1, Part I.

(101) 1985 c. 37; section 1(1)(aa) of the Act of 1985 was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 34.

(i) any third party in whose favour the transfer of, or transaction involving, the property is to be or was made, and

(ii) any other person having an interest in the transfer of, or transaction involving, the property,

in the following terms:— “Warrant to intimate to (*name and address*) as the person in whose favour the transfer of [*or* transaction involving] property referred to in the condescendence attached to this summons was made [*or* is to be made] [*or* is a person having an interest in the transfer of [*or* transaction involving] property referred to in the condescendence attached to this summons].”; and

(k) in an action where the pursuer makes an application for an order under the Act of 1981(102)—

(i) where he is a non-entitled partner and the entitled partner has a spouse, to that spouse, or

(ii) where the application is under section 2(1)(e), 2(4)(a), 3(1), 3(2), 4, 7, 13 or 18 of that Act, and the entitled spouse or entitled partner is a tenant or occupies the matrimonial home by permission of a third party, to the landlord or the third party, as the case may be,

in the following terms:— “Warrant to intimate to (*name and address*) as a person with an interest in the order sought in the (*number*) conclusion of this summons.”.

(2) Expressions used in paragraph (1)(k) which are also used in the Act of 1981 have the same meaning as in that Act.

(3) A notice of intimation shall be attached to the copy of the summons where intimation is given on a warrant—

(a) under paragraph (1)(a) (address of defender not known), in Form 49.8–A;

(b) under paragraph (1)(b) (allegation of adultery), in Form 49.8–B;

(c) under paragraph (1)(c) (mental disorder of defender), in Form 49.8–C;

(d) under paragraph (1)(d) (polygamous marriage), in Form 49.8–D;

(e) under paragraph (1)(e)(i) or (ii) (where order may be made for any parental rights in respect of a child in care of local authority or accepted as a child of the marriage), in Form 49.8–E;

(f) under paragraph (1)(e)(iii) (where order may be made for any parental rights in respect of a child in respect of whom a third party exercises such rights *de facto*), in Form 49.8–F;

(g) under paragraph (1)(f) (custody sought by guardian), in Form 49.8–G;

(h) under paragraph (1)(g) (custody sought by non-parent resident in Scotland), in Form 49.8–H;

(i) under paragraph (1)(h) (action which affects a child), in Form 49.8–I;

(j) under paragraph (1)(i) (transfer of property), in Form 49.8–J;

(k) under paragraph (1)(j) (avoidance transactions), in Form 49.8–K;

(l) under paragraph (1)(k) (orders sought under the Act of 1981), in Form 49.8–L.

(4) In a family action, where the pursuer—

(a) concludes for the custody of a child;

(b) is not a parent of the child; and

(c) is not resident in Scotland when the summons is presented for signing,

he shall, on presenting the summons for signeting, apply by motion for an order for intimation in Form 49.8–H to such local authority as the court thinks fit.

(5) Where the address of a person mentioned in paragraph (1)(b), (d), (e), (f), (g), (i), (j), (k) or (l) is not known and cannot reasonably be ascertained, the pursuer shall, immediately after the calling of the summons, apply by motion to dispense with intimation; and the court may grant that motion or make such other order as it thinks fit.

(6) Where the identity or address of a person to whom intimation of a family action is required becomes known during the course of the action, the party who would have been required to insert a warrant for intimation to that person shall apply by motion for a warrant for intimation to that person or to dispense with such intimation.

(7) In relation to paragraph (1)(h) (action which affects a child), the court may, on an application to it by motion to dispense with intimation to a child–

- (a) dispense with intimation to that child on the ground that the child is not capable of forming his own views;
- (b) appoint a curator *ad litem* to the child; or
- (c) order that a specified part of the summons need not be intimated to the child.

#### **Intimation where relevant association**

**49.9.**—(1) In a family action where the pursuer alleges a relevant association as defined in paragraph (4) between the defender and another named person, the pursuer shall, when the summons is presented for signeting, apply by motion for an order for intimation to that person or to dispense with such intimation.

(2) In determining a motion under paragraph (1), the court may–

- (a) make such order for intimation as it thinks fit; or
- (b) dispense with intimation; and
- (c) where it dispenses with intimation, order that the name of that person be deleted from the condescendence of the summons.

(3) Where intimation is ordered under paragraph (2), a notice of intimation in Form 49.9 shall be attached to the copy of the summons to be intimated.

(4) In paragraph (1), “relevant association” means sodomy, incest or any homosexual relationship.

#### **Productions in action of divorce or where order for custody may be made**

**49.10.**—(1) There shall be lodged as a production with the principal writ when first lodged in process–

- (a) in an action of divorce, an extract or certified copy of the relevant entry in the register of marriages; and
- (b) in a family action in which the court may make an order in respect of the custody of a child, an extract or certified copy of the relevant entry in the register of births.

(2) In the application of sub-paragraph (a) of paragraph (1) to an action of divorce where the address of the defender is not known, the document to be lodged under that sub-paragraph shall be one obtained and dated within three months before the date on which it is lodged.

**Execution of service on, or intimation to, local authority**

**49.11.**—(1) Where a local authority referred to in rule 49.8(1)(g) (custody sought by non-parent resident in Scotland) or rule 49.8(4) (custody sought by non-parent not resident in Scotland) is called as a defender in a summons at the time of signeting, service of the summons on that local authority shall be executed within 7 days after the date of signeting.

(2) Where in a family action—

(a) to which rule 49.8(1)(g) applies, or

(b) in which a motion under rule 49.8(4) is required,

the local authority referred to in that provision is called as a defender in the summons at the time of signeting, a notice in Form 49.8–H shall be attached to the copy of the summons served on that local authority unless the court otherwise orders.

(3) Where, by virtue of rule 49.8(1)(g), 49.8(4) or 49.15(2), intimation of an application for custody is to be made to a local authority, intimation to that local authority shall be given within 7 days after the date of signeting or order for intimation, as the case may be; and a notice in Form 49.8–H shall be attached to the copy of the summons intimated to that local authority.

**Notice of actions by advertisement**

**49.12.** Where notice of a family action is given by advertisement under rule 16.5 (service where address of person is not known), the period of notice shall be 21 days from the date of publication of the advertisement unless the court otherwise orders.

**Service in cases of mental disorder of defender**

**49.13.**—(1) In a family action where the defender suffers or appears to suffer from mental disorder and is resident in a hospital or other similar institution, service of the summons shall be executed in accordance with rule 16.4 (service by post) addressed to the medical officer in charge of that hospital or institution; and there shall be included with the copy of the summons—

(a) any notice required by rule 49.14(1) (notices in certain actions of divorce or separation);

(b) a request in Form 49.13–A requesting the medical officer to—

(i) deliver and explain the summons, citation and any notice or form of notice of consent required under rule 49.14(1); or

(ii) certify that such delivery or explanation would be dangerous to the health or mental condition of the defender; and

(iii) complete the certificate in Form 49.13–B; and

(c) a stamped envelope addressed for return of that certificate to the pursuer or his agent, if he has one.

(2) The medical officer referred to in paragraph (1) shall send the certificate in Form 49.13–B duly completed to the pursuer or his agent, as the case may be.

(3) The certificate mentioned in paragraph (2) shall be attached to the summons when it is lodged for calling.

(4) Where such a certificate bears that the summons has not been delivered to the defender, the court may, at any time while the action is depending—

(a) order such further medical inquiry, and

(b) make such order for further service or intimation,

as it thinks fit.



### **Notices in certain actions of divorce or separation**

**49.14.**—(1) In the following actions of divorce or separation, there shall be attached to the copy of the summons served on the defender—

- (a) in an action relying on section 1(2)(d) of the Act of 1976(**103**) (no cohabitation for two years with consent of defender to decree)—
  - (i) which is an action of divorce, a notice in Form 49.14–A and a form of notice of consent in Form 49.14–B;
  - (ii) which is an action of separation, a notice in Form 49.14–C and a form of notice of consent in Form 49.14–D;
- (b) in an action relying on section 1(2)(e) of the Act of 1976 (no cohabitation for five years)—
  - (i) which is an action of divorce, a notice in Form 49.14–E;
  - (ii) which is an action of separation, a notice in Form 49.14–F.

(2) The certificate of service of a summons in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been included with the summons.

### **Orders for intimation by the court**

**49.15.**—(1) In any family action, the court may order intimation to be made to such person as it thinks fit.

(2) Where a party makes an application or averment in a family action which, had it been made in a summons when presented for signing, would have required a warrant for intimation under rule 49.8 that party shall apply by motion for a warrant for intimation or to dispense with such intimation.

### **Interested persons entering process**

**49.16.**—(1) A person on whom intimation has been made of a family action or an application in a family action, may apply by minute for leave to be sisted as a party and to lodge defences, answers or a minute, as the case may be—

- (a) where the intimation was made on a warrant in a summons, within 7 days after the summons is lodged for calling; and
- (b) in any other case, within the period of notice.

(2) Where the court grants a motion under paragraph (1), it shall make such order for further procedure as it thinks fit.

### **Appointment of curators *ad litem* to defenders**

**49.17.**—(1) This rule applies to an action of divorce or separation where it appears to the court that the defender is suffering from a mental disorder.

(2) In an action to which this rule applies, the court shall, after the expiry of the period for lodging defences—

- (a) appoint a curator *ad litem* to the defender; and
- (b) where the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on—
  - (i) make an order for intimation of the ground of the action to the Mental Welfare Commission for Scotland; and

*Status: This is the original version (as it was originally made).*

- (ii) include in such an order a requirement that the Commission sends to the Deputy Principal Clerk a report indicating whether in its opinion the defender is capable of deciding whether or not to give consent to the granting of decree.
- (3) Within 7 days after the appointment of a curator *ad litem* under paragraph (2)(a), the pursuer shall send to him a copy of the summons and any defences lodged (including any adjustments and amendments).
- (4) On receipt of a report required under paragraph (2)(b)(ii), the Deputy Principal Clerk shall—
  - (a) cause the report to be lodged in process; and
  - (b) give written intimation that this has been done to—
    - (i) the pursuer;
    - (ii) the agent for the defender, if known; and
    - (iii) the curator *ad litem*
- (5) The curator *ad litem* shall lodge in process one of the writs mentioned in paragraph (6)—
  - (a) within 14 days after the report required under paragraph (2)(b)(ii) has been lodged in process; or
  - (b) where no such report is required, within 21 days after the date of his appointment under paragraph (2)(a).
- (6) The writs referred to in paragraph (5) are—
  - (a) defences to the action;
  - (b) a minute adopting defences already lodged in process; and
  - (c) a minute stating that the curator *ad litem* does not intend to lodge defences.
- (7) Notwithstanding that he has lodged a minute stating that he does not intend to lodge defences, a curator *ad litem* may appear at any stage of the action to protect the interests of the defender.
- (8) If, at any time, it appears to the curator *ad litem* that the defender is not suffering from mental disorder, he may report that fact to the court and seek his own discharge.
- (9) The pursuer shall be responsible, in the first instance, for payment of the fees and outlays of the curator *ad litem* incurred during the period from his appointment until—
  - (a) he lodges a minute stating that he does not intend to lodge defences;
  - (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
  - (c) being satisfied after investigation that the defender is not suffering from mental disorder, he is discharged.

### **Applications for sist**

**49.18.** An application for a sist, or there call of a sist, under Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973(**104**) shall be made by motion.

### **Notices of consent to divorce or separation**

**49.19.**—(1) Where, in an action of divorce or separation in which the facts in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree of divorce or separation, as the case may be, he

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(104) 1973 c. 45; Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraphs 19 and 20.

shall do so by giving notice in writing in Form 49.14–B (divorce) or Form 49.14–D (separation), as the case may be, to the Deputy Principal Clerk.

(2) The evidence of one witness shall be sufficient for the purpose of establishing that the signature on a notice of consent under paragraph (1) is that of the defender.

(3) In an action of divorce or separation where the summons includes, for the purposes of section 1(2)(d) of the Act of 1976, an averment that the defender consents to the grant of decree, the defender may give notice by letter sent to the Deputy Principal Clerk stating that he has not so consented or that he withdraws any consent which he has already given.

(4) On receipt of a letter under paragraph (3), the Deputy Principal Clerk shall–

- (a) cause the letter to be lodged in process; and
- (b) give written intimation of the terms of the letter to the pursuer.

(5) On receipt of an intimation under paragraph (4)(b), the pursuer may, within 14 days after the date of the intimation, if none of the other facts mentioned in section 1(2) of the Act of 1976 is averred in the summons, apply by motion for the action to be sisted.

(6) If no such motion is enrolled, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

(7) If a motion under paragraph (5) is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

### **Consents to grant of custody**

**49.20.**—(1) Where a party, who requires a consent under section 47(2) of the Act of 1975 **(105)** to the grant of custody, executes service on, or gives intimation to, a person whomay give such consent, he shall–

- (a) include with the copy of the summons or other pleadings, as the case may be–
  - (i) a notice of intimation in Form 49.8–G; and
  - (ii) a form of notice of consent in Form 49.20; and
- (b) in the certificate of service or intimation, as the case may be, state expressly that such notice and form of notice of consent were included.

(2) Where a parent or guardian wishes to consent to the grant of an application for custody, he shall–

- (a) complete and sign the notice of consent in Form 49.20;
- (b) have his signature witnessed; and
- (c) send the notice of consent to the Deputy Principal Clerk who shall cause it to be lodged in process.

(3) Where a person, who has consented under paragraph (2) to the grant of such an application, wishes to withdraw that consent, he shall give notice by letter sent to the Deputy Principal Clerk stating that he withdraws his consent.

(4) On receipt of a letter under paragraph (3), the Deputy Principal Clerk shall–

- (a) cause the letter to be lodged in process; and
- (b) give written intimation of the terms of the letter to the applicant and to every other party.

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**(105)** 1975 c. 72; section 47(2) was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1, paragraph 14(1) and by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 2.

**Reports by local authorities under section 49(2) of the Act of 1975**

**49.21.**—(1) On completion of a report made under section 49(2) of the Act of 1975 (report by local authority on child in certain custody applications), the local authority shall—

- (a) send the report, and a copy of it for each party, to the Deputy Principal Clerk; and
- (b) where a curator *ad litem* has been appointed to the child in respect of whom the application for custody has been made, send a copy of the report to him.

(2) On receipt of such a report, the Deputy Principal Clerk shall—

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that he may uplift a copy of the report from process.

(3) Where intimation is given to a local authority under rule 49.8(1)(g) or (4) for the purposes of section 49(2) of the Act of 1975, an application for the custody of the child shall not be determined until the report of the local authority has been lodged in process.

(4) When disposing of an application for custody, the court shall determine which party or parties are to be liable for the expenses of the local authority incurred in the preparation of any report made under section 49(2) of the Act of 1975.

**Appointment of local authority or reporter to report on a child**

**49.22.**—(1) This rule applies where, at any stage of a family action, the court appoints—

- (a) a local authority under section 11(1) of the Matrimonial Proceedings (Children) Act 1958<sup>(106)</sup> or section 12(2)(a) of the Guardianship Act 1973<sup>(107)</sup> (which both relate to a report on a child with respect to custody), or
- (b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub-paragraph (a) or otherwise,

to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.

(2) On making an appointment referred to in paragraph (1), the court shall direct that the party who sought the appointment or, where the court makes the appointment at its own instance, the pursuer or minuter, as the case may be, shall—

- (a) instruct the local authority or reporter; and
- (b) be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.

(3) Where a local authority or reporter is appointed—

- (a) the party who sought the appointment, or
- (b) where the court makes the appointment at its own instance, the pursuer or minuter, as the case may be,

shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.

(4) The local authority or reporter, as the case may be, shall, on completion of a report referred to in paragraph (1), send the report, and a copy of it for each party, to the Deputy Principal Clerk.

(5) On receipt of such a report, the Deputy Principal Clerk shall—

<sup>(106)</sup> 1958 c. 40; section 11(1) was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 2 and by the Family Law Act 1986 (c. 55), Schedule 1, paragraph 7.

<sup>(107)</sup> 1973 c. 29; section 12(2)(a) was amended by the Children Act 1975 (c. 72), section 48(4).

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that he may uplift a copy of the report from process.

(6) Where a local authority or reporter has been appointed to investigate and report in respect of a child, an application for the custody of that child shall not be determined until the report of the local authority or the reporter, as the case may be, has been lodged in process.

### **Referral to family mediation and conciliation service**

**49.23.** In any family action in which the custody of, or access to, a child is in dispute, the court may, at any stage of the action where it considers it appropriate to do so and with the consent of the parties, refer that dispute to a specified family mediation and conciliation service.

### **Applications for orders to disclose whereabouts of children**

**49.24.**—(1) An application for an order under section 33(1) of the Family Law Act 1986<sup>(108)</sup> (which relates to the disclosure of the whereabouts of a child) shall be made by motion.

(2) Where the court makes an order under section 33(1) of the Family Law Act 1986, it may ordain the person against whom the order has been made to appear before it or to lodge an affidavit.

### **Applications in relation to removal of children**

**49.25.**—(1) An application for leave under section 51(1) of the Act of 1975<sup>(109)</sup> (authority to remove a child from the care and possession of the applicant for custody) or for an order under section 35(3) of the Family Law Act 1986 (application for interdict or interim interdict prohibiting removal of child from jurisdiction)—

- (a) by a party, shall be made by motion;
- (b) by a person other than a party, shall be made by minute in the process of that action.

(2) An application under section 35(3) of the Family Law Act 1986 need not be served or intimated.

(3) An application under section 23(2) of the Child Abduction and Custody Act 1985<sup>(110)</sup> (declarator that removal of child from United Kingdom was unlawful) shall be made—

- (a) in an action depending before the court—
  - (i) by a party, in the summons, defences or minute, as the case may be, or by motion; or
  - (ii) by any other person, by minute; or
- (b) after final decree, by minute in the process of the action to which the application relates.

### **Intimation to local authority before supervised access**

**49.26.**—(1) Where the court, at its own instance or on the motion of a party, is considering making an award of access or interim access subject to supervision by the social work department of a local authority, it shall ordain the party moving for access or interim access to intimate to the chief executive of that local authority (unless a party to the action and represented at the hearing at which the issue arises)—

- (a) the terms of any relevant motion;

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<sup>(108)</sup> 1986 c. 55.

<sup>(109)</sup> Section 51(1) of the Act of 1975 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraph 25.

<sup>(110)</sup> 1985 c. 60.

- (b) the intention of the court to order that access be supervised by the social work department of that local authority; and
  - (c) that the local authority shall, within such period as the court has determined—
    - (i) notify the Keeper of the Rolls whether it intends to make representations to the court through counsel or other person having a right of audience or in writing; and
    - (ii) where it intends to make representations in writing, to do so within that period.
- (2) After receiving notice or written representations, as the case may be, under paragraph (1)(c), the Keeper of the Rolls shall put the action out on the By Order Roll before the Lord Ordinary on such a date as may be convenient, for the court to determine, after considering any representations of a local authority under paragraph (1), whether to order such supervision.

### **Joint minutes**

**49.27.** Where any parties have reached agreement in relation to—

- (a) any parental rights in respect of a child,
- (b) aliment for a child, or
- (c) an order for financial provision,

a joint minute may be entered into expressing that agreement; and the court may grant decree in respect of those parts of the joint minute in relation to which it could otherwise make an order, whether or not such a decree would include a matter for which there was no conclusion or crave.

### **PART II UNDEFENDED FAMILY ACTIONS**

### **Evidence in certain undefended family actions**

**49.28.—**(1) This rule—

- (a) subject to sub-paragraph (b), applies to all family actions in which no defences have been lodged, other than a family action—
  - (i) for any parental rights or aliment;
  - (ii) for financial provision after an overseas divorce or annulment within the meaning of Part IV of the Matrimonial and Family Proceedings Act 1984<sup>(111)</sup>; or
  - (iii) for an order under the Act of 1981<sup>(112)</sup>;
- (b) applies to a family action in which a curator *ad litem* has been appointed under rule 49.17(2)(a) where the curator *ad litem* to the defender has lodged a minute intimating that he does not intend to lodge defences;
- (c) applies to any family action which proceeds at any stage as undefended where the court so directs;
- (d) applies to the merits of a family action which is undefended on the merits where the court so directs, notwithstanding that the action is defended on an ancillary matter.

(2) Unless the court otherwise directs, evidence shall be given by affidavit.

(3) Unless the court otherwise directs, evidence relating to the welfare of a child shall be given by affidavit, at least one affidavit being sworn by a person other than a parent or party to the action.

(4) Evidence in the form of a written statement bearing to be the professional opinion of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence by him.

<sup>(111)</sup> 1984 c. 42; Part IV was amended by the Act of 1985 (c. 37), Schedule 1, paragraphs 12 and 13.

<sup>(112)</sup> 1981 c. 59.

(5) Rule 36.8 (conditions for receiving certain written statements in evidence) shall not apply in an undefended family action to which this rule applies.

#### **Procedure for decree in actions under rule 49.28**

**49.29.**—(1) In an action to which rule 49.28 (evidence in certain undefended family actions) applies, if counsel or other person having a right of audience, on consideration of the available affidavits and support in documents, is satisfied that a motion for decree may properly be made, he may, at any time after the expiry of the period for lodging defences, move the court by minute in Form 49.29–A to grant decree in terms of the conclusions of the summons or in such restricted terms as may be appropriate.

(2) On lodging such a minute in process, the pursuer shall—

- (a) lodge in process the documents specified in the schedule to the minute; and
- (b) send to the Deputy Principal Clerk, Form 49.29–B duly completed.

(3) The court may, at any time after the minute and other documents referred to in paragraph (2) have been lodged, without requiring the appearance of counsel or other person having a right of audience—

- (a) grant decree in terms of the motion for decree contained in the minute; or
- (b) put the action out on the By Order Roll before the Lord Ordinary for such further procedure, if any, including proof by parole evidence, as the court thinks fit.

(4) Notice shall be given in the rolls of all decrees granted under paragraph (3)(a).

#### **No suspension in undefended divorce actions**

**49.30.** A defender may not bring any proceedings for the suspension of any decree of divorce pronounced in an undefended action.

#### **PART IIIDEFENDED FAMILY ACTIONS**

#### **Defences in family actions**

**49.31.**—(1) This rule applies where the defender in a family action seeks—

- (a) to oppose any conclusion in the summons;
- (b) to make a claim for—
  - (i) aliment;
  - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
  - (iii) an order relating to parental rights; or
- (c) an order—
  - (i) under section 16(1)(b) or (3) of the Act of 1985<sup>(113)</sup> (setting aside or varying agreement as to financial provision);
  - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
  - (iii) under the Act of 1981; or
- (d) to challenge the jurisdiction of the court.

(2) In an action to which this rule applies, the defender shall—

- (a) lodge defences to the action in process; and

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<sup>(113)</sup> 1985 c. 37.

- (b) make any claim or seek any order, as the case may be, referred to in paragraph (1) in those defences by setting out in those defences—
  - (i) conclusions;
  - (ii) averments in the answers to the condescence in support of those conclusions; and
  - (iii) appropriate pleas-in-law.

### **Abandonment by pursuer**

**49.32.** Notwithstanding abandonment by a pursuer, the court may allow a defender to pursue an order or claim sought in his defences; and the proceedings in relation to that order or claim shall continue in dependence as if a separate cause.

### **Adjustment and further procedure**

**49.33.**—(1) Chapter 22 (making up and closing records) shall not apply to a family action.

(2) The court shall, 14 days after the date on which defences were lodged, or a minute by a person on whom intimation has been made under rule 49.8, 49.9, or 49.15 was lodged, pronounce an interlocutor allowing the parties a proof of their respective averments.

(3) Notwithstanding the pronouncement of an interlocutor under paragraph (2), the parties may adjust their respective pleadings until 28 days before the diet of proof; and any such adjustments shall be written on the summons, defences or minute, as the case may be.

(4) Not earlier than 28 days after the allowance of proof, the court may, on cause shown, withdraw the allowance of proof and appoint the action to the Procedure Roll.

(5) The pursuer shall, within 7 days after the end of the adjustment period under paragraph (3) or the appointment of the action to the Procedure Roll, as the case may be—

- (a) subject to rule 49.68 (procedure for minutes in causes under the Act of 1981), make up a copy of the adjusted pleadings in the form of a record;
- (b) send not less than three copies of the record to every other party; and
- (c) not later than 48 hours before the diet of proof or hearing on the Procedure Roll, as the case may be, lodge two copies of the record in process.

### **Late appearance by defenders**

**49.34.**—(1) In a family action, the court may, at any time while the action is depending, make an order with such conditions, if any, as it thinks fit, allowing a defender—

- (a) to lodge defences to the action; and
- (b) to appear and be heard at a diet of proof although he has not lodged defences, but he shall not, in that event, be allowed to lead evidence without the pursuer's consent.

(2) Where the court makes an order under paragraph (1)(a), the pursuer may recall a witness already examined or lead other evidence whether or not he closed his proof before that order was made.

## **PART IV APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS**

### **Application and interpretation of this Part**

**49.35.**—(1) This Part applies to an action of divorce, separation or declarator of nullity of marriage.



(2) In this Part, “the Act of 1958” means the Matrimonial Proceedings (Children) Act 1958<sup>(114)</sup>.

### **Applications in actions to which this Part applies**

- 49.36.**—(1) An application for an order mentioned in paragraph (2) shall be made—
- (a) by a conclusion in the summons or defences, as the case may be, in an action to which this Part applies; or
  - (b) where the application is made by a person other than the pursuer or defender, by minute in that action.
- (2) The orders referred to in paragraph (1) are—
- (a) an order for any parental rights; and
  - (b) an order for aliment for a child.

### **Intimation before committal to care or supervision**

**49.37.**—(1) Where the court is considering making an order under section 10(1) of the Act of 1958<sup>(115)</sup> (committal of care of child to an individual other than one of the parties to the marriage or to a local authority) or Under section 12(1) of that Act<sup>(116)</sup> (placing child under supervision of a local authority), it shall ordain one of the parties to intimate to that person or to the chief executive of the appropriate local authority, as the case may be, where not already a party to the action and represented at the hearing at which the issue arises—

- (a) a copy of the pleadings (including any adjustments and amendments);
- (b) the terms of any relevant motion;
- (c) a notice of intimation in Form 49.37 requiring any representations which that person or that local authority wishes to make to the court to be made by minute in the process of the action within such period as the court has determined.

(2) Before lodging a minute under paragraph (1)(c), the minuter shall intimate to every other party a copy of the minute and the date on which it will be lodged.

### **Care or supervision orders**

**49.38.** Where the court makes, varies or recalls an order under section 10(1) (committal of care of child to an individual other than one of the parties of the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958, it shall send a copy of the interlocutor making the order and a notice in Form 49.38 to the chief executive of the local authority or other person concerned.

### **Intimation of certain applications to local authorities or other persons**

**49.39.** Where a child is subject to an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958, any motion enrolled or minute lodged which relates to that child shall be intimated to the chief executive of the local authority or other person concerned.

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<sup>(114)</sup> 1958 c. 40.

<sup>(115)</sup> Section 10(1) of the Act of 1958 was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 2; and the Family Law Act 1986 (c. 55), Schedule 1, paragraph 6.

<sup>(116)</sup> Section 12(1) of the Act of 1958 was amended by the Social Work (Scotland) Act 1968 (c. 49), Schedule 9.

**Applications in depending actions by motion**

**49.40.**—(1) An application by a party in an action depending before the court to which this Part applies—

- (a) for, or for variation of, an order—
  - (i) for interim aliment for a child under the age of 18 years, or
  - (ii) for interim custody of, or interim access to, a child, or
- (b) for variation or recall of an order under section 10(1) (committal of care of child to another individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958,

shall be made by motion.

(2) Written intimation of a motion under paragraph (1) shall be given to every other party not less than 7 days before the date on which the motion is enrolled.

**Applications after decree relating to parental rights or care**

**49.41.**—(1) Subject to rule 49.42 (applications after decree relating to access or supervision), an application after final decree—

- (a) for, or for the variation or recall of, an order relating to parental rights other than access, or
- (b) for an order under section 10(1) of the Act of 1958 (committal of care of child to an individual other than one of the parties to the marriage or to a local authority),

shall be made by minute in the process of the action to which the application relates.

- (2) where a minute has been lodged under paragraph (1), any party—
  - (a) may apply by motion for any interim order which may be made pending the determination of the application; and
  - (b) shall intimate any such motion to every other party not less than 7 days before the date on which the motion is enrolled.

**Applications after decree relating to access or supervision**

**49.42.**—(1) An application after final decree for, or for the variation or recall of—

- (a) an order for access to a child, or
- (b) an order under section 12(1) of the Act of 1958 (placing child under supervision of a local authority),

shall be made by motion in the process of the action to which the application relates.

- (2) A motion under paragraph (1) shall—
  - (a) include a brief statement of the reasons for the order sought, and
  - (b) be intimated by registered post or the first class recorded delivery service to—
    - (i) any person concerned or a solicitor known to be acting on behalf of that person, and
    - (ii) where appropriate, the local authority concerned, not less than 14 days before the date on which the motion is enrolled.
- (3) On enrolling a motion under paragraph (1), the applicant shall lodge in process—
  - (a) a copy of the letter of intimation; and
  - (b) the Post Office receipt or certificate of posting of that letter.

(4) At the hearing of a motion under paragraph (1), the court may order that the application be made by minute; and, in such a case, shall make an order for the lodging of answers to the minute in process within such period as it thinks fit.

(5) Where the court makes an order under paragraph (4), any party may apply by motion for an interim order pending the determination of the application.

#### **Applications after decree relating to aliment**

**49.43.**—(1) An application after final decree for, or for the variation or recall of, an order for aliment for a child shall be made by motion in the process of the action to which the application relates.

(2) A motion under paragraph (1) shall—

- (a) include a brief statement of the reasons for the order sought; and
- (b) be intimated by registered post or the first class recorded delivery service to any person concerned or a solicitor known to be acting on behalf of that person, not less than 14 days before the date on which the motion is enrolled.

(3) On enrolling a motion under paragraph (1), the applicant shall lodge in process—

- (a) a copy of the letter of intimation;
- (b) the Post Office receipt or certificate of posting of that letter; and
- (c) written evidence of the earnings or other income of the applicant or, if not employed, written evidence of that fact.

(4) At the hearing of a motion under paragraph (1), the court may order that the application be made by minute; and, in such a case, shall make an order for the lodging of answers to the minute in process within such period as the court thinks fit.

(5) Where the court makes an order under paragraph (4), any party—

- (a) may apply by motion for an interim order pending the determination of the application; and
- (b) shall give written intimation of any such motion to every other party not less than 7 days before the date on which the motion is enrolled.

#### **Applications after decree by persons over 18 years for aliment**

**49.44.**—(1) A person—

- (a) to whom an obligation of aliment is owed under section 1 of the Act of 1985<sup>(117)</sup>,
- (b) in whose favour an order for aliment while under the age of 18 years was made in an action to which this Part applies, and
- (c) who seeks, after attaining that age, an order for aliment against a person in that action against whom the order for aliment in his favour was made,

shall apply by minute in the process of that action.

(2) An application for interim aliment pending the determination of an application under paragraph (1) shall be made by motion.

(3) Where a decree has been pronounced in an application under paragraph (1) or (2), any application for variation or recall of any such decree shall be made by motion; and rule 49.43 (applications after decree relating to aliment) shall apply to a motion under this paragraph as it applies to a motion under that rule.

PART V ORDERS RELATING TO FINANCIAL PROVISION ETC.

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<sup>(117)</sup> 1985 c. 37.

**Application and interpretation of this Part**

- 49.45.**—(1) This Part applies to an action of divorce or declarator of nullity of marriage.
- (2) In this Part, “incidental order” has the meaning assigned in section 14(2) of the Act of 1985.

**Applications in actions to which this Part applies**

- 49.46.**—(1) An application for an order mentioned in paragraph (2) shall be made—
- (a) by a conclusion in the summons or defences, as the case may be, in an action to which this Part applies; or
  - (b) where the application is made by a person other than the pursuer or defender, by minute in that action.
- (2) The orders referred to in paragraph (1) are—
- (a) an order for financial provision within the meaning of section 8(3) of the Act of 1985;
  - (b) an order under section 16(1)(b) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision);
  - (c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and
  - (d) an order under section 13 of the Act of 1981<sup>(118)</sup> (transfer or vesting of tenancy of a matrimonial home).

**Applications in depending actions relating to incidental orders**

- 49.47.**—(1) In an action depending before the court to which this Part applies—
- (a) the pursuer or defender, notwithstanding rule 49.31(2) (application by defender for order for financial provision) and rule 49.46(1)(a) (application for order for financial provision in summons or defences), may apply by motion for an incidental order; and
  - (b) the court shall not be bound to determine such a motion if it considers that the application should properly be by a conclusion in the summons or defences, as the case may be.
- (2) In an action depending before the court to which this Part applies, an application under section 14(4) of the Act of 1985 for the variation or recall of an incidental order shall be made by motion.

**Applications relating to interim aliment**

- 49.48.**—(1) An application for, or for the variation or recall of, an order for interim aliment for the pursuer or defender shall be made by motion.
- (2) Written intimation of a motion under paragraph (1) shall be given not less than 7 days before the date on which the motion is enrolled.

**Applications relating to orders for financial provision**

- 49.49.**—(1) An application—
- (a) after final decree under any of the following provisions of the Act of 1985—
    - (i) section 8(1) for periodical allowance,
    - (ii) section 12(1)(b) (payment of capital sum or transfer of property),

<sup>(118)</sup> 1981 c. 59; section 13 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraph 23, by the Tenants' Rights, Etc. (Scotland) Amendment Act 1984 (c. 18), section 8(2), by the Family Law (Scotland) Act 1985, Schedule 1, paragraph 11 and by the Housing (Scotland) Act 1987 (c. 26), Schedule 23, paragraph 26.

- (iii) section 12(4) (variation of date or method of payment of capital sum or date of transfer of property), or
- (iv) section 13(4) (variation, recall, backdating or conversion of periodical allowance), or
- (b) after the grant or refusal of an application under—
  - (i) section 8(1) or 14(3) for an incidental order, or
  - (ii) section 14(4) (variation or recall of incidental order),

shall be made by motion in the process of the action to which the application relates.

(2) Rule 49.43 (applications after decree relating to aliment) shall apply to a motion under this rule as it applies to a motion under that rule.

### **Applications after decree relating to agreements or avoidance transactions**

**49.50.** An application for an order—

- (a) under section 16(1)(a) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision), or
- (b) under section 18 of the Act of 1985 (which relates to avoidance transactions),

made after final decree shall be made by minute in the process of the action to which the application relates.

### **PART VIAPPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS**

#### **Form of applications relating to avoidance transactions**

**49.51.—**(1) An application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions) by a party to a family action shall be made by including in the summons, defences or minute, as the case may be, appropriate conclusions, averments and pleas-in-law.

(2) An application for an order under section 18 of the Act of 1985 after final decree in a family action, shall be made by minute in the process of the action to which the application relates.

### **PART VIIFINANCIAL PROVISION AFTER OVERSEAS DIVORCE OR ANNULMENT**

#### **Interpretation of this Part**

**49.52.** In this Part—

- “the Act of 1984” means the Matrimonial and Family Proceedings Act 1984<sup>(119)</sup>;
- “order for financial provision” has the meaning assigned in section 30(1) of the Act of 1984;
- “overseas country” has the meaning assigned in section 30(1) of the Act of 1984.

### **Applications for financial provision after overseas divorce or annulment**

**49.53.—**(1) An application under section 28 of the Act of 1984<sup>(120)</sup> for an order for financial provision after a divorce or annulment in an overseas country shall be made by summons.

(2) An application for an order in an action to which paragraph (1) applies—

- (a) made before or after final decree under—
  - (i) section 13 of the Act of 1981<sup>(121)</sup> (transfer of tenancy of matrimonial home),
  - (ii) section 29(4) of the Act of 1984 for interim periodical allowance, or

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<sup>(119)</sup> 1984 c. 42.

<sup>(120)</sup> Section 28 was extended by section 29A (inserted by the Act of 1985, Schedule 1, paragraph 12) to an annulment.

<sup>(121)</sup> 1981 c. 51; section 13(2) was amended by the Act of 1985, Schedule 1, paragraph 11.

- (iii) section 14(4) of the Act of 1985 (variation or recall of an incidental order), or
- (b) made after final decree under—
  - (i) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum or date of transfer of property),
  - (ii) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion of periodical allowance), or
  - (iii) section 14(4) of the Act of 1985 (variation or recall of incidental order),
 shall be made by motion.

(3) Rule 49.43 (applications after decree relating to aliment) shall apply to a motion under this rule as it applies to a motion under that rule.

## PART VIIIACTIONS OF ALIMENT

### Interpretation of this Part

**49.54.** In this Part, “action of aliment” means a claim for aliment under section 2(1) of the Act of 1985.

### Undefended actions of aliment

**49.55.**—(1) Where a motion for decree in absence is enrolled in an action of aliment, the pursuer shall, on enrolling the motion, lodge all documentary evidence of the means of the parties available to him in support of the amount of aliment sought.

(2) Where the court requires any appearance for the pursuer, the cause shall be put out for hearing on the Motion Roll.

### Applications relating to aliment

**49.56.**—(1) An application for, or for the variation of, an order for interim aliment in an action of aliment depending before the court shall be made by motion.

(2) Written intimation of a motion under paragraph (1) shall be given not less than 7 days before the date on which the motion is enrolled.

(3) An application after final decree for the variation or recall of an order for aliment in an action of aliment shall be made by motion; and rule 49.43 (applications after decree relating to aliment) shall apply to a motion under this paragraph as it applies to a motion under that rule.

(4) A person—

- (a) to whom an obligation of aliment is owed under section 1 of the Act of 1985<sup>(122)</sup>,
- (b) in whose favour an order for aliment while made under the age of 18 years was made in an action of aliment, or
- (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,

shall apply by minute in the process of that action.

(5) An application for interim aliment pending the determination of an application under paragraph (4) shall be made by motion.

(6) Where a decree has been pronounced in an application under paragraph (3) or (4), any application for variation or recall of any such decree shall be made by motion; and rule 49.43

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(122) 1985 c. 37.

(applications after decree relating to aliment) shall apply to a motion under this paragraph as it applies to a motion under that rule.

### **Applications relating to agreements on aliment**

**49.57.** An application under section 7(2) of the Act of 1985 (variation or termination of agreement on aliment) shall be made by summons or in defences in a family action, as the case may be.

## **PART IX CAUSES RELATING TO PARENTAL RIGHTS**

### **Application and interpretation of this Part**

**49.58.**—(1) This Part applies to an application for any parental rights in a family action other than in an action of divorce, separation or declarator of nullity of marriage.

(2) In this Part, “the Act of 1973” means the Guardianship Act 1973(123).

### **Form of applications relating to parental rights**

**49.59.** Subject to any other provision in this Chapter, an application for an order for any parental rights in respect of a child shall be made—

- (a) by an action for parental rights,
- (b) by a conclusion in the summons or defences, as the case may be, in any other family action to which this Part applies; or
- (c) where the application is made by a person other than a party to an action mentioned in paragraph (a) or (b), by minute in that action.

### **Defenders in actions for parental rights**

**49.60.** In an action for parental rights, the pursuer shall call as a defender—

- (a) the parents or other parent of the child in respect of whom the order is sought;
- (b) any guardian of the child;
- (c) any person who has accepted the child into his family;
- (d) any person having the *de facto* custody of the child;
- (e) any local authority in whose care or under whose supervision the child is; and
- (f) in any case where there is no person falling within paragraphs (a) to (e), the Lord Advocate.

### **Applications relating to interim orders in depending actions**

**49.61.**—(1) An application, in an action depending before the court to which this Part applies, for, or for the variation or recall of, an order for interim custody or interim access shall be made by motion.

(2) Written intimation of a motion under paragraph (1) shall be given not less than 7 days before the date on which the motion is enrolled.

### **Care and supervision by local authorities**

**49.62.**—(1) Where the court is considering making an order under section 11(1) of the Act of 1973(124) (committal of care of child to a local authority or order that a child be under supervision of

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(123) 1973 c. 29.

(124) Section 11(1) was amended by the Act of 1975 (c. 72), section 48(3).

a local authority), it shall ordain one of the parties to intimate to the chief executive of the appropriate local authority (unless such a local authority is a party to the cause and represented at the hearing at which the issue arises)–

- (a) a copy of the pleadings (including any adjustments and amendments);
- (b) the terms of any relevant motion;
- (c) a notice of intimation in Form 49.62–A requiring any representations which the local authority wishes to make to the court to be made by minute in the process of the cause within such period as the court has determined.

(2) Before lodging a minute under paragraph (1)(c), the minuter shall intimate to every other party a copy of the minute and the date on which it will be lodged.

(3) Where the court makes, varies or recalls an order placing a child under the supervision of a local authority under section 11(1) of the Act of 1973, it shall send a copy of the interlocutor making the order and a notice in Form 49.62–B to the chief executive of that local authority.

(4) Where a child is subject to an order made under section 11(1) of the Act of 1973, any motion enrolled or minute lodged which relates to that child shall be intimated to the chief executive of the local authority concerned.

### **Applications after decree**

**49.63.**—(1) An application after final decree–

- (a) for the variation or recall of an order for any parental rights other than access, or
- (b) for, or for the variation or recall of, an order under section 11(1) of the Act of 1973 committing the care of a child to a local authority,

shall be made by minute in the process of the action to which it relates.

(2) Where a minute has been lodged under paragraph (1), any party–

- (a) may apply by motion for an interim order pending the determination of the application; and
- (b) shall intimate such a motion to every other party not less than 7 days before the date on which the motion is enrolled.

(3) An application after final decree for, or for the variation or recall of–

- (a) an order for access, or
- (b) an order under section 11(1) of the Act of 1973 for the supervision of a child by a local authority,

shall be made by motion; and rule 49.43 (applications after decree relating to aliment) shall apply to a motion under this paragraph as it applies to a motion under that rule.

PART XCAUSES UNDER THE MATRIMONIAL HOMES (FAMILY PROTECTION) (SCOTLAND) ACT 1981

### **Interpretation of this Part**

**49.64.** Unless the context otherwise requires, words and expressions used in this Part which are also used in the Act of 1981<sup>(125)</sup> have the same meaning as in that Act.

### **Form of applications under the Act of 1981**

**49.65.** Subject to any other provision in this Chapter, an application for an order under the Act of 1981 shall be made–

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(125) 1981 c. 59.



- (a) by an action for such an order;
- (b) by a conclusion in the summons or in defences, as the case may be, in any other family action; or
- (c) where the application is made by a person other than a party to an action mentioned in paragraph (a) or (b), by minute in that action.

### **Defenders in causes under the Act of 1981**

**49.66.** The applicant for an order under the Act of 1981 shall call as a defender—

- (a) where he is seeking an order as a spouse, the other spouse;
- (b) where he is a third party making an application under section 7(1)(**126**) (dispensing with consent of non-entitled spouse to a dealing), or section 8(1) (payment from non-entitled spouse in respect of loan), of the Act of 1981, both spouses; and
- (c) where the application is made under section 18 of the Act of 1981(**127**) (occupancy rights of cohabiting couples), or is one to which that section applies, the other partner.

### **Applications by motion under the Act of 1981**

**49.67.**—(1) An application under any of the following provisions of the Act of 1981 shall be made by motion:—

- (a) section 3(4) (interim order for regulation of rights of occupancy etc.);
- (b) section 4(6) (interim order suspending occupancy rights);
- (c) section 5 (variation and recall of orders regulating occupancy rights and of exclusion order);
- (d) section 15(1) (order attaching power of arrest), if made after application for matrimonial interdict;
- (e) section 15(2)(**128**) and (5) (variation and recall of matrimonial interdict and power of arrest); and
- (f) the proviso to section 18(1)(**129**) (extension of period of occupancy rights).

(2) Written intimation of a motion under paragraph (1) shall be given not less than 7 days before the date on which the motion is enrolled—

- (a) to the other spouse or partner, as the case may be;
- (b) where the motion is under paragraph (1)(a), (b), (c) or (f) and the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 49.8(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 49.15 (orders for intimation by the court).

### **Procedure for minutes**

**49.68.** Where an application is made by minute under rule 49.65(c) (form of application under the Act of 1981 by a person other than a party) and answers to that minute are lodged, the minute

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(**126**) Section 7(1) was amended by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 1, paragraph 37.

(**127**) Section 18 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 13(9).

(**128**) Section 15(2) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 64(a).

(**129**) The proviso to section 18(1) of the Act of 1981 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 13(9).

and answers shall not be included with the other pleadings in the action in any record, but shall be made up separately in the form of a record; and rule 49.33(5)(b) and (c) (lodging etc. of records) shall apply to that record as it applies to a record under that rule.

### **Sist of actions to enforce occupancy rights**

**49.69.** Unless the court otherwise directs, the sist of an action by virtue of section 7(4) of the Act of 1981 (where action raised by non-entitled spouse to enforce occupancy rights) shall apply only to such part of the action as relates to the enforcement of occupancy rights by a non-entitled spouse.

### **Certificates of execution of delivery of documents to chief constable**

**49.70.**—(1) Where an applicant is required to comply with section 15(4) or (5), as the case may be, of the Act of 1981 **(130)** (delivery of documents to chief constable where power of arrest attached to matrimonial interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form 49.70.

(2) Where a matrimonial interdict to which a power of arrest under section 15(1) of the Act of 1981 has been attached ceases to have effect by reason of a decree of divorce or declarator of nullity of marriage being pronounced by the court, the pursuer in the action of divorce or declarator of nullity of marriage, as the case may be, shall send—

- (a) to the chief constable of the police area in which the matrimonial home is situated, and
- (b) if the applicant spouse (within the meaning of section 15(6) of the Act of 1981) resides in another police area, to the chief constable of that other police area,

a copy of the interlocutor granting decree; and lodge in process a certificate of delivery in Form 49.70.

### **Evidence in causes under the Act of 1981**

**49.71.**—(1) For the purposes of proof in any application for an order under the Act of 1981, evidence by affidavit shall be admissible in place of parole evidence.

(2) Rule 36.8 (conditions for receiving certain written statements in evidence) shall not apply in a cause to which paragraph (1) of this rule applies.

### **PART XSIMPLIFIED DIVORCE APPLICATIONS**

### **Application and interpretation of, and directions under, this Part**

**49.72.**—(1) This Part applies to an application for divorce by a party to a marriage made in the manner prescribed in rule 49.73 (form of applications for simplified divorce) if, but only if—

- (a) that party relies on the facts set out in section 1(2)(d) (no cohabitation for two years with consent of defender to decree), or section 1(2)(e) (no cohabitation for five years), of the Act of 1976 **(131)**;
- (b) in an application under section 1(2)(d) of the Act of 1976, the other party consents to decree of divorce being granted;
- (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
- (d) there are no children of the marriage under the age of 16 years;
- (e) neither party to the marriage applies for an order for financial provision on divorce; and

**(130)** Section 15(4) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 64(b).

**(131)** 1976 c. 39.

- (e) neither party to the marriage suffers from mental disorder.
- (2) If an application ceases to be one to which this Part applies at any time before final decree, it shall be deemed to be abandoned and shall be dismissed.
- (3) In this Part, “simplified divorce application” means an application mentioned in paragraph (1).
- (4) The Principal Clerk shall give directions in relation to the administrative procedures to be followed on the lodging of a simplified divorce application for—
  - (a) the registration and service of such an application,
  - (b) having it brought before the court for consideration,
  - (c) in the event of decree of divorce being granted, for notification to the parties, and
  - (d) connected purposes;and such directions shall have effect subject to the provisions of this Part.

#### **Form of applications for simplified divorce**

- 49.73.—**(1) A simplified divorce application in which the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form 49.73–A and shall only be of effect if—
- (a) it is signed by the applicant; and
  - (b) the form of consent in Part 2 of Form 49.73–A is signed by the party to the marriage giving consent.
- (2) A simplified divorce application in which the facts set out in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on shall be made in Form 49.73–B and shall only be of effect if it is signed by the applicant.

#### **Lodging and registration of simplified divorce applications**

- 49.74.—**(1) The applicant shall send a simplified divorce application to the Deputy Principal Clerk with—
- (a) an extract or certified copy of the marriage certificate; and
  - (b) the appropriate fee.
- (2) Subject to the following rules of this Part, a simplified divorce application shall, on being registered in accordance with any directions made under rule 49.72(4), be treated as a summons in an action of divorce which has commenced.

#### **Warrants for service or intimation of simplified divorce applications**

- 49.75.—**(1) On registration of a simplified divorce application where the address of the other party to the marriage is known, a clerk of session shall grant warrant for service of the application.
- (2) On registration of an application in which the facts set out in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on where the address of the other party to the marriage is not known to the applicant and cannot reasonably be ascertained—
- (a) the Deputy Principal Clerk shall grant warrant for intimation of the application to—
    - (i) every child of the marriage, and
    - (ii) one of the next of kin of the other party who has reached the age of 16 years, unless the address of such person is not known and cannot reasonably be ascertained; and
  - (b) the application shall thereafter be placed before the Lord Ordinary for such order under rule 16.5 (service where address of person is not known) as he thinks fit.

(3) A warrant granted under paragraph (1) or (2)(a) shall be sufficient authority for such service and intimation.

### **Execution of service or intimation of simplified divorce applications**

**49.76.**—(1) Subject to the following paragraphs, service of intimation of a simplified divorce application on a warrant granted under rule 49.75 on any person whose address is known to the applicant shall be made—

- (a) by the Deputy Principal Clerk by post in accordance with rule 16.4 (service by post); or
- (b) by a messenger-at-arms.

(2) In the application of Part I of Chapter 16 (service and intimation) to service or intimation under this rule, the following provisions of that Part of that Chapter shall not apply:—

- rule 16.1(3) (which relates to a party lodging a certificate of service in process),
- rule 16.3(1)(b) (form of citation and certificate of service by messenger-at-arms),
- rule 16.4(2)(b) (service by post by agent),
- rule 16.4(4) (form of citation in service by post).

(3) In the case of service of a simplified divorce application on the other party to the marriage under paragraph (1), the person executing service shall complete a citation in Form 49.76–A (no cohabitation for two years with consent to divorce) or Form 49.76–B (no cohabitation for five years), as the case may be.

(4) In the case of intimation of a simplified divorce application on a person under paragraph (1), the person giving intimation shall complete a notice of intimation in Form 49.76–C.

(5) A certificate of service or intimation in Form 49.76–D (certificate by Deputy Principal Clerk) or Form 49.76–E (certificate by messenger-at-arms), as the case may be, shall be—

- (a) completed by the person executing service or giving intimation;
- (b) in the case of a certificate completed by a messenger-at-arms, sent to the Deputy Principal Clerk; and
- (c) attached to the application by the Deputy Principal Clerk.

### **Opposition to simplified divorce applications**

**49.77.**—(1) Any person on whom service or intimation of a simplified divorce application has been made may give notice by letter sent to the Deputy Principal Clerk within the period of notice that he challenges the jurisdiction of the court or opposes the grant of decree of divorce and giving the reasons for his opposition to the application.

(2) Where opposition to a simplified divorce application is made under paragraph (1), the court shall dismiss the application unless it is satisfied that the reasons given for the opposition are frivolous.

(3) The Deputy Principal Clerk shall give written intimation of the decision under paragraph (2) to the applicant and the respondent.

(4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

### **Evidence in simplified divorce applications**

**49.78.**—(1) Parole evidence shall not be given in a simplified divorce application.

(2) Rule 36.8 (conditions for receiving certain written statements in evidence) shall not apply in a simplified divorce application.

### **No reclaiming in simplified divorce applications**

**49.79.** A decree pronounced in a simplified divorce application may not be reclaimed against.

### **Applications after decree in simplified divorce applications**

**49.80.—**(1) Any application to the court after decree of divorce has been granted in a simplified divorce application which could have been made if it had been an action of divorce shall be made by minute.

(2) On lodging a minute under paragraph (1), the minuter shall lodge a process.

PART XI CHILD SUPPORT ACT 1991

### **Interpretation of this Part**

**49.81.** In this Part—

“the Act of 1991” means the Child Support Act 1991<sup>(132)</sup>;

“child” has the meaning assigned in section 55 of the Act of 1991;

“maintenance assessment” has the meaning assigned in section 54 of the Act of 1991.

### **Restriction of expenses**

**49.82.** Where the Secretary of State is called as a defender in an action for declarator of non-parentage or illegitimacy, and the Secretary of State does not defend the action, no expenses shall be awarded against the Secretary of State.

### **Effect of maintenance assessments**

**49.83.** The Deputy Principal Clerk shall, on receiving notification that a maintenance assessment has been made, cancelled or has ceased to have effect so as to affect an order of a kind prescribed for the purposes of section 10 of the Act of 1991, endorse on the interlocutor sheet relating to that order a certificate in Form 49.83–A or 49.83–B, as the case may be.

### **Effect of maintenance assessments on extracts relating to aliment**

**49.84.—**(1) Where an order relating to aliment is affected by a maintenance assessment, any extract of that order issued by the Extractor shall be endorsed with a certificate in Form 49.84–A.

(2) Where an order relating to aliment has ceased to have effect on the making of a maintenance assessment, and that maintenance assessment is later cancelled or ceases to have effect, any extract of that order issued by the Extractor shall be endorsed also with a certificate in Form 49.84–B.

## **CHAPTER 50**

### **CAUSES UNDER THE PRESUMPTION OF DEATH (SCOTLAND) ACT 1977**

### **Interpretation of this Chapter**

**50.1.** In this Chapter—

“the Act of 1977” means the Presumption of Death (Scotland) Act 1977<sup>(133)</sup>;

“action of declarator” means an action under section 1(1) of the Act of 1977;

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<sup>(132)</sup>1991 c. 48.

<sup>(133)</sup>1977 c. 27.

“missing person” has the meaning assigned in section 1(1) of the Act of 1977.

### **Parties to, and service and intimation of, actions for declarator**

**50.2.—**(1) The missing person shall be called as the defender in an action of declarator and, subject to paragraph (2), service on that person shall be executed in accordance with rule 16.5 (service where address of person is not known).

(2) The period of notice where service is executed in accordance with rule 16.5 by virtue of paragraph (1) of this rule shall be 21 days from the date of publication of the advertisement unless the court otherwise orders.

(3) In the application of rule 16.5(3)(a) (form of advertisement) to service under paragraph (1) of this rule, for the reference to Form 16.5 there shall be substituted a reference to Form 50.2–A.

(4) Subject to paragraph (6), in the summons in an action of declarator, the pursuer shall insert a warrant for intimation to—

- (a) the missing person's—
  - (i) spouse, and
  - (ii) children or, if he has no children, nearest relative known to the pursuer.
- (b) any person, including any insurance company, who so far as known to the pursuer, has any interest in the action, and
- (c) the Lord Advocate,

in the following terms:— “Warrant for intimation to (*name and address*) as [husband *or* wife, child *or* nearest relative] [a person having an interest in the presumed death] of (*name and last known address of the missing person*) and to the Lord Advocate.”.

(5) A notice of intimation in Form 50.2–B shall be attached to the copy of the summons where intimation is given on a warrant under paragraph (4).

(6) The court may, on the motion of the pursuer, dispense with intimation on a person mentioned in paragraph (4)(a) or (b).

(7) Notwithstanding the reference in subsection 5 of section 1 of the Act of 1977 (person interested in seeking determination or appointment not sought by pursuer) to lodging a minute, an application under that subsection shall be made by lodging defences containing a conclusion for the determination or appointment sought, averments in the answers to the condescendence in support of that conclusion and an appropriate plea-in-law.

(8) On lodging defences under paragraph (7), the defender shall, as well as complying with rule 4.6 (intimation of steps of process)—

- (a) send a copy of the defences by registered post or the first class recorded delivery service to each person to whom intimation of the action has been made under paragraph (4); and
- (b) lodge in process the Post Office receipt or certificate of posting of those defences.

### **Further advertisement and procedure**

**50.3.—**(1) The pursuer in an action of declarator shall, on the expiry of the period for lodging defences and without any defences having been lodged indicating knowledge of the present whereabouts of the missing person, apply by motion—

- (a) for such advertisement of the facts relating to the missing person set out in the summons in such newspapers or other publications as the court thinks fit; or
- (b) to dispense with further advertisement.

(2) At any time before the determination of the action, the court may, at its own instance or on the motion of a party, make such order for further advertisement as it thinks fit.

### **Applications for proof**

**50.4.** In an action of declarator where no defences have been lodged, the pursuer shall, after such further advertisement as may be ordered under rule 50.3, apply by motion for an order for a proof.

### **Applications for variation or recall of decrees**

**50.5.—**(1) An application under section 4(1) of the Act of 1977 (variation or recall of decree) shall be made by minute in the process of the action to which the application relates.

(2) On the lodging of such a minute, the minuter shall apply by motion for an order—

- (a) for service on the missing person, where his whereabouts have become known;
- (b) for intimation to those persons mentioned in rule 50.2(4) or to dispense with intimation to a person mentioned in rule 50.2(4)(a) or (b); and
- (c) for any answers to the minute to be lodged in process within such period as the court thinks fit.

(3) An application under section 4(3) of the Act of 1977~~(134)~~ (person interested seeking determination or appointment not sought by applicant for variation order) shall be made by lodging answers containing a crave for the determination or appointment sought.

(4) A person lodging answers containing a crave under paragraph (4) shall, as well as sending a copy of the answers to the minuter—

- (a) send a copy of the answers by registered post or the first class recorded delivery service to each person on whom service or intimation of the minute was ordered; and
- (b) lodge in process the Post Office receipt or certificate of posting of those answers.

### **Applications for remit from sheriff court**

**50.6.—**(1) An application by a person for a direction under section 1(6) or 4(4) of the Act of 1977 (remit of action or application to the court) shall be made by petition.

(2) An action of declarator or an application which is remitted to the court under section 1(6) or 4(4) of the Act of 1977 shall proceed in the Outer House as if it were an action brought or an application made, as the case may be, in that court.

### **Appointment of judicial factors**

**50.7.—**(1) Rule 61.6 (documents relating to judicial factories for Accountant of Court) shall apply to an application for the appointment of a judicial factor under section 2(2)(c) or section 4(2) of the Act of 1977 as it applies to a petition for the appointment of a judicial factor.

(2) Where, in an action of declarator or an application under section 4(1) of the Act of 1977 (variation or recall of decree), a judicial factor on the estate of the missing person is appointed, the process shall forthwith be transmitted to, and retained by, the Petition Department; and the judicial factory shall proceed as if the judicial factor had been appointed in a petition for that purpose.

(3) In the application of rule 50.5 (applications for variation or recall of decrees) to an application under section 4(1) of the Act of 1977 in a cause transmitted to the Petition Department under paragraph (2), for references to a minute there shall be substituted references to a note.

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(134) Section 4(3) of the Act of 1977 is amended by this Act of Sederunt, Schedule 3, paragraph 1.

## CHAPTER 51

### ACTIONS OF MULTIPLEPOINDING

#### Application of this Chapter

**51.1.** This Chapter applies to an action of multiplepoinding.

#### Parties to actions of multiplepoinding

**51.2.—**(1) An action of multiplepoinding may be brought by any person holding, or having an interest in, or claim on, the fund *in medio*, in his own name.

(2) The pursuer shall call as defenders to such an action—

- (a) all persons so far as known to him as having an interest in the fund *in medio*; and
- (b) where he is not the holder of the fund, the holder of that fund.

#### Condescence of fund *in medio*

**51.3.—**(1) Where the pursuer is the holder of the fund *in medio*, he shall include a detailed statement of the fund in the condescence annexed to the summons.

(2) Where the pursuer is not the holder of the fund *in medio*, the holder shall, unless he has lodged defences in accordance with rule 51.4 (objections to actions of multiplepoinding), lodge in process a condescence of the fund *in medio*, stating—

- (a) any claim or lien which he may profess to have on that fund, and
- (b) all persons so far as known to him as having an interest in the fund,

within 7 days after the date on which the summons has called.

#### Objections to actions of multiplepoinding

**51.4.—**(1) Any objection to an action of multiplepoinding on any ground shall be made by lodging defences.

(2) Where the holder of a fund *in medio* lodges defences under paragraph (1), he shall, notwithstanding his objection to the action, disclose all persons so far as known to him and reasonably ascertainable who have an interest in that fund.

(3) On defences being lodged under paragraph (1), the pursuer shall comply with rule 22.1 (making up open records); and the action shall proceed for the purpose of determining the objection stated in the defences as an ordinary action.

(4) Where the holder of the fund *in medio* has lodged defences, the court shall, on determining those defences without dismissing the action, ordain the holder of the fund to lodge a condescence of the fund *in medio* stating any claim or lien which he may profess to have on that fund, within such period as it thinks fit.

#### Advertisement for objections to condescence and claims

**51.5.—**(1) The pursuer may—

- (a) after the expiry of the period for lodging defences without defences having been lodged, or
- (b) where defences have been lodged, after those defences have been repelled and, where an order is made under rule 51.4(4), the condescence of the fund has been lodged,

apply by motion for the orders mentioned in paragraph (2).



- (2) The orders referred to in paragraph (1) are—
  - (a) the ordaining of any objection to the condescendence of the fund *in medio* and claims on the fund to be lodged within such period as the court thinks fit; and
  - (b) advertisement of the call for any objection and claims in such newspapers or other publications and for such number of insertions as the court thinks fit.
- (3) An advertisement ordered under paragraph (1) shall be in Form 51.5.

#### **Form of objection to condescendence and claims**

**51.6.**—(1) An objection to a condescendence of the fund *in medio* shall be made by lodging defences.

(2) A claim on the fund *in medio* shall be made in the form of a condescendence, claim and appropriate pleas-in-law.

(3) On lodging a condescendence and claim, a claimant shall lodge his ground of debt and all other documents supporting his claim.

- (4) Where a person intends to—
  - (a) object to the condescendence on the fund *in medio*, and
  - (b) make a claim on the fund,

he shall lodge defences and a separate condescendence and claim.

#### **Procedure following call for objections**

**51.7.**—(1) Where defences are lodged under rule 51.6 (form of objection to condescendence and claims), an open record shall be made up on the condescendence and such objection, and the pursuer shall comply with rule 22.1 (making up open records); and the cause shall proceed for the purposes of determining the objection as an ordinary action.

(2) No order shall be pronounced in relation to any claims on the fund *in medio* until any defences under rule 51.6 have been disposed of and the condescendence of the fund *in medio* approved.

(3) Where the court disposes of defences, or where no defences have been lodged under rule 51.6, the court shall—

- (a) approve the condescendence of the fund *in medio*, subject to such alteration as it may make in disposing of any objection;
- (b) find the pursuer, or where he is not the holder of the fund, the holder, liable only in once and single payment;
- (c) make such further order, if any, for claims as it thinks fit.

#### **Advertisement of dependence of actions**

**51.8.** The court may, at its own instance or on the motion of a party, at any time order—

- (a) such advertisement of the dependence of the action as it thinks fit; and
- (b) intimation of the dependence of the action to any person not called as a defender.

#### **Evidence of advertisement and intimation**

**51.9.** Where the court orders advertisement or intimation under this Chapter, the party required to make such advertisement or intimation shall lodge in process, as the case may be—

- (a) a copy of the newspaper or other publication containing the advertisement or a certificate of publication by the publisher stating the date of publication and the text of the advertisement; or
- (b) the certificate of intimation.

#### **Consignation of fund and discharge of holder**

**51.10.**—(1) On approval of the condescendence of the fund *in medio*, the holder of the fund may apply by motion for—

- (a) a finding that he is entitled to his expenses out of the fund; and
- (b) authority to consign the fund into court, after deduction of his expenses as taxed by the Auditor.

(2) Where consignation is made by virtue of an authority under paragraph (1)(b), the holder of the fund may apply by motion for his exoneration and discharge.

#### **Claims not timeously lodged**

**51.11.**—(1) A claimant who fails to lodge his claim within the period specified in the order under rule 51.5(2)(a) (order for any objections and for claims) may apply by motion to have his claim received.

(2) The court may allow such a claim to be received on such conditions as to expenses, if any, as it thinks fit.

#### **Procedure following approval of fund *in medio***

**51.12.**—(1) After the condescendence of the fund *in medio* has been approved, and it appears that there is no competition, the court may, on the motion of any claimant, rank and prefer the parties who have lodged claims.

(2) After the condescendence of the fund *in medio* has been approved and where there is competition—

- (a) any party may apply by motion for an order to print a record in the competition and, on such an order being made, an open record shall be made up on the condescendences and claims and the pursuer shall comply with rule 22.1 (making up open records); and the action shall proceed for the purpose of determining the competition as an ordinary action; and
- (b) during the period of adjustment, a claimant may adjust his condescendence to state any objection to any other claim.

(3) When pronouncing any decree of ranking on the fund *in medio*, the court may determine any question of expenses; and, where it finds any party entitled to expenses out of the fund *in medio*, notwithstanding rule 42.1(1)(b) (decerniture for expenses as taxed) it shall not at the same time decern for payment of those expenses.

#### **Decrees for payment**

**51.13.**—(1) No decree for payment out of the fund *in medio*, whether consigned into court or not, following an order for ranking (whether for aught yet seen or otherwise) shall be made until—

- (a) all accounts of expenses found payable out of the fund *in medio* have been taxed and the report of the Auditor on those accounts have been approved; and
- (b) the certificate referred to in rule 8.1(1)(b) (Inland Revenue certificate of taxes or duties paid) has been lodged.

(2) Where the fund *in medio* has been consigned into court, any decree for payment out of the fund shall include—

- (a) warrant to the bank, on production of a certified copy of the interlocutor granting decree, to pay to each party the sums for which he has been ranked; and
- (b) warrant to the Accountant of Court, on production of a certified copy of the interlocutor granting decree, to endorse and deliver the consignment receipt to the bank in order that the payments may be made.

### **Reclaiming by claimant against ranking for aught yet seen**

**51.14.**—(1) A claimant, who has failed to lodge his claim on the fund *in medio* before a ranking for aught yet seen, may reclaim against the interlocutor making such ranking at any time while the action is depending.

(2) The Division of the Inner House before which a motion for review of an interlocutor is brought under paragraph (1) may recall that interlocutor and remit the cause to the Lord Ordinary to receive the claim on such conditions as to expenses, if any, as it thinks fit.

### **Exoneration of holder where no consignment**

**51.15.** Where the holder of the fund *in medio* has not been exonerated and discharged, he may—

- (a) following a decree for payment,
- (b) on production of the receipts of the persons entitled to payment under that decree, and
- (c) on consignment of any balance of the fund remaining,

apply by motion for his exoneration and discharge.

## *CHAPTER 52*

### *ACTIONS OF PROVING THE TENOR*

#### **Parties to action of proving the tenor**

**52.1.** In an action of proving the tenor, the pursuer shall call as a defender—

- (a) any person having an interest in the document to be proved; or
- (b) where only the pursuer has such an interest, the Lord Advocate as representing the public interest.

#### **Lodging of supporting evidence**

**52.2.** On lodging the summons for signeting, supporting documentary evidence of the tenor of the document to be proved in an action of proving the tenor, so far as in the possession or control of the pursuer, shall be lodged in process.

#### **Proof in undefended actions**

**52.3.** Where no appearance has been entered or no defences have been lodged in an action of proving the tenor, the pursuer shall apply by motion for an order for proof.

## CHAPTER 53

### ACTIONS OF REDUCTION

#### Conclusions for suspension etc.

**53.1.** In an action where real or personal diligence may proceed on a document sought to be reduced in the action, the pursuer may include in the summons, in relation to that diligence, conclusions for suspension, interdict, and liberation as circumstances may require.

#### Intimation to clerk of inferior court or tribunal

**53.2.—**(1) In an action in which reduction of a decree, order, decision or warrant of whatever nature of an inferior court or tribunal is concluded for, intimation of the action shall be made to the clerk of that court or tribunal.

(2) In an action to which paragraph (1) applies, the pursuer shall insert a warrant for intimation in the summons in the following terms:— “Warrant to the (*designation of the clerk of the relevant court or tribunal*) being the court [*or tribunal*] in which the decree [*or as the case may be*] was granted [*or made*] which is sought to be reduced in this action.”.

(3) A notice of intimation in Form 53.2 shall be attached to the copy of the summons where intimation is given on a warrant under paragraph (2).

(4) An interlocutor granting reduction in an action to which paragraph (1) applies shall include a direction to the clerk of court to send a copy of the interlocutor to the clerk of the inferior court or tribunal to whom intimation of the action was made.

(5) Where such an interlocutor is reclaimed against or appealed to the House of Lords, the reclaimer or appellant, as the case may be, shall give written intimation of that fact to the clerk of the inferior court or tribunal forthwith after the reclaiming motion has been marked or the petition of appeal to the House of Lords has been lodged, as the case may be.

(6) The interlocutor disposing of such a reclaiming motion or giving effect to the judgment of the House of Lords shall include a direction to the clerk of court to send a copy of that interlocutor to the clerk of the inferior court or tribunal to whom intimation of the action was made.

#### Objection by defenders to production

**53.3.—**(1) Where a defender objects to satisfying a conclusion for production of a document sought to be reduced in an action, he shall state in his defences—

- (a) his grounds of objection; and
- (b) any defence on the merits of the action.

(2) Where a defender objects to satisfying such a conclusion, he shall not be required to satisfy production at the time of lodging his defences.

(3) Where the court repels or reserves an objection to satisfying a conclusion for production, it shall, in the interlocutor repelling or reserving such objection, ordain the defender to satisfy production within such period as it thinks fit.

(4) Where—

- (a) the defender obtempers an order made under paragraph (3), he shall, on lodging in process any such document as is in his possession or within his control, apply by motion to hold production either satisfied or satisfied in respect of the document lodged, as the case may be; or
- (b) the defender fails to obtemper an order made under paragraph (3), the pursuer may apply by motion for decree by default.

### **Production by defenders where no objection**

**53.4.**—(1) Where a defender does not state an objection against satisfying a conclusion for production of a document sought to be reduced, he shall—

- (a) on lodging his defences, lodge in process any such document as is in his possession or within his control; and
- (b) apply by motion to hold production either satisfied or satisfied in respect of the document lodged.

(2) Where a defender—

- (a) does not state an objection against satisfying a conclusion for production, and
- (b) fails to comply with paragraph (1)(a),

the pursuer may apply by motion for decree by default.

### **Pursuers to satisfy production**

**53.5.**—(1) Where a document, in respect of which reduction is concluded for, is in the possession or the control of the pursuer, he shall lodge it in process on lodging the summons for calling.

(2) The court may, at any stage of an action, ordain the pursuer to satisfy a conclusion for production of a document sought to be reduced.

(3) The pursuer shall, on lodging a document under paragraph (1) or (2), apply by motion to hold production satisfied.

(4) Where a pursuer fails to obtemper an order made under paragraph (2), the defender may apply by motion for dismissal of the action.

### **Joint minutes for reduction**

**53.6.** In an action in which a conclusion for production has not been satisfied and parties enter into a joint minute in terms of which decree of reduction is to be pronounced—

- (a) the document to be reduced shall be lodged in process with the joint minute; and
- (b) the terms of the joint minute shall be such as to enable the court, when interponing authority to it, to hold production satisfied.

### **Production satisfied by copies**

**53.7.** The court may, with the consent of the parties, hold production satisfied by a copy of the document sought to be reduced.

### **Challenge of deeds or writings *ope exceptionis***

**53.8.** Where, in an action, a deed or other writing is founded on by a party, any objection to it may be stated by way of exception, unless the court considers that the objection would be more conveniently disposed of in a separate action of reduction.

*CHAPTER 54**APPLICATIONS AND REFERENCES UNDER THE DEFAMATION ACT 1952***Form of certain references**

**54.1.**—(1) A reference to the court under section 4(4)(a) of the Defamation Act 1952(**135**) (which relates to offers of amends) where proceedings for defamation have been taken shall be made by minute lodged in the process of those proceedings.

(2) A minute lodged under paragraph (1) shall—

(a) set out—

(i) the questions to be determined by the court;

(ii) the contentions of the minuter; and

(b) have appended to it a copy of the offer of amends and written declaration.

**Other applications**

**54.2.** A reference under section 4(4) of the Defamation Act 1952, or any application under that section other than a reference, where no proceedings for defamation have been taken, shall be made by petition.

*CHAPTER 55**CAUSES RELATING TO INTELLECTUAL PROPERTY***Application and interpretation of this Chapter**

**55.1.**—(1) This Chapter applies to any cause—

(a) under the Trade Marks Act 1938(**136**);

(b) under the Patents Act 1949(**137**);

(c) under the Registered Designs Act 1949(**138**);

(d) under the Defence Contracts Act 1958(**139**);

(e) under the Patents Act 1977(**140**);

(f) under the Copyright, Designs and Patents Act 1988(**141**);

(g) for the determination of a question relating to a patent under the inherent jurisdiction of the court.

(2) In this Chapter—

“the Act of 1938” means the Trade Marks Act 1938;

“the Act of 1949” means the Patents Act 1949;

“the Act of 1977” means the Patents Act 1977;

“the Comptroller” means the Comptroller-General of Patents, Designs and Trade Marks;

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(135) 1952 c. 66.

(136) 1938 c. 22.

(137) 1949 c. 87.

(138) 1949 c. 88; this Act is set out as amended in the Act of 1988, Schedule 4.

(139) 1958 c. 38.

(140) 1977 c. 37.

(141) 1988 c. 48.

- “the Copyright Act of 1988” means the Copyright, Designs and Patents Act 1988;
- “existing patent” means a patent mentioned in section 127(2)(a) or (c) of the Act of 1977;
- “the Journal” means the journal published in accordance with rules made under section 123(6) of the Act of 1977;
- “patent” means an existing patent or a patent under the Act of 1977;
- “patentee” has the meaning assigned to it in section 101(1) of the Act of 1949.

### **Proceedings before patents judge**

**55.2.** All proceedings in the Outer House in a cause to which this Chapter applies shall be brought before a judge of the court nominated by the Lord President as the patents judge or, where the patents judge is not available, any other judge of the court (including the vacation judge).

### **Pre-proof hearings**

**55.3.—**(1) In a cause under the Act of 1949 or the Act of 1977, not later than 6 weeks after—

- (a) in a cause initiated by summons, the closing of the record, or
- (b) in a cause initiated by petition, the expiry of any period of adjustment allowed,

there shall be a pre-proof hearing on such date as the Keeper of the Rolls shall, subject to paragraph (2), fix.

(2) The Keeper of the Rolls shall consult the patents judge and the parties before fixing a date for a pre-proof hearing under paragraph (1) and shall, unless the parties otherwise agree, give 14 days' notice of such a date.

(3) Not less than 7 days before the pre-proof hearing, each party shall lodge in process and send to every other party, a notice of any issue sought to be raised on a preliminary plea against any other party.

(4) At a pre-proof hearing, the court shall consider—

- (a) whether to direct that any issue of law or fact (including validity, infringement, an application for amendment of a patent under section 75 of the Act of 1977, damages or other remedies sought) should be determined separately from any other issue;
- (b) whether the cause should be appointed to the Procedure Roll for consideration of any - preliminary plea, and may order—

- (i) a party, whose plea is to be considered, to lodge in process a concise note of argument consisting of numbered paragraphs stating the grounds on which he proposes to submit that the preliminary plea should be sustained, and to send a copy of it to every other party concerned within such period as the court thinks fit;
  - (ii) any other party to lodge in process a note of argument in reply and to send a copy of it to every other party, within a specified period thereafter; and

(c) whether—

- (i) to remit to the Patent Office for a report and what the terms of the remit should be;
  - (ii) to order a party to make available to any other party a copy of any documents;
  - (iii) to appoint an assessor or assessors;
  - (iv) a meeting of experts should be held for the purpose of producing a joint report on the general state of the art;

- (v) to order each party to make available to every other party a copy of any precognitions, or reports, of skilled witnesses on any matter which is not the subject of a joint report under head (iv) and the time by which they were to be made available;
  - (vi) to order the advisers of the parties to meet for the purpose of agreeing and preparing a single paginated inventory of productions and, if necessary, to fix a date by which this is to be done;
  - (vii) to make an order regulating the making of any experiment, inspection, test or report;
  - (viii) to fix a date by which a notice under rule 55.4 (notices to admit and notices of non-admission) shall be served; and
  - (ix) to fix the time within which, notwithstanding rule 36.3 (lodging productions for proofs), any production shall be lodged or within which any other step may be taken.
- (5) at a pre-proof hearing, the court may—
- (a) continue the hearing to another date;
  - (b) without prejudice to paragraph (6), order a further pre-proof hearing on a specified date or a date to be afterwards fixed; or
  - (c) give such further directions as to the conduct of the cause as it thinks fit.
- (6) The court may order a further pre-proof hearing at any time of its own motion or on the motion of any party.
- (7) Where a party intends to seek a particular order at a pre-proof hearing, he shall give written intimation, to the court and to every other party not less than 7 days before the hearing, of the order sought and the reason for seeking it.

#### **Notices to admit and notices of non-admission**

**55.4.—**(1) In a cause under the Act of 1949 or the Act of 1977, at any time after defences or answers have been lodged but not later than such date as has been fixed by the court at a pre-proof hearing, a party may intimate to any other party to the cause 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;
    - (ii) a true copy of an original and properly authenticated document; or
    - (iii) correct in the particular respects specified in the notice.
- (2) Where a party on whom a notice has been served under paragraph (1)—
- (a) does not admit any of the facts specified in the notice, or
  - (b) does not admit, or seeks to challenge, the authenticity or correctness of any document specified in the notice,

he shall, within 28 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 serve a notice of non-admission under paragraph (2) shall be deemed to have admitted the matters specified in the notice intimated to him under paragraph (1); and such matters may be used in evidence at a proof if otherwise admissible in evidence unless the court, on special cause shown, otherwise directs.

(4) A party who fails to intimate a notice of non-admission under paragraph (2) within 28 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 matters specified in that notice unless the court otherwise directs.

(5) The party intimating 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 of 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).

(7) The court may, at any time, allow a party to amend or withdraw an admission made by him on such conditions, if any, as it thinks fit.

### **Applications for leave to amend specifications**

**55.5.**—(1) A patentee or the proprietor of a patent intending to apply to the court under section 30 of the Act of 1949 or section 75 of the Act of 1977 (which provide for leave to amend specification) shall give notice of his intention to the Comptroller and at the same time deliver to him a form of advertisement—

- (a) identifying the proceedings depending before the court in which it is intended to apply for such leave;
- (b) giving particulars of the amendment sought;
- (c) stating the address of the applicant for service within the United Kingdom; and
- (d) stating that any person intending to oppose the amendment who is not a party to the proceedings must, within 28 days after the appearance of the advertisement, give written notice of that intention to the applicant and to the Deputy Principal Clerk.

(2) On receipt of a form of advertisement under paragraph (1), the Comptroller shall cause the advertisement to be inserted once in the Journal.

(3) A person who gives notice of intention to oppose the amendment in accordance with the advertisement shall be entitled to be heard on the application subject to any order of the court as to expenses.

(4) Within 35 days after the appearance of the advertisement, the applicant shall make his application under section 30 of the Act of 1949 or section 75 of the Act of 1977, as the case may be, by motion intimated, with a copy of the specification certified by the Comptroller and showing in coloured ink the amendment sought, to—

- (a) the Comptroller;
- (b) every other party; and
- (c) any person who has intimated his intention to oppose the amendment.

(5) On enrolling a motion under paragraph (4), the applicant shall lodge in process—

- (a) a copy of the Journal containing the advertisement referred to in paragraph (2); or
- (b) a certificate of publication by the publisher stating the date of publication and the text of the advertisement.

(6) At the hearing of a motion under paragraph (4)—

- (a) where there is no opposition to the amendment sought, the court may—
  - (i) grant the application; or
  - (ii) make such order for further procedure as it thinks fit; or
- (b) where there is opposition to the amendment sought, the court shall ordain the applicant to lodge a minute setting out the grounds of his application within such period as the court thinks fit, and allow any party or person opposing the amendment to lodge answers to the minute in process within a specified period.

(7) Within 7 days after the expiry of the time for lodging answers under paragraph (6)(b), the applicant shall apply by motion for an order for further procedure.

(8) On a motion under paragraph (7), the court may—

- (a) grant the application;
- (b) determine whether the motion shall be heard at the same time as the hearing of the cause depending before the court relating to the patent in question or at a different time;
- (c) determine the manner in which evidence shall be given and, if the evidence is to be given by affidavit, the period within which affidavits must be lodged; or
- (d) make such other order for further procedure as it thinks fit.

(9) Where the court allows the specification to be amended, the applicant shall forthwith—

- (a) lodge with the Comptroller a certified copy of the interlocutor; and
- (b) if so required by the court or the Comptroller, leave at the Patent Office a new specification and drawings as amended, prepared in compliance with the Act of 1949 or the Act of 1977, as the case may be, and any rules made under either of those Acts.

(10) On receiving the certified copy interlocutor under paragraph (9), the Comptroller shall cause it to be inserted at least once in the Journal.

### **Applications for revocation of patents**

**55.6.**—(1) Subject to paragraph (2), an application under section 72 of the Act of 1977<sup>(142)</sup> (revocation of a patent) shall be made by petition.

(2) Where an action is depending before the court between the same parties in relation to the patent in question, such an application may be made by counterclaim in that action; and Chapter 25 (counterclaims) shall apply to any such counterclaim.

### **Proceedings for infringement**

**55.7.**—(1) In any cause in which it is alleged that a patent has been infringed, the person alleging infringement must aver in the petition or summons, as the case may be, particulars of the infringement relied on, showing which of the claims in the specification of the patent are alleged to have been infringed and giving at least one instance of each type of infringement alleged.

(2) Where, as a defence to such an allegation, it is averred that—

- (a) at the time of the infringement there was in force a contract or licence relating to the patent made by or with the consent of the person alleging the infringement, and
- (b) containing a condition or term void by virtue of section 44 of the Act of 1977,

the person stating that defence must aver particulars of the date of, and the parties to, each such contract or licence and particulars of each such condition or term.

### **Objections to validity of patent**

**55.8.**—(1) A person who—

- (a) brings an action under section 32 of the Act of 1949<sup>(143)</sup> or presents a petition under section 72 of the Act of 1977 for revocation of a patent, or
- (b) being a party to an action relating to a patent—
  - (i) challenges the validity of the patent, or

<sup>(142)</sup> Section 72 was amended by the Copyright Act of 1988 (c. 48), Schedule 5, paragraph 8 and Schedule 8.

<sup>(143)</sup> Section 32 of the Act of 1949 was amended by the Act of 1977 (c. 37), section 127 and Schedule 1, paragraph 6 and Schedule 6.

- (ii) applies by counterclaim in the action for revocation of the patent, shall aver the grounds on which the validity of the patent is challenged.
- (2) Where the grounds in respect of which averments are required under paragraph (1) include—
  - (a) want of novelty, or
  - (b) want of any inventive step,the averments shall include the matters mentioned in paragraph (3).
- (3) The matters referred to in paragraph (2) are—
  - (a) the manner, time and place of every prior publication or use relied on; and
  - (b) where prior use is alleged—
    - (i) specification of the name of every person alleged to have made such use;
    - (ii) an averment as to whether such use is alleged to have continued until the priority date of the claim in question or of the invention, as the case may be, and, if not, the earliest and latest date on which such use is alleged to have taken place;
    - (iii) a description accompanied, if necessary, by drawings sufficient to identify such use; and
    - (iv) if such use relates to machinery or apparatus, an averment as to whether the machinery or apparatus is in existence and where it can be inspected.
- (4) Where, in the case of an existing patent—
  - (a) one of the grounds on which the validity of the patent is challenged is that the invention, so far as claimed in any claim of the complete specification, is not useful, and
  - (b) it is intended, in connection with that ground, to rely on the fact that an example of the invention which is the subject of any such claim cannot be made to work, either at all or as described in the specification,

the averments shall specify that fact and identify each such claim and shall include particulars of each such example, specifying the respects in which it is alleged that it does not work or does not work as described.

#### **Determination of question or application where Comptroller declines to deal with it**

##### **55.9. Where the Comptroller—**

- (a) declines to deal with a question under the following sections of the Act of 1977:—
  - (i) section 8 (entitlement to patents etc.),
  - (ii) section 12 (entitlement to foreign and convention patents),
  - (iii) section 37(**144**) (right to patent after grant), or
  - (iv) section 61(3) (infringement of patent),
- (b) declines to deal with an application under section 40 of that Act (compensation of employees for certain inventions), or
- (c) issues a certificate under section 72(7) of that Act (revocation of patent should be determined by the court),

any person entitled to do so may, within 28 days after the decision of the Comptroller, apply by petition to have the question or application, as the case may be, determined by the court.

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(144) Section 37 of the Act of 1977 was amended by the Copyright Act of 1988 (c. 48), Schedule 5, paragraph 9.

**Applications by employees for compensation under section 40 of the Act of 1977**

**55.10.**—(1) An application under section 40(1) or (2) of the Act of 1977 (compensation of employees for certain inventions) shall be made by summons commenced within the period which begins when the relevant patent is granted and which expires one year after it has ceased to have effect.

(2) Where a patent has ceased to have effect by reason of a failure to pay any renewal fee within the period prescribed for the payment of that fee and an application is made to the Comptroller under section 28 of the Act of 1977(**145**) (restoration of lapsed patent), the period within which the application by summons is to be made shall—

- (a) if restoration is ordered, continue as if the patent has remained continuously in effect; or
- (b) if restoration is refused, be treated as if expiring one year after the patent ceased to have effect or 6 months after the refusal, whichever is the later.

**Proceedings for determination of certain disputes**

**55.11.** A reference or application under any of the following provisions shall be made by petition:—

- (a) a reference under—
  - (i) section 48 of the Act of 1949 or section 58(**146**) of the Act of 1977 (which provide for disputes as to Crown use);
  - (ii) paragraph 3 of Schedule 1 to the Registered Designs Act 1949(**147**) (disputes as to Crown use);
  - (iii) section 4 of the Defence Contracts Act 1958(**148**) (payments for use and determination of disputes);
  - (iv) section 251(1) (design right matters), or section 252(1) (disputes as to Crown use), of the Act of 1988(**149**); and
- (b) an application under section 45(3) of the Act of 1977 (variation of certain contracts).

**Applications for rectification of Register of Designs or Patents**

**55.12.**—(1) Subject to paragraph (2), an application under section 20(1) of the Registered Designs Act 1949 (rectification of Register of Designs) or section 34(1) of the Act of 1977 (rectification of Register of Patents) shall be made by petition.

(2) Where an action for infringement of a patent is depending before the court, an application mentioned in paragraph (1) may be made by a counterclaim in that action; and Chapter 25 (counterclaims) shall apply to any such counterclaim.

(3) In an application under section 34(1) of the Act of 1977, the applicant shall intimate the application to the Comptroller, who may lodge answers in process and be heard on the application.

**Counterclaim for rectification of Register of Designs**

**55.13.**—(1) Where, in any cause, an infringement of the copyright in a registered design is alleged, the party against whom the allegation is made may—

(**145**) Section 28 of the Act of 1977 was amended by the Copyright Act of 1988 (c. 48), Schedule 5, paragraph 6 and Schedule 8.

(**146**) Section 58 was amended by the Copyright Act of 1988, Schedule 5, paragraph 16.

(**147**) 1949 c. 88; paragraph 3 of Schedule 1 was amended by the Copyright Act of 1988 (c. 48), Schedule 3, paragraph 37(3) and Schedule 8. The text of the Registered Designs Act 1949 as amended is set out in Schedule 4 to the Copyright Act of 1988.

(**148**) 1958 c. 38.

(**149**) 1988 c. 48.

- (a) put in issue the validity of the registration of that design;
- (b) counterclaim for an order that the Register of Designs be rectified by cancelling or varying the registration; or
- (c) put in issue such validity and make such a counterclaim.

(2) A party to any such cause who counterclaims for an order that the Register of Designs be rectified shall intimate to the Comptroller a copy of the counterclaim; and the Comptroller may, or (if ordered to do so by the court) shall, lodge answers in process and be heard in any such cause.

(3) Chapter 25 (counterclaims) shall apply to any such counterclaim.

### **Appeals from Comptroller**

**55.14.**—(1) Subject to the following paragraphs of this rule, an appeal under the Act of 1949, the Act of 1977 or the Copyright Act of 1988 from a decision of the Comptroller shall be heard in the Outer House by the patents judge.

(2) In the application of Part III of Chapter 41 (appeals in Form 49.19) by virtue of rule 41.43 (appeals to Lord Ordinary) to an appeal under paragraph (1) of this rule—

- (a) for references to the Inner House there shall be substituted references to the patents judge; and
- (b) the following paragraphs of this rule shall apply.

(3) Subject to paragraph (4), an appeal shall be lodged in the General Department—

- (a) in the case of a decision on a matter of procedure, within 14 days after the date of the decision; and
- (b) in any other case, within 6 weeks after the date of the decision.

(4) Except with the leave of the court, no appeal under this rule shall be entertained unless it has been lodged within the period specified in paragraph (3) or within such further period as the Comptroller may allow on an application made to him before the expiry of that period.

(5) Any determination by the Comptroller that a decision is on a matter of procedure shall be treated as being itself a decision on a matter of procedure.

(6) In the application of paragraph (1) of rule 41.21 (orders for service and answers), the order under that paragraph shall include a requirement to—

- (a) intimate the appeal to the Comptroller; and
- (b) serve the appeal on every other party to the proceedings before the Comptroller.

(7) On receiving intimation of the appeal, the Comptroller shall forthwith transmit to the Deputy Principal Clerk all the papers relating to the matter which is the subject of the appeal.

(8) A respondent who, not having appealed from the decision of the Comptroller, wishes to contend at the hearing of the appeal that the decision or the grounds of the decision should be varied shall—

- (a) specify the grounds of that contention in his answers; and
- (b) intimate those answers to the Comptroller and to every other party to the proceedings before the Comptroller.

(9) Intimation of the date of the hearing of the appeal shall be made to the Comptroller by the appellant not less than 7 days before that date, unless the court otherwise directs.

(10) An appeal under this rule shall be a re-hearing and the evidence led on appeal shall be the same as that led before the Comptroller; and, except with the leave of the court, no further evidence shall be led.

**Intimation to Comptroller of reclaiming motion**

**55.15.** The marking of a reclaiming motion from a decision of the patents judge on an appeal from a decision of the Comptroller shall be intimated by the reclamer to the Comptroller as well as to the other parties to the appeal.

**Communication of information to European Patent Office**

**55.16.—**(1) The court may authorise the communication to the European Patent Office or the competent authority of any country which is a party to the European Patent Convention<sup>(150)</sup> of any such information in the records of the court as the court thinks fit.

(2) An application for such information shall be made by letter addressed to the Deputy Principal Clerk.

(3) Before complying with an application for the disclosure of information under paragraph (1), any person appearing to be affected by the application shall be given the opportunity of making representations to the patents judge in chambers on the question whether the information should be disclosed; and the decision of the patents judge shall be final and not subject to review.

(4) In this rule, “the European Patent Convention” has the meaning assigned in section 130(1) and (6) of the Act of 1977<sup>(151)</sup>.

**Applications under the Act of 1938 or the Copyright Act of 1988**

**55.17.—**(1) An application under section 99, 195 or 230 of the Copyright Act of 1988 (which provide for orders for delivery in respect of infringement of copyright, rights in performances and design rights) shall be made—

- (a) in a cause depending before the court, by motion; or
- (b) where there is no depending cause, by petition.

(2) An application under section 114, 204 or 231 of the Copyright Act of 1988 (which provide for orders for disposal in respect of infringement of copyright, rights in performances and design rights) shall be made—

- (a) in a cause depending before the court, by motion; or
- (b) where there is no depending cause, by petition; and

the applicant shall intimate the application to all persons, so far as known to the petitioner or reasonably ascertainable, having an interest in the copy, article, recording or other thing which is the subject of the application, including any person in whose favour an order could be made in respect of the copy, article, recording or other thing under any of the said sections of the Copyright Act of 1988 or section 58C of the Act of 1938<sup>(152)</sup> (order for disposal in respect of infringement of trademarks).

(3) An application under section 58C of the Act of 1938 shall be made by petition and the petitioner shall intimate the petition to all persons, so far as known to the petitioner or reasonably ascertainable, having an interest in the goods or material which are the subject of the application, including any person in whose favour an order could be made in respect of the goods or material under that section or section 114, 204 or 231 of the Copyright Act of 1988.

**Applications for leave to proceed**

**55.18.—**(1) Where leave of the court is required under the Copyright Act of 1988 before an action may proceed, the pursuer shall apply by motion for leave to proceed before the summons is signeted.

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<sup>(150)</sup> Cmnd. 8510 (1982).

<sup>(151)</sup> 1977 c. 37.

<sup>(152)</sup> 1938 c. 22; section 58C was inserted by section 300 of the Copyright Act of 1988.

(2) A motion under paragraph (1) shall be heard in chambers.

(3) Where such leave is granted, a copy of the interlocutor allowing leave shall be attached to the copy of the summons served on the defender.

## CHAPTER 56

### JUDGMENTS OF THE HOUSE OF LORDS

#### **Applications to apply judgments of the House of Lords**

**56.1.**—(1) An application to apply a judgment of the House of Lords in a cause shall be made by motion in the Single Bills.

(2) On enrolling a motion under paragraph (1), the party enrolling it shall lodge four copies of the House of Lords judgment in process.

## CHAPTER 57

### ADMISSION OF ADVOCATES

#### **Form of petition for admission as advocate**

**57.1.** A petition by a person for admission to the public office of advocate shall be in such form as the Lord President shall, in consultation with the Dean of the Faculty of Advocates, determine.

#### **Disapplication of rules in relation to petitions**

**57.2.** The following provisions of these Rules shall not apply to a petition by a person for admission to the public office of advocate:—

rule 4.1 (form, size, etc., of documents forming the process),

rule 4.3 (lodging of processes), and

Chapter 14 (petitions).

#### **Admission as advocate**

**57.3.**—(1) On presentation of the petition, the court shall pronounce an interlocutor remitting to the Dean and Faculty of Advocates to take trial of the qualifications of the petitioner for the public office of advocate and to report to the court.

(2) The Faculty of Advocates shall, subject to the approval of the court, make such rules and regulations with respect to the terms and conditions of admission to the Faculty of Advocates as it may from time to time think fit.

## CHAPTER 58

### APPLICATIONS FOR JUDICIAL REVIEW

#### **Application and interpretation of this Chapter**

**58.1.**—(1) This Chapter applies to an application to the supervisory jurisdiction of the court.

(2) In this Chapter—

“the first hearing” means a hearing under rule 58.9;

“the second hearing” means a hearing under rule 58.10.

**Disapplication of certain rules to this Chapter**

- 58.2.** The following rules shall not apply to a petition to which this Chapter applies:–
- rule 14.4 (form of petitions),
  - rule 14.5 (first order in petitions),
  - rule 14.9 (unopposed petitions).

**Applications for judicial review**

**58.3.**—(1) Subject to paragraph (2), an application to the supervisory jurisdiction of the court, including an application under section 45(b) of the Act of 1988 (specific performance of statutory duty), shall be made by petition for judicial review.

(2) An application may not be made under paragraph (1) if that application is made, or could be made, by appeal or review under or by virtue of any enactment.

**Powers of court in judicial review**

- 58.4.** The court, in exercising its supervisory jurisdiction on a petition for judicial review, may–
- (a) grant or refuse any part of the petition, with or without conditions;
  - (b) make such order in relation to the decision in question as it thinks fit, whether or not such order was sought in the petition, being an order that could be made if sought in any action or petition, including an order for reduction, declarator, suspension, interdict, implement, restitution, payment (whether of damages or otherwise) and any interim order;
  - (c) subject to the provisions of this Chapter, make such order in relation to procedure as it thinks fit.

**Nominated judge**

**58.5.** A petition for judicial review shall be heard by a judge nominated by the Lord President for the purposes of this Chapter or, where such a judge is not available, any other judge of the court (including the vacation judge).

**Form of petition**

**58.6.**—(1) A petition for judicial review shall be in Form 58.6.

(2) The petitioner shall lodge with the petition all relevant documents in his possession and within his control.

(3) Where the petitioner finds in the petition on a document not in his possession or within his control, he shall append to the petition a schedule specifying the document and the person who possesses or has control over the document.

(4) Where the decision, act or omission in question and the basis on which it is complained of is not apparent from the documents lodged with the petition, an affidavit shall be lodged stating the terms of the decision, act or omission and the basis on which it is complained of.

**First order**

**58.7.** On being lodged, the petition shall, without appearing in the Motion Roll, be presented forthwith to the Lord Ordinary in court or in chambers for–

- (a) an order specifying–
  - (i) such intimation, service and advertisement as may be necessary;



- (ii) any documents to be served with the petition;
- (iii) a date for the first hearing, being a date not earlier than 7 days after the expiry of the period specified for intimation and service; or
- (b) any interim order;

and, having heard counsel or other person having a right of audience, the Lord Ordinary may grant such an order.

### **Compearing parties**

**58.8.**—(1) A person to whom intimation of the first hearing has been made and who intends to appear—

- (a) shall intimate his intention to do so to—
  - (i) the agent for the petitioner, and
  - (ii) the Keeper of the Rolls,not less than 48 hours before the date of the hearing; and
- (b) may lodge answers and any relevant documents.

(2) Any person not specified in the first order made under rule 58.7 as a person on whom service requires to be made may apply by motion for leave to enter the process; and if the motion is granted, the provisions of this Chapter shall apply to that person as they apply to a person specified in the first order.

### **First hearing**

**58.9.**—(1) At the first hearing, the Lord Ordinary shall—

- (a) satisfy himself that the petitioner has duly complied with the first order made under rule 58.7; and
  - (b) hear the parties.
- (2) After hearing the parties, the Lord Ordinary may—
- (a) determine the petition; or
  - (b) make such order for further procedure as he thinks fit, and in particular may—
    - (i) adjourn or continue the first hearing to another date;
    - (ii) order service on a person not specified in the first order made under rule 58.7;
    - (iii) make any interim order;
    - (iv) order answers to be lodged within such period as he shall specify;
    - (v) order further specification in the petition or answers in relation to such matters as he shall specify;
    - (vi) order any fact founded on by a party at the hearing to be supported by evidence on affidavit to be lodged within such period as he shall specify;
    - (vii) order any party who appears to lodge such documents relating to the petition within such period as the Lord Ordinary shall specify;
    - (viii) appoint a reporter to report to him on such matters of fact as the Lord Ordinary shall specify; or
    - (ix) order a second hearing on such issues as he shall specify.

**Second hearing**

**58.10.**—(1) Where the Lord Ordinary orders a second hearing under rule 58.9(2)(b)(ix), the Keeper of the Rolls shall, in consultation with the Lord Ordinary and the parties, fix a date for the second hearing as soon as reasonably practicable.

(2) Subject to the terms of any order for further procedure made under rule 58.9(2)(b), the parties shall, not less than 7 days before the date of the second hearing, lodge all documents and affidavits to be founded on by them at the second hearing with copies for use by the court.

(3) At any time before the date of the second hearing, the Lord Ordinary may cause the petition to be put out for hearing on the By Order Roll for the purpose of obtaining such information from the parties as he considers necessary for the proper disposal of the petition at the hearing.

(4) At a hearing on the By Order Roll under paragraph (3), the Lord Ordinary may make such order as he thinks fit, having regard to all the circumstances, including an order appointing a commissioner to recover a document or take the evidence of a witness.

(5) At the second hearing, the Lord Ordinary may—

- (a) adjourn the hearing;
- (b) continue the hearing for such further procedure as he thinks fit; or
- (c) determine the petition.

*CHAPTER 59**APPLICATIONS FOR LETTERS***Applications for letters of arrestment or inhibition**

**59.1.**—(1) An application for letters of arrestment or inhibition may be made, as the case may be, in—

- (a) Form 59.1–A (arrestment);
- (b) Form 59.1–B (inhibition where decree granted);
- (c) Form 59.1–C (inhibition on deed registered for execution); or
- (d) Form 59.1–D (inhibition on dependence of action in sheriff court).

(2) An application under paragraph (1) shall be presented in the Signet Office of the General Department together with any relevant supporting documents.

(3) If the Deputy Principal Clerk is satisfied that the applicant for such letters is entitled to a warrant for arrestment or inhibition—

- (a) he shall sign and date the warrant in such an application; and
- (b) the application shall be signeted;

and such signeted application and warrant shall constitute letters of arrestment or inhibition, as the case may be.

(4) If the Deputy Principal Clerk refuses to sign and date such warrant, the application shall, on request, be placed before the Lord Ordinary; and the decision of the Lord Ordinary shall be final and not subject to review.

(5) An application for letters of arrestment or inhibition on the dependence of an action to which a claim under section 19 of the Family Law (Scotland) Act 1985(**153**) applies shall be placed before the Lord Ordinary; and the decision of the Lord Ordinary shall be final and not subject to review.

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(153) 1985 c. 37.

## CHAPTER 60

### APPLICATIONS FOR SUSPENSION, SUSPENSION AND INTERDICT, AND SUSPENSION AND LIBERATION

#### Application of this Chapter

**60.1.** Subject to rule 53.1 (conclusions for suspension etc., in action of reduction), this Chapter applies to an application for suspension, suspension and interdict, or suspension and liberation.

#### Form of applications

- 60.2.**—(1) An application to which this Chapter applies shall be made by petition.  
(2) It shall not be necessary in any such petition to make an offer of caution or consignation.

#### First order

**60.3.** Where the interlocutor ordering intimation, service or advertisement contains an interim suspension of execution, interim interdict or interim liberation, subject to the finding of caution or the giving of other security or any other conditions, the petition shall not be intimated, served or advertised until such condition has been met.

#### Further petition following refusal by default

**60.4.** Where a petition for suspension, suspension and interdict, or suspension and liberation has been refused—

- (a) for failure by the petitioner to—
  - (i) find caution or give other security, or to consign money into court, or
  - (ii) comply with any other condition imposed by the court under rule 60.3 (first order), or
- (b) on any other ground other than on the merits,

the petitioner may, having paid any expenses in which he was found liable, present another petition for suspension, suspension and interdict, or suspension and liberation, as the case may be.

#### Appointing petition to Adjustment Roll

**60.5.**—(1) Any party may, within 7 days after any answers have been lodged, apply by motion for an order appointing the petition and answers to the Adjustment Roll.

(2) Where the court grants a motion under paragraph (1), the petitioner shall, within 14 days after the interlocutor granting the motion—

- (a) send at least four copies of the petition and answers in the form of an open record to the respondent, and
- (b) lodge two copies of the record in process;

and thereafter the cause shall proceed as an action.

#### Suspension of decree of inferior court or tribunal

**60.6.**—(1) This rule applies to a petition for the suspension of a decree, order, decision or warrant of whatever nature of an inferior court or tribunal.

(2) The petition shall be served on the clerk of the inferior court or tribunal to which the petition relates.

(3) The Lord Ordinary may pronounce an interlocutor ordering production to the court of any part of the proceedings in the inferior court or tribunal within such period as he thinks fit.

(4) On an interlocutor being pronounced under paragraph (1), the petitioner shall exhibit to the clerk of the inferior court or tribunal a certified copy of the interlocutor; and that clerk shall transmit the documents ordered to be produced to the Deputy Principal Clerk.

(5) Where the petitioner fails to comply with the requirement on him under paragraph (4), the petition shall be refused.

(6) An interlocutor granting suspension shall include a direction to the clerk of court to send a copy of the interlocutor by post to the clerk of the inferior court or tribunal on whom service was executed under paragraph (2).

(7) Where an interlocutor granting suspension is reclaimed against, the reclamer shall give written intimation of that fact to the clerk of the inferior court or tribunal as soon as possible after the reclaiming motion has been marked.

(8) The interlocutor disposing of such a reclaiming motion shall include a direction to the clerk of court to send a copy of that interlocutor to the clerk of the inferior court or tribunal on whom service was executed under paragraph (2).

#### **Interlocutor refusing suspension after proof**

**60.7.** Where the Lord Ordinary, after a proof, refuses a petition for suspension of a decree or decision of an inferior court or tribunal, he shall specify in his interlocutor the relevant facts of the case which he finds to be established and the points of law which he has applied to such facts.

### *CHAPTER 61*

#### *JUDICIAL FACTORS*

#### **PART I GENERAL PROVISIONS**

#### **Application and interpretation of this Chapter**

**61.1.**—(1) This Chapter applies to an application for the appointment of a judicial factor, and to a judicial factor appointed by the court.

(2) In this Chapter, unless the context otherwise requires—

“the Act of 1849” means the Judicial Factors Act 1849<sup>(154)</sup>;

“judicial factor” includes a curator *bonis*, a factor *loco absentis*, a factor on trust or other estates, and a guardian.

#### **Form of applications to appoint judicial factor**

**61.2.** An application for the appointment of a judicial factor shall be made by petition.

#### **Crave to dispense with service on *incapax***

**61.3.** Where, in a petition for the appointment of a curator *bonis* to an *incapax*, dispensation of service on the *incapax* is craved on the ground that such service would be injurious to the health of the *incapax*, two medical certificates to that effect shall be lodged in process.

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<sup>(154)</sup> 1849 c. 51.

### **Incidental applications**

**61.4.** Unless otherwise provided in this Chapter, an incidental application to the court in a petition for the appointment of a judicial factor shall be made by note.

### **Intimation and service**

**61.5.—(1)** The order for intimation and service under rule 14.5 (first order in petitions) in a petition or note relating to a judicial factor shall include a requirement for intimation to the Accountant of Court by first class recorded delivery post of the petition or note, as the case may be, and any production lodged with the petition or note.

(2) The Lord Ordinary may order publication of an advertisement of the petition in Form 61.5–A in the case of a petition for the appointment of a judicial factor or in Form 61.5–B in the case of a petition for the discharge of a judicial factor.

(3) Where publication of an advertisement has been made under paragraph (2), there shall be lodged in process—

- (a) a copy of the newspaper or other publication containing the advertisement; or
- (b) a certificate of publication by the publisher stating the date of publication and the text of the advertisement.

### **Documents for Accountant of Court**

**61.6.—(1)** A person who lodges any document in a cause relating to a judicial factor (other than a petition for appointment of a judicial factor) shall send a copy of that document to the Accountant of Court.

(2) The clerk of session in the Petition Department shall transmit to the Accountant of Court any part of a process in a cause relating to a judicial factor as the Accountant of Court may request unless such part of the process is, at the time of request, required by the court.

### **Accountant of Court to send information on prior application**

**61.7.** The Accountant of Court, on receiving intimation of a petition for the appointment of a judicial factor, shall report any information he may possess which he considers may be of use to the court in disposing of the petition.

### **Transmission of process to Accountant of Court to find caution**

**61.8.** The clerk of session in the Petition Department shall, on the appointment of the judicial factor being made by the court, transmit the process of the petition to the Accountant of Court for the fixing and finding of caution.

### **Finding caution**

**61.9.—(1)** The appointment of a person as a judicial factor shall be subject to his finding caution; and the interlocutor appointing a judicial factor shall ordain him to find caution.

(2) The court may, on cause shown, on a motion made before the expiry of the period for finding caution specified by virtue of rule 33.3 (orders to find caution or other security), allow further time for finding caution.

(3) The Accountant of Court shall, on receiving the process in a petition for the appointment of a judicial factor transmitted to him under rule 61.8, fix the caution to be found by the judicial factor.

(4) Where the Accountant of Court considers that any caution fixed by the court under section 27 of the Act of 1849<sup>(155)</sup> (amount of caution limited by court), should be increased—

- (a) the Accountant of Court may increase the amount unless the judicial factor requires him to report to the court;
- (b) where the judicial factor requires him to report to the court, the Accountant of Court shall do so; and
- (c) on the report mentioned in sub-paragraph (b) being received, the cause shall be put out on the By Order Roll before the Lord Ordinary to determine the amount of caution.

(5) A bond of caution or other security offered by a judicial factor shall be delivered to the Accountant of Court; and rule 33.4(3) (lodging of bond of caution in process) and rule 33.7(1) (Deputy Principal Clerk to satisfy himself that the bond of caution or other security is in proper form) shall not apply.

(6) Except in relation to paragraph (7), where caution has been found to the satisfaction of the Accountant of Court, he shall endorse and sign, on the interlocutor sheet of the process appointing the judicial factor, a certificate stating that caution has been found, the amount of caution and the date of the certificate.

(7) During the subsistence of a judicial factory, the Accountant of Court may, at any time—

- (a) require the judicial factor to increase the amount of, or find new or additional, caution; or
- (b) authorise the judicial factor to reduce the amount of existing caution.

#### **Issue of official certified copy interlocutor**

**61.10.** An official certified copy of the interlocutor appointing a judicial factor shall not be issued by a clerk of session without a certificate having been endorsed on the interlocutor sheet in accordance with rule 61.9(6).

#### **Judicial factor's title to act**

**61.11.** A judicial factor shall not be entitled to act until he has received the official certified copy of the interlocutor appointing him.

#### **Remission or modification of penal interest**

**61.12.** The Accountant of Court may, if satisfied that the circumstances justify it, remit or modify any interest incurred by a judicial factor under section 5(1) of the Act of 1849<sup>(156)</sup> (interest incurred for failure by factor to lodge money in bank etc.).

#### **Applications to encroach on capital**

**61.13.—**(1) Where the income from the estate of a ward is insufficient for the maintenance of the ward, the judicial factor may apply to the Accountant of Court for his consent to encroach on the capital of the estate for the purpose of maintaining the ward.

(2) An application under paragraph (1) shall be made by letter and shall be supported by such information as the Accountant of Court may require.

(3) On receipt of such an application, the Accountant of Court shall—

<sup>(155)</sup>Section 27 was amended by the age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 1, paragraph 10.

<sup>(156)</sup>Section 5 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), section 7 and by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 21(1)(a).

- (a) ordain the judicial factor to intimate the making of the application in accordance with paragraphs (5) and (6); or
  - (b) require him to apply by note to the Lord Ordinary for special powers.
- (4) A person to whom intimation is given in accordance with paragraphs (5) and (6) may object to the application by—
- (a) lodging an objection in writing with the Accountant of Court; and
  - (b) sending a copy of his objection to the judicial factor within 28 days after the date on which intimation was given to him.
- (5) The persons to whom intimation under paragraph (3)(a) is to be given are—
- (a) any cautioner of the judicial factor;
  - (b) any petitioner for the appointment of the judicial factor;
  - (c) the ward, unless the circumstances of the ward are such as would warrant dispensing with service on him of a petition for the appointment of a judicial factor on his estate;
  - (d) the persons on whom the petition for appointment of the judicial factor was served and whose whereabouts are known to the judicial factor; and
  - (e) all other persons who have an interest in the estate and whose identity and whereabouts are known to the judicial factor.
- (6) The intimation under paragraph (3)(a) shall include—
- (a) a copy of the letter of application; and
  - (b) a notice setting out—
    - (i) the right of the person receiving the notice to object to the application in the manner provided in paragraph (4); and
    - (ii) that, in the absence of any such objection, the Accountant of Court may consent to the application.
- (7) The judicial factor shall, on giving intimation under paragraph (3)(a), send to the Accountant of Court a certificate of intimation in Form 16.7 with a copy of the notice sent attached to it; and rule 16.7(2) (attaching certificate of intimation to principal writ or lodging it in process) shall not apply.
- (8) Where no objections have been lodged under paragraph (4), the Accountant of Court may, on the expiry of the period for lodging objections—
- (a) consent to the application subject to such conditions as he thinks fit; or
  - (b) require the judicial factor to apply to the court for special powers.
- (9) Where any objection has been lodged under paragraph (4), the judicial factor shall, on expiry of the period for lodging objections, apply to the court for special powers.

### **Applications under section 2(3) of the Trusts (Scotland) Act 1961**

**61.14.**—(1) An application under section 2(3) of the Trusts (Scotland) Act 1961(**157**) to the Accountant of Court for his consent to the doing of an act to which that section applies shall be made by letter and shall be supported by such information as the Accountant of Court may require.

(2) Any person to whom intimation requires to be given in accordance with paragraph (3) may object to the application by lodging any objection with the Accountant of Court, and sending a copy of it to the judicial factor, within 28 days after the date on which the intimation was given.

(3) On the date on which he makes the application referred to in paragraph (1), the judicial factor shall intimate the application to—

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(157) 1961 c. 57; sub-section (3) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), section 8.

*Status: This is the original version (as it was originally made).*

- (a) any cautioner of the judicial factor;
  - (b) any petitioner for the appointment of the judicial factor;
  - (c) the ward, unless the circumstances of the ward are such that would warrant dispensing with service on him of a petition for the appointment of a judicial factor on his estate;
  - (d) the persons upon whom the application for appointment of the judicial factor was served and whose whereabouts are known to the judicial factor; and
  - (e) all other persons who have an interest in the estate and whose identity and whereabouts are known to the judicial factor.
- (4) The intimation to be given under paragraph (3) shall include—
- (a) a copy of the letter of application, and
  - (b) a notice setting out—
    - (i) the right of the person receiving the notice to object to the application in the manner provided in paragraph (2); and
    - (ii) that, in the absence of any such objection, the Accountant of Court may consent to the application.
- (5) The judicial factor shall, on giving intimation under paragraph (3), send to the Accountant of Court a certificate of intimation in Form 16.7 with a copy of the notice required under paragraph (4) attached to it; and rule 16.7(2) (attaching certificate of intimation to principal writ or lodging it in process) shall not apply.

#### **Applications for special powers or authority under section 5 of the Trusts (Scotland) Act 1921**

- 61.15.**—(1) This rule applies to an application by a judicial factor—
- (a) for special powers at common law or under section 7 of the Act of 1849<sup>(158)</sup>; or
  - (b) under section 5 of the Trusts (Scotland) Act 1921<sup>(159)</sup> (application for authority to do an act at variance with terms or purposes of the judicial factory).
- (2) An application may be made—
- (a) in the petition for the appointment of the judicial factor; or
  - (b) by note in the process of that petition.
- (3) Before making an application, the judicial factor shall apply to the Accountant of Court for an opinion by lodging with him a report explaining why the special powers or authority are necessary and concluding with a statement of the precise powers he seeks.
- (4) The Accountant of Court shall, after making any necessary inquiry, send his written opinion to the judicial factor.
- (5) The judicial factor shall lodge in process his report to, and the opinion of, the Accountant of Court.
- (6) The judicial factor shall send to the Accountant of Court a copy of the interlocutor disposing of the application within 2 days after the date of the interlocutor.
- (7) An application by a judicial factor for special powers under this rule shall not be made before he has received an official certified copy of the interlocutor appointing him.
- (8) An application by a judicial factor in respect of special powers sought in the petition for his appointment shall be made by him by motion.

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<sup>(158)</sup> Section 7 was amended by the Mental Health (Scotland) Act 1960 (c. 61), Schedule 4.  
<sup>(159)</sup> 1921 c. 58.



## PART II APPLICATIONS UNDER SECTION 11A OF THE JUDICIAL FACTORS (SCOTLAND) ACT 1889

### Application of this Part

**61.16.** This Part applies to a petition under section 11A of the Judicial Factors (Scotland) Act 1889<sup>(160)</sup> (appointment of a judicial factor on estate of person deceased).

### Form of applications under section 11A of the Judicial Factors (Scotland) Act 1889

**61.17.** A petition to which this Part applies shall include averments stating—

- (a) the name, last known address and date of death of the deceased person;
- (b) the reasons for the appointment being necessary;
- (c) the interest of the petitioner, including—
  - (i) if a creditor, the nature and amount of the debt, how constituted, vouched or established, or
  - (ii) if a person having an interest in the succession to the estate, the nature of that interest;
- (d) details of the estate of the deceased person so far as known to the petitioner including heritable and moveable property, any stock in trade, interests in any business or partnership, debts owed to or by the deceased and any other relevant facts;
- (e) the names and addresses of all persons known to the petitioner as having an interest in the estate either as creditors or in the succession to the estate, and the nature of the interest in each case; and
- (f) the name, designation and address of the person nominated to be the judicial factor.

### Intimation and service of section 11A petition

**61.18.** The order for intimation and service under rule 14.5 (first order in petitions) in a petition under this Part shall include a requirement for—

- (a) a notice of the petition in the Edinburgh Gazette in Form 61.18; and
- (b) service of the petition on such persons named in the petition as personal representatives of the deceased who are not parties to the petition.

### Interim appointment

**61.19.** The court may make an interim appointment of a judicial factor in a petition to which this Part applies when the petition is presented or at any time thereafter.

### Notice calling for claims

**61.20.**—(1) In order to ascertain the claims on the estate, the judicial factor shall, within 14 days after he has received the official certified copy of the interlocutor appointing him, place a notice in the Edinburgh Gazette, and in such other newspaper as he thinks fit, in Form 61.20.

(2) The judicial factor shall lodge in process—

- (a) a copy of each newspaper containing the notice under paragraph (1); or
- (b) a certificate of publication by the publisher of each such newspaper stating the date of publication and text of the notice.

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<sup>(160)</sup> 1889 c. 39; section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66), Schedule 7, paragraph 4.

(3) The period within which a creditor shall intimate a claim on the estate to the judicial factor shall be 4 months from the date of publication of the notice under paragraph (1).

### **Claims**

**61.21.**—(1) The judicial factor shall examine the claims of creditors in order to ascertain whether the debts are properly due from the estate of the deceased, and may—

- (a) call for further evidence in support of the claims;
- (b) if he thinks fit, require a creditor to constitute such claim by decree in a competent court in an action in which the judicial factor shall be called as a defender.

(2) For the purpose of ranking and payment of creditors, the date of the appointment of the judicial factor shall be deemed to be equivalent to the date of sequestration.

### **Custody and inspection of inventory of estate, etc.**

**61.22.** There shall remain in the possession of the Accountant of Court and be open to inspection, within his office, by any creditor or person in the succession of the deceased—

- (a) the inventory of estate, when adjusted and approved by the Accountant of Court and signed by him and the judicial factor;
- (b) any report of the state of debts; and
- (c) all subsequent accounts submitted by the judicial factor to the Accountant of Court.

### **Administration, deathbed and funeral expenses**

**61.23.**—(1) Out of the first funds realised by him, the judicial factor shall reserve sufficient funds to defray the estimated costs of his administration including the legal expenses of the judicial factory.

(2) On the expiry of the period for lodging claims, the judicial factor shall be entitled to pay out of such funds, with the prior approval of the Accountant of Court, those debts listed in paragraphs (a) to (e) of section 51(1) of the Bankruptcy (Scotland) Act 1985(**161**) (order of priority in distribution).

### **Procedure where there are creditors**

**61.24.**—(1) Where claims are lodged, the judicial factor shall—

- (a) where funds remain available for division after payment of the claims referred to in rule 61.23(2), prepare a state of funds and scheme of division amongst the creditors; or
- (b) where no such funds remain after payment of those claims, prepare a state of funds only.

(2) The judicial factor shall—

- (a) lodge with the Accountant of Court—
  - (i) the state of funds and any scheme of division,
  - (ii) all relevant writings and documents; and
- (b) provide the Accountant of Court with such explanations as he may require.

(3) The Accountant of Court shall prepare a written report on the state of funds and any scheme of division containing such observations as he thinks fit for consideration by the court.

(4) The Accountant of Court shall issue the report under paragraph (3) to the judicial factor.

### **Notice to creditors**

**61.25.**—(1) As soon as the report of the Accountant of Court under rule 61.24(3) has been issued, the judicial factor shall—

- (a) lodge in process that report, the state of funds and any scheme of division;
- (b) send to each person who has lodged with him a claim on the estate of the deceased a notice by first class post, or, if that person is furth of Europe, by air mail, stating—
  - (i) that the state of funds and scheme of division or state of funds only, as the case may be, and a report have been lodged in court; and
  - (ii) the amount for which the creditor has been ranked and whether his claim is to be paid in full or by a dividend and the amount of it; or
  - (iii) that his claim has been rejected; or
  - (iv) that no funds are available for division;
- (c) place a notice in Form 61.25 in the Edinburgh Gazette; and
- (d) if—
  - (i) any person, other than a person who has lodged a claim with him, is stated in the application or in the books, deed of settlement, or other papers of the deceased, to be a creditor of the estate or has an interest in the estate, or
  - (ii) he has reason to believe that any other person is either a creditor of the estate or has an interest in the estate,give notice to such person, by first class post or, if that person is furth of Europe, by air mail, that no dividend is allotted to him in the scheme of division.

(2) Any creditor or person having an interest in the succession to the deceased's estate shall be entitled to examine—

- (a) the state of funds and any scheme of division lodged in process; and
- (b) the claims and supporting vouchers or evidence lodged with the judicial factor.

### **Approval of state of funds or scheme of division**

**61.26.**—(1) Any creditor or person having an interest in the succession to the estate of the deceased who is dissatisfied with the state of funds or any scheme of division may lodge in process a note of objection within 28 days after the date of the notice given under rule 61.25(1)(b) and, until the expiry of that period, the court shall not approve the state of funds and any scheme of division.

(2) Where a note of objection under paragraph (1) is lodged, the court shall dispose of the note after hearing any objector and the judicial factor and making such investigations as it thinks fit.

(3) If any objection is sustained to any extent, the necessary alterations shall be made to the state of funds and any scheme of division, and shall be approved by the court.

(4) Where no note of objection is lodged, the court shall approve the state of funds and any scheme of division.

### **Payment following approval of scheme of division**

**61.27.** After the court has approved a scheme of division, the judicial factor shall pay, deliver or convey to the parties the sums or other property to which they are entitled under the scheme.

**Partial division on first scheme of division**

**61.28.**—(1) Where, in the opinion of the judicial factor, a partial division of funds among the creditors who have claimed may be made with safety in the interests of all concerned, the judicial factor may, with the approval of the Accountant of Court, prepare a state of funds and first scheme of division as soon as possible after the period for lodging claims has expired.

(2) The following provisions of this Part shall apply to a state of funds and first scheme of division prepared under paragraph (1) of this rule as they apply to a state of funds and scheme of division prepared under rule 61.24(1)(a):—

- rule 61.24(2) (lodging of state of funds etc. with Accountant of Court),
- rule 61.24(3) (report by Accountant of Court on state of funds),
- rule 61.25 (notice to creditors),
- rule 61.26 (approval of state of funds or scheme of division) subject to paragraph (3) of this rule.

(3) Subject to paragraph (4), the court may, not earlier than 6 months after the death of the deceased, approve the first scheme of division and, where it so approves, the judicial factor shall pay, deliver or convey to the parties the sums or other property to which they are entitled under the first scheme.

(4) Out of the funds there shall be retained and deposited in an institution authorised under the Banking Act 1987(162) or other appropriate institution a sufficient sum to meet—

- (a) the amount of the claims of creditors whose debts have not at that time been admitted by the judicial factor, or whose debts are future or contingent; and
- (b) the full amount of such debts as are claimed as preferable but the priority of which is not admitted by the judicial factor.

**Procedure where no creditors**

**61.29.** Where, on the expiry of the period for lodging claims, no creditor has lodged a claim, the judicial factor shall not lodge a state of funds but shall prepare a report with regard to the disposal of the surplus estate in accordance with rule 61.30.

**Disposal of surplus estate**

**61.30.**—(1) Where, after payment of the creditors, there is a surplus, the judicial factor shall lodge with the Accountant of Court a statement of—

- (a) the amount of the surplus;
- (b) the parties claiming that surplus and their respective grounds of claim; and
- (c) those parties who, in the opinion of the judicial factor, are entitled to the surplus and the reasons for his opinion.

(2) The Accountant of Court shall prepare a written opinion on the statement of the judicial factor lodged under paragraph (1) and issue that opinion to the judicial factor.

(3) On receipt of the opinion of the Accountant of Court under paragraph (2), the judicial factor shall—

- (a) lodge in process that opinion and the statement prepared under paragraph (1); and
- (b) give notice to each party claiming an interest or apparently entitled to any part of the estate, by first class post or, if that person is furth of Europe, by air mail, that—

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(162) 1987 c. 22.

- (i) the statement of the judicial factor and the opinion of the Accountant of Court have been lodged in process; and
  - (ii) should any such party wish to lodge any objection to the statement, he shall lodge a note of objection with the Deputy Principal Clerk within 28 days after the date of the posting of the notice by the judicial factor.
- (4) On expiry of the period for lodging objections under paragraph (3)(b)(ii), the court, on considering the statement, opinion, and any note of objection and, after such procedure as it thinks fit, shall—
- (a) determine which parties are entitled to the surplus estate and direct the judicial factor to make payment accordingly; or
  - (b) if the court considers that it is desirable that the judicial factor should continue to administer the surplus estate, direct the judicial factor to do so.

#### PART II DISCHARGE OF JUDICIAL FACTORS

##### Applications for discharge to Accountant of Court

**61.31.**—(1) This rule applies to a judicial factor appointed as a—

- (a) curator *bonis*;
- (b) guardian;
- (c) factor *loco absentis*; or
- (d) commissary factor.

(2) Where a judicial factory is terminated by reason of the recovery, death or coming of age of the ward, or by reason of the exhaustion of the estate, the judicial factor, or where he has died, his representative, may apply to the Accountant of Court for a certificate of discharge.

(3) The judicial factor shall intimate a notice in Form 61.31 of an application under paragraph (2) to—

- (a) the cautioner; and
- (b) any person having an interest in the estate of the ward.

(4) Any person to whom intimation has been given under paragraph (3) may make written representations relating to the application to the Accountant of Court within 21 days after the date of such intimation.

(5) On the expiry of the period specified in paragraph (4), the Accountant of Court shall, after considering the application and representations made, send to—

- (a) the factor,
- (b) the Deputy Principal Clerk, and
- (c) any person who has made representations,

a copy of his decision to issue or refuse to issue a certificate of discharge and a note of his reasons for making that decision.

(6) The Accountant of Court—

- (a) shall not sign a certificate of discharge until the time for lodging an appeal under rule 61.32 has expired; and
- (b) shall, on issuing a certificate of discharge, give written intimation of the issue of the certificate to the Deputy Principal Clerk.

(7) The issue of a certificate of discharge shall be sufficient authority for the judicial factor to uplift his bond of caution.

**Appeals against decisions under rule 61.31**

**61.32.**—(1) The judicial factor, or any person who has made representations under rule 61.31(4), may, within 14 days after intimation of a decision to him under rule 61.31(5), appeal to the Lord Ordinary against the determination of the Accountant of Court.

(2) An appeal under paragraph (1) shall be—

- (a) made by letter to the Deputy Principal Clerk containing a statement of the grounds of appeal; and
- (b) intimated to the Accountant of Court.

(3) On receipt of an appeal under paragraph (1), the Deputy Principal Clerk shall place the appeal before the Lord Ordinary in chambers for determination.

(4) On disposing of such an appeal, the Lord Ordinary may—

- (a) direct the Accountant of Court to sign the certificate of discharge;
- (b) ordain the judicial factor to lodge a petition for his discharge; or
- (c) make such other order as he thinks fit.

(5) The decision of the Lord Ordinary on an appeal to him under paragraph (1) shall be final and not subject to review.

**Applications for discharge to court**

**61.33.**—(1) Where a judicial factor, other than one to whom rule 61.31 (applications for discharge to Accountant of Court) applies, seeks his discharge, he, or where he has died, his representative, shall apply to the court by petition for his discharge.

(2) The order for intimation and service under rule 14.5 (first order in petitions) in a petition for discharge of a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 shall include a requirement for—

- (a) a notice of the petition in the Edinburgh Gazette in Form 61.33; and
- (b) service on the cautioner and on the personal representatives of the deceased person in respect of whom the appointment was made.

(3) The court shall remit a petition under paragraph (1) to the Accountant of Court to report to the court on the petition.

*Other proceedings in relation to statutory applications***CHAPTER 62****RECOGNITION, REGISTRATION AND ENFORCEMENT OF FOREIGN JUDGMENTS, ETC.  
PART I GENERAL PROVISIONS****Disapplication of certain rules to this Chapter**

**62.1.** The following rules shall not apply to a petition or application under this Chapter:—

- 14.5 (first order in petitions),
- 14.6 (period of notice for lodging answers),
- 14.7 (intimation and service of petitions),
- 14.9 (unopposed petitions).

### **Certificate of currency conversion**

**62.2.**—(1) Where the sum payable under a judgment, award, recommendation or determination to be registered in accordance with a provision of this Chapter is expressed in a currency other than sterling, the petitioner or applicant, as the case may be, before applying to the Keeper of the Registers for registration of such a document, shall lodge in the Petition Department—

- (a) a certified statement of the rate of exchange prevailing at—
  - (i) the date of the judgment, award, recommendation or determination,
  - (ii) the date on which the certified statement is lodged, or
  - (iii) a date within three days before the date on which the certified statement is lodged,and of the sterling equivalent, at that rate, of the principal sum, interest and expenses contained in the judgment, award, recommendation or determination, as the case may be; and
- (b) a certificate of currency conversion in Form 62.2.

(2) The certified statement required under paragraph (1) shall be by an official in the Bank of England or an institution authorised under the Banking Act 1987<sup>(163)</sup>.

(3) On receipt of the documents specified in paragraph (1), the clerk of session shall, if satisfied with the terms of those documents, sign and date the certificate of currency conversion.

### **Translation of document lodged**

**62.3.** Where a judgment, award, or other document lodged with a petition or application to which this Chapter applies is in a language other than English, there shall be produced with the petition a translation into English certified as correct by the translator; and the certificate shall include his full name, address and qualification.

PART IIREGISTRATION AND ENFORCEMENT UNDER THE ADMINISTRATION OF JUSTICE ACT 1920 AND THE FOREIGN JUDGEMENTS (RECIPROCAL ENFORCEMENT) ACT 1933

### **Application and interpretation of this Part**

**62.4.**—(1) This Part applies to an application to the court under the Administration of Justice Act 1920<sup>(164)</sup> or the Foreign Judgments (Reciprocal Enforcement) Act 1933<sup>(165)</sup>.

(2) In this Part—

“the Act of 1920” means the Administration of Justice Act 1920;

“the Act of 1933” means the Foreign Judgments (Reciprocal Enforcement) Act 1933.

### **Applications for registration under the Act of 1920 or 1933**

**62.5.**—(1) An application under section 9 of the Act of 1920 (enforcement in United Kingdom of judgments obtained in superior courts in other British Dominions etc.) shall be made by petition.

(2) An application under section 2 of the Act of 1933<sup>(166)</sup> (application for registration of a foreign judgment) shall be made by petition.

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<sup>(163)</sup> 1987 c. 22.

<sup>(164)</sup> 1920 c. 81.

<sup>(165)</sup> 1933 c. 13.

<sup>(166)</sup> Section 2 was amended by the Administration of Justice Act 1977 (c. 38), section 4 and Schedule 3.

**Supporting documents**

**62.6.**—(1) There shall be produced with the petition for registration referred to in rule 62.5 an affidavit—

- (a) referring to the judgment or a certified copy of the judgment issued by the original court and authenticated by its seal; and
- (b) stating—
  - (i) the full name, title, trade or business and the usual or last known place of residence or business of the judgment creditor and the judgment debtor respectively;
  - (ii) that the petitioner is entitled to have the judgment registered under the Act of 1920 or the Act of 1933, as the case may be;
  - (iii) where the judgment is in respect of several matters, only some of which may be registered, those in respect of which the petitioner seeks registration;
  - (iv) the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the date of the affidavit;
  - (v) the amount of the judgment which is unsatisfied;
  - (vi) that at the date of presentation of the petition the judgment may be enforced by execution in the country of the original court;
  - (vii) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 4 of the Act of 1933; and
  - (viii) that the judgment is not a judgment to which section 5 of the Protection of Trading Interests Act 1980<sup>(167)</sup> (restriction on enforcement of certain overseas judgments) applies.

(2) There shall be produced with a petition referred to in rule 62.5 such other evidence with respect to the matters referred to in sub-paragraphs (b)(iv) and (b)(vi) of paragraph (1) as may be required having regard to the provisions of an order in Council made under section 1 of the Act of 1933<sup>(168)</sup> (power to extend the Act of 1933 to the country of the original court).

**Warrant for registration under the Act of 1920 or 1933**

**62.7.**—(1) The court shall, on being satisfied that the petition complies with the requirements of the Act of 1920 or the Act of 1933, as the case may be, pronounce an interlocutor granting warrant for the registration of the judgment.

(2) The interlocutor under paragraph (1) shall specify a date by which the judgment debtor may apply to the court to set aside the registration; and in fixing such date, regard shall be had to the place of residence of the judgment debtor.

(3) In fixing the date under paragraph (2), the court shall have regard, in the case of a judgment debtor furth of Scotland, to the periods for superseding extract of a decree in absence in rule 19.1(5).

**Registration of judgments under the Act of 1920 or 1933**

**62.8.**—(1) Where the court pronounces an interlocutor under rule 62.7(1) granting warrant for registration, the Deputy Principal Clerk shall enter details of the judgment in a register of judgments under the Act of 1920 or the Act of 1933, as the case may be, kept in the Petition Department.

(2) On presentation by the petitioner to the Keeper of the Registers of—

- (a) a certified copy of the interlocutor under rule 62.7(1) granting warrant for registration,

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<sup>(167)</sup>1980 c. 11.

<sup>(168)</sup>Section 1 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 10.



(b) the judgment or a certified copy of the judgment and any translation of it, and  
(c) any certificate of currency conversion under rule 62.2(2),  
they shall be registered in the register of judgments of the Books of Council and Session.

(3) An extract of a registered judgment with a warrant for execution shall not be issued by the Keeper of the Registers until the certificate mentioned in rule 62.10(3) is produced to him.

### **Service on judgment debtor**

**62.9.** On registration of a judgment under rule 62.8(2), the petitioner shall serve a notice of the registration on the judgment debtor in Form 62.9.

### **Application to set aside registration under the Act of 1920 or 1933**

**62.10.**—(1) An application by a judgment debtor to set aside the registration of a judgment shall be made by note and supported by affidavit and any documentary evidence.

(2) In relation to such an application, the court may order such inquiry as it thinks fit.

(3) Where no such application is made by the date specified in the interlocutor pronounced under rule 62.7(2) or where the application has been made and refused, the Deputy Principal Clerk shall, at the request of the petitioner, issue a certificate to that effect.

(4) Subject to paragraph (5), where such an application is granted, a certificate to that effect issued by the Deputy Principal Clerk shall be sufficient warrant to the Keeper of the Registers to cancel the registration and return the judgment to the petitioner.

(5) Where the court makes an order under section 5(3) of the Act of 1933 (judgment ordered to be registered for balance payable), it shall pronounce an interlocutor—

- (a) recalling the warrant for registration granted under rule 62.7; and
- (b) granting warrant for registration of the judgment in respect of the balance remaining payable at the date of the original petition for registration.

### **Application for enforcement abroad under the Act of 1920 or 1933**

**62.11.**—(1) An application under section 10 of the Act of 1920(**169**) or the Act of 1933(**170**), as the case may be, for a certified copy of a judgment pronounced by the court shall be made by letter to the Deputy Principal Clerk.

(2) On receipt of such an application, the Deputy Principal Clerk shall issue under the seal of the court a copy of the judgment certified by him in Form 62.11.

(3) Where such an application is made under section 10 of the Act of 1933, the Deputy Principal Clerk shall issue with the certified copy of the judgment a further certificate under the seal of the court signed by him containing the details, and having appended the documents, mentioned in paragraph (4).

(4) A certificate under paragraph (3) shall—

- (a) state—
  - (i) the manner in which the principal writ or counterclaim was served on the judgment debtor;
  - (ii) whether or not the judgment debtor entered appearance or lodged answers in the process of the cause;

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(**169**) Section 10 of the Act of 1920 was substituted by the Civil Jurisdiction and Judgments Act 1982 (c. 27) (“the 1982 Act”), section 35.

(**170**) Section 10 of the Act of 1933 was substituted by the 1982 Act, Schedule 10, paragraph 3.

- (iii) any objection made to the jurisdiction;
  - (iv) that the time limit for appeal has expired and that no appeal has been taken, or that an appeal was taken but was refused; and
  - (v) such other particulars as may be required by the foreign court which may enable execution of the judgment; and
- (b) number, identify and have appended to it a copy of—
- (i) the principal writ or counterclaim showing the manner in which such writ was served on the judgment debtor;
  - (ii) the pleadings, if any, in the cause resulting in the judgment; and
  - (iii) a copy of the opinion, if any, of the judge or judges who issued the judgment.

(5) Where necessary, the applicant shall provide the copies of the documents mentioned in paragraph (4).

#### PART III REGISTRATION OF AWARDS UNDER THE ARBITRATION (INTERNATIONAL INVESTMENT DISPUTES) ACT 1966

##### **Application and interpretation of this Part**

**62.12.**—(1) This Part applies to the registration of awards under the Arbitration (International Investment Disputes) Act 1966(171).

(2) In this Part—

- “the Act of 1966” means the Arbitration (International Investment Disputes) Act 1966;
- “award” has the meaning assigned to it in section 1(7) of the Act of 1966;
- “the Convention” means the convention mentioned in section 1(1) of the Act of 1966.

##### **Applications for registration under the Act of 1966**

**62.13.**—(1) An application for recognition or enforcement of an award under Article 54 of the Convention shall be made by petition.

(2) There shall be produced with such a petition an affidavit—

- (a) exhibiting a copy of the award certified under the Convention; and
- (b) stating—
  - (i) the full name, title, trade or business and the usual or the last known place of residence or, where appropriate, of the business of the petitioner and of the party against whom the award was made;
  - (ii) that the petitioner is entitled to have the award registered under the Act of 1966;
  - (iii) the amount of the award which is unsatisfied;
  - (iv) whether the enforcement of the award has been resisted (provisionally or otherwise) under the Convention and whether any, and if so what, application has been made under the Convention which, if granted, might result in a refusal of enforcement of the award.

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(171) 1966 c. 41.

### **Warrant for registration under the Act of 1966**

**62.14.** The court shall, subject to rule 62.17 (sist of enforcement), on being satisfied that the petition complies with the requirements of the Act of 1966, pronounce an interlocutor granting warrant for the registration of the award.

### **Registration under the Act of 1966**

**62.15.—**(1) Where the court pronounces an interlocutor under rule 62.14 granting warrant for registration, the Deputy Principal Clerk shall enter details of the interlocutor and the award in a register of awards under the Act of 1966.

(2) On presentation by the petitioner to the Keeper of the Registers of—

- (a) a certified copy of the interlocutor under rule 62.14,
- (b) a certified copy of the award and any translation of it, and
- (c) any certificate of currency conversion under rule 62.2(2),

they shall be registered in the register of judgments of the Books of Council and Session.

(3) An extract of the registered award with warrant for execution shall not be issued by the Keeper of the Registers until a certificate of service under rule 62.16 is produced to him.

### **Service on party against whom award made**

**62.16.** On registration under rule 62.15, the petitioner shall forthwith serve a notice of the registration on the party against whom the award was made in Form 62.16.

### **Sist of enforcement under the Act of 1966**

**62.17.—**(1) Where it appears to the court that—

- (a) the enforcement of the award has been sisted (whether provisionally or otherwise) under the Convention, or
- (b) any application has been made under the Convention which, if granted, might result in a sist of the enforcement of the award,

the court shall, or in the case referred to in sub-paragraph (b) may, sist the petition for such time as it thinks fit.

(2) Where the court has granted a warrant for registration under rule 62.14, the party against whom the award was made may apply to the court for suspension or interdict of execution of the award.

(3) An application under paragraph (2) shall—

- (a) be made on ground (a) or (b) of paragraph (1);
- (b) notwithstanding rule 60.2 (form of applications for suspension), be made by note in the process of the petition under rule 62.13; and
- (c) be accompanied by an affidavit stating the relevant facts.

### **PART IVEUROPEAN COMMUNITY JUDGMENTS**

### **Interpretation of this Part**

**62.18.—**(1) In this Part—

“Community judgment” means any decision, judgment or order which is enforceable under or in accordance with—

- (a) Article 187 or 192 of the E.E.C. Treaty,

(b) Article 18, 159 or 164 of the Euratom Treaty, or

(c) Article 44 or 92 of the E.C.S.C. Treaty;

“Euratom inspection order” means an order made by or in the exercise of the functions of the President of the European Court or by the Commission of the European Communities under Article 81 of the Euratom Treaty;

“European Court” means the Court of Justice of the European Communities;

“order for enforcement” means an order by or under the authority of the Secretary of State that the Community judgment to which it is appended is to be registered for enforcement in the United Kingdom.

(2) In paragraph (1), the expressions “E.E.C. Treaty”, “Euratom Treaty” and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972<sup>(172)</sup>.

### **Register of European Community judgments**

**62.19.** A register shall be kept by the Deputy Principal Clerk for the purpose of registering—

- (a) any Community judgment to which the Secretary of State has attached an order for enforcement
- (b) any Euratom inspection order; or
- (c) any order of the European Court that enforcement of a registered Community judgment shall be suspended.

### **Applications for registration of European Community judgments**

**62.20.**—(1) An application for registration of a Community judgment or Euratom inspection order shall be made by petition.

(2) Where the application is for registration of a Community judgment under which a sum of money is payable, the petition shall set out—

- (a) the name, trade or business and the usual or last known place of residence or business of the judgment debtor, so far as known to the petitioner; and
- (b) the amount of the judgment which remains unsatisfied.

(3) There shall be produced with a petition referred to in paragraph (1) the Community judgment and the order for its enforcement or the Euratom inspection order, as the case may be, or a copy of it.

### **Warrant for registration of European Community judgments**

**62.21.**—(1) On an application being made under rule 62.20, the court shall direct that any Euratom inspection order or any Community judgment which has appended to it an order for enforcement shall be entered in the register kept under rule 62.19 and—

- (a) in respect of a Community judgment, subject to paragraph (2), pronounce an interlocutor granting warrant for registration of the judgment in the Books of Council and Session; or
- (b) in respect of a Euratom inspection order, pronounce such interlocutor as is necessary for the purpose of ensuring that effect is given to that order.

(2) Where it appears that a Community judgment under which a sum of money is payable has been partly satisfied at the date of the application under rule 62.20, warrant for registration in the Books of Council and Session shall be granted only in respect of the balance remaining payable at that date.

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<sup>(172)</sup>1972 c. 68.

### **Registration of European Community judgments**

**62.22.**—(1) On presentation by the petitioner to the Keeper of the Registers of—

- (a) a certified copy of an interlocutor pronounced under rule 62.21(1)(a),
- (b) the Community judgment or a certified copy of it and any translation of it, and
- (c) any certificate of currency conversion under rule 62.2(2),

they shall immediately be registered in the register of judgments of the Books of Council and Session.

(2) On registration under paragraph (1), the Keeper of the Registers shall issue an extract of the registered Community judgment with a warrant for execution.

### **Service on judgment debtor of European Community judgment**

**62.23.** On an interlocutor being pronounced under rule 62.21(1)(a), the petitioner shall forthwith serve a copy of it on the person against whom the Community judgment was given or the Euratom inspection order was made, as the case may be.

### **Variation or cancellation of registration**

**62.24.**—(1) An application for the variation or cancellation of any registration shall be made by note in the process of the petition under rule 62.20(1).

(2) Where the court grants an application under paragraph (1), it may direct that the entry in the register kept under rule 62.19, and, in the case of variation of a Community judgment, the entry in the Books of Council and Session, shall be varied as sought by the noter.

### **Suspension of enforcement of Community judgments**

**62.25.**—(1) An order of the European Court that enforcement of a registered Community judgment be suspended—

- (a) shall—
  - (i) on production of the order to the Court of Session, and
  - (ii) on application made by note,be registered forthwith, and
- (b) shall be of the same effect as if the order had been an order made by the Court of Session on the date of its registration suspending the execution of the judgment for the same period and on the same conditions as are stated in the order of the European Court.

(2) No steps to enforce the judgment mentioned in paragraph (1) shall be taken while such an order of the European Court remains in force.

PART V RECOGNITION AND ENFORCEMENT OF JUDGMENTS UNDER THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

### **Application and interpretation of this Part**

**62.26.**—(1) This Part applies to the recognition and enforcement of a judgment under the Civil Jurisdiction and Judgments Act 1982(173).

(2) Unless the context otherwise requires, in this Part—

“the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982;

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(173) 1982 c. 27.

“Contracting State” has the meaning assigned in section 1(3) of the Act of 1982<sup>(174)</sup>;  
 “judgment” includes an authentic instrument or court settlement.

### **Disapplication of certain rules to this Part**

**62.27.** The following provisions shall not apply to an application under this Part in addition to those rules mentioned in rule 62.1:—

- rule 4.1(1) (printed form for petition),
- rule 14.4 (form of petitions).

### **Enforcement of judgements, authentic instruments or court settlements from another Contracting State**

**62.28.**—(1) An application under section 4 of, and Article 31 (enforcement of judgment from another Contracting State) or Article 50 (enforcement of authentic instrument or court settlement from another Contracting State) of the Convention in Schedule 1 or 3C to, the Act of 1982<sup>(175)</sup> shall be made by petition in Form 62.28.

(2) There shall be produced with the petition—

- (a) an authentic copy of the judgment to be registered;
- (b) a document which establishes that, according to the law of the country in which the judgment has been given, the judgment is enforceable and has been served;
- (c) where judgment has been given in absence (that is to say, in default of appearance), the original or a certified copy of the document which establishes that the party against whom judgment was given in absence was served with the document initiating the proceedings or with an equivalent document;
- (d) where applicable, a document showing that the applicant is in receipt of legal aid in the country in which the judgment was given;
- (e) an affidavit stating—
  - (i) whether the judgment provides for the payment of a sum of money;
  - (ii) whether interest is recoverable on the judgment under the law of the country in which judgment was given, and if so, the rate of interest, the date from which interest is due and the date on which interest ceases to accrue;
  - (iii) an address within the jurisdiction of the court for service on or intimation to the petitioner;
  - (iv) the usual or last known place of residence or business of the person against whom the judgment was given;
  - (v) the grounds on which the petitioner is entitled to enforce the judgment; and
  - (vi) the part of the judgment which is unsatisfied.

(3) Where the petitioner does not produce a document required under paragraph (2)(a) to (d), the court may—

- (a) fix a period within which that document is to be lodged;
- (b) accept an equivalent document; or
- (c) dispense with the requirement to produce the document.

<sup>(174)</sup>Section 1(3) of the Act of 1982 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 2(5).

<sup>(175)</sup>Section 4 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2, paragraph 2 and was extended to authentic instruments and court settlements by S.I. 1993/604. Schedule 1 was substituted by S.I. 1990/2591. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991, section 1(3) and Schedule 1.

### **Protective measures and interim interdict**

**62.29.**—(1) On lodging a petition referred to in rule 62.28, the petitioner may, at any time until the expiry of the period for lodging an appeal referred to in rule 62.34 or its disposal, apply by motion for a warrant for the execution of protective measures.

(2) On lodging such a petition, the petitioner may, at any time until the expiry of the period for lodging an appeal mentioned in rule 62.34 or its disposal, apply by motion for an interim interdict.

### **Warrant for registration under the Act of 1982**

**62.30.**—(1) The court shall, on being satisfied that the petition complies with the requirements of the Act of 1982, pronounce an interlocutor—

- (a) granting warrant for the registration of the judgment;
  - (b) granting warrant for the execution of protective measures; and
  - (c) where necessary, granting decree in accordance with Scots law.
- (2) The interlocutor pronounced under paragraph (1) shall specify—
- (a) the period within which an appeal mentioned in rule 62.34 against the interlocutor may be made; and
  - (b) that the petitioner—
    - (i) may register the judgment under rule 62.32; and
    - (ii) may not proceed to execution until the expiry of the period for lodging such an appeal or its disposal.

### **Intimation to petitioner**

**62.31.** Where the court pronounces an interlocutor under rule 62.30(1) granting warrant for registration, the Deputy Principal Clerk shall intimate such interlocutor to the petitioner by sending to his address for service in Scotland a certified copy of the interlocutor by registered post or the first class recorded delivery service.

### **Registration under the Act of 1982**

**62.32.**—(1) Where the court pronounces an interlocutor under rule 62.30(1) granting warrant for registration, the Deputy Principal Clerk shall enter the judgment in a register of judgments, authentic instruments and court settlements under the Act of 1982 kept in the Petition Department.

- (2) On presentation by the petitioner to the Keeper of the Registers of—
- (a) a certified copy of the interlocutor under rule 62.30(1) granting warrant for registration,
  - (b) an authentic copy of the judgment and any translation of it, and
  - (c) any certificate of currency conversion under rule 62.2(2),
- they shall be registered in the register of judgments of the Books of Council and Session.
- (3) On registration under paragraph (2), the Keeper of the Registers shall issue an extract of the registered judgment with a warrant for execution.

### **Service of warrant for registration under the Act of 1982**

**62.33.** The petitioner shall serve a copy of the interlocutor granting warrant for registration of a judgment and a notice in Form 62.33 on the person liable under the judgment.

**Appeals under the Act of 1982**

**62.34.**—(1) An appeal under Article 37 of the convention in Schedule 1 or 3C to the Act of 1982 (appeal against granting of warrant for registration) shall be made by motion—

- (a) to the Lord Ordinary; and
- (b) within one month of service under rule 62.33 (service of warrant for registration under the Act of 1982) or within two months of such service where service was executed on a person domiciled in another Contracting State.

(2) An appeal under Article 40 of the convention in Schedule 1 or 3C to the Act of 1982 (appeal against refusal to grant warrant for registration) shall be made by motion—

- (a) to the Lord Ordinary; and
- (b) within one month of the interlocutor pronounced under rule 62.30(1) (warrant for registration under the Act of 1982).

(3) Where the respondent in any such appeal is domiciled furth of the United Kingdom—

- (a) in relation to an appeal under paragraph (1), intimation of the motion shall be made to the address for service of the respondent in Scotland;
- (b) in relation to an appeal under paragraph (2), intimation of the motion shall be made in accordance with rule 16.2 (service furth of United Kingdom) or rule 16.5 (service where address of person is not known), as the case may be.

(4) Where an appeal under paragraph (1) is successful, the court shall, on the motion of the appellant, pronounce an interlocutor recalling any protective measure or interim interdict.

**Reclaiming under the Act of 1982**

**62.35.**—(1) Any party dissatisfied with the interlocutor of the Lord Ordinary in any appeal mentioned in rule 62.34 (appeals under the Act of 1982) may reclaim on a point of law against that interlocutor.

(2) Where a reclaiming motion under paragraph (1) against the registration of a judgment is successful, the court shall, on the motion of the appellant, pronounce an interlocutor recalling any protective measure or interim interdict.

**Recognition of judgments from another Contracting State**

**62.36.**—(1) For the purposes of Article 26 of the convention in Schedule 1 or 3C to the Act of 1982, an interlocutor pronounced under rule 62.30(1) (warrant for registration under the Act of 1982) shall imply recognition of the judgment so dealt with.

(2) In an application under Article 26(2) of the convention in Schedule 1 or 3C to the Act of 1982 (application for recognition of a judgment), rules 62.26 to 62.35 shall apply to such an application as they apply to an application under Article 31 of that convention, subject to the following provisions:—

- (a) it shall not be necessary to produce any documents required by rule 62.28(2)(b) and (d); and
- (b) rule 62.32 shall not apply.

**Enforcement of judgments from another part of the United Kingdom in Scotland (money provisions)**

**62.37.**—(1) An application under paragraph 5 of Schedule 6 to the Act of 1982 (application for registration in the Court of Session of a certificate in relation to a money provision in a judgment from another part of the United Kingdom) shall be made by presenting to the Keeper of the Registers—



- (a) a certificate under paragraph 4(1) of Schedule 6 to the Act of 1982; and
  - (b) any certificate of currency conversion under rule 62.2(2).
- (2) On presentation of the certificate mentioned in paragraph (1)(a), the Keeper of the Registers shall—
- (a) register the certificate in the register of judgments of the Books of Council and Session; and
  - (b) issue an extract of the certificate with a warrant for execution.
- (3) An application under—
- (a) paragraph 9 of Schedule 6 to the Act of 1982 (application to sist proceedings for enforcement of a certificate registered under paragraph (2) of this rule), or
  - (b) paragraph 10 of Schedule 6 to the Act of 1982 (application to reduce the registration under paragraph (2) of this rule),
- shall be made by petition.

#### **Enforcement of judgments from another part of the United Kingdom in Scotland (non-money provisions)**

**62.38.**—(1) An application under paragraph 5 of Schedule 7 to the Act of 1982 (application for registration in the Court of Session of a non-money provision in a judgment from another part of the United Kingdom) shall be made by petition in Form 62.38.

- (2) There shall be produced with the petition under paragraph (1)—
- (a) a certified copy of the judgment of the original court; and
  - (b) a certificate under paragraph 4(1)(b) of Schedule 7 to the Act of 1982.
- (3) The petition under paragraph (1) shall be heard by the Lord Ordinary in chambers and shall not require any appearance for the applicant unless the court so requires.
- (4) The court shall, on being satisfied that the petition complies with the requirements of section 18 of, and Schedule 7 to, the Act of 1982, pronounce an interlocutor—
- (a) granting warrant for the registration of the judgment; and
  - (b) where necessary, granting decree in accordance with Scots law.
- (5) Where the court pronounces an interlocutor under paragraph (4), rule 62.32 shall apply to the registration of a judgment under this rule as it applies to the registration of a judgment under that rule.
- (6) An application under—
- (a) paragraph 8 of Schedule 7 to the Act of 1982 (application to sist proceedings for enforcement of a judgment registered under paragraph (5) of this rule), or
  - (b) paragraph 9 of Schedule 7 to the Act of 1982 (application to reduce the registration under paragraph (5) of this rule),
- shall be made by petition.

#### **Cancellation of registration under the Act of 1982**

**62.39.** Where—

- (a) an interlocutor under rule 62.30(1) (warrant for registration under the Act of 1982) is recalled and registration under rule 62.32 (registration under the Act of 1982) is ordered to be cancelled after an appeal under Article 37 of the convention in Schedule 1 or 3C to the Act of 1982, or

- (b) registration under rule 62.37(2) (registration of judgments from another part of the United Kingdom in Scotland (money provisions)) or rule 62.38(5) (registration of judgments from another part of the United Kingdom in Scotland (non-money provisions)) is reduced, a certificate to that effect by the Deputy Principal Clerk shall be sufficient warrant to the Keeper of the Registers to cancel the registration and return the judgment, certificate or other documents to the person who applied for registration.

#### **Enforcement in another Contracting State of Court of Session judgments etc.**

**62.40.**—(1) Where a person seeks to apply under section 12 of the Act of 1982<sup>(176)</sup> for recognition or enforcement in another Contracting State of a judgment given by the court or a court settlement in the court, he shall apply by letter to the Deputy Principal Clerk for—

- (a) a certificate in Form 62.40–A;
- (b) a certified copy of the judgment; and
- (c) if required, a certified copy of the opinion of the court.

(2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1)(a) unless there is produced to him an execution of service of the judgment on the person on whom it is sought to be enforced.

(3) Where a person seeks to apply under Article 50 of the convention in Schedule 1 or 3C of the Act of 1982 for enforcement of an authentic instrument or court settlement registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate in Form 62.40–B; and
- (b) an extract of the authentic instrument or court settlement.

#### **Enforcement in another part of the United Kingdom of Court of Session judgments or documents registered for execution (money provisions)**

**62.41.**—(1) Where a person seeks to apply under Schedule 6 to the Act of 1982 for enforcement in another part of the United Kingdom of a money provision in a judgment given by the court, he shall apply by letter to the Deputy Principal Clerk for a certificate in Form 62.41–A.

(2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1) unless there is produced to him an affidavit stating—

- (a) the sum or aggregate of sums including interest and expenses payable and unsatisfied;
- (b) that the time for making an appeal against such judgment has expired or such appeal has been finally determined;
- (c) that enforcement of the judgment has not been suspended and the time available for its enforcement has not expired; and
- (d) the address of the party entitled to enforce, and the usual or last known address of the party liable to execution on, the judgment.

(3) Where a person seeks to apply under Schedule 6 to the Act of 1982 for enforcement in another part of the United Kingdom of a document registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate in Form 61.41–B; and
- (b) an extract of the document.

<sup>(176)</sup>Section 12 was extended to court settlements by [S.I. 1993/604](#).

(4) The Keeper of the Registers shall not issue a certificate under paragraph (3) unless there is produced to him an affidavit which includes the statements required under paragraph (2)(a), (c) and (d).

**Enforcement in another part of the United Kingdom of Court of Session judgments or documents registered for execution (non-money provisions)**

**62.42.**—(1) Where a person seeks to apply under Schedule 7 to the Act of 1982 for enforcement in another part of the United Kingdom of a non-money provision in a judgment of the court, he shall apply by letter to the Deputy Principal Clerk for—

- (a) a certificate in Form 62.42–A; and
- (b) a certified copy of such judgment.

(2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1) unless there is produced to him an affidavit stating—

- (a) that the time for making an appeal against such judgment has expired or such appeal has been finally determined; and
- (b) the address of the party entitled to enforce, and the usual or last known address of the party liable to execution on, the judgment or registered document.

(3) Where the Deputy Principal Clerk issues a certificate in Form 62.42–A, he shall attach it to the certified copy judgment.

(4) Where a person seeks to apply under Schedule 7 to the Act of 1982 for enforcement in another part of the United Kingdom of a non-money provision in a document registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate in Form 62.42–B; and
- (b) an extract of the document.

(5) The Keeper of the Registers shall not issue a certificate under paragraph (4) unless there is produced to him an affidavit referred to in paragraph (2).

(6) Where the Keeper of the Registers issues a certificate in Form 62.42–B, he shall attach it to the extract of the document.

**PART VIREGISTRATION UNDER THE MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982**

**Application and interpretation of this Part**

**62.43.**—(1) This part applies to an application under section 9 of the Merchant Shipping (Liner Conferences) Act 1982<sup>(177)</sup> (recognition and enforcement of recommendations, etc., of conciliators).

(2) In this Part, “the Liner Conferences Act” means the Merchant Shipping (Liner Conferences) Act 1982.

**Applications for registration under the Liner Conferences Act**

**62.44.**—(1) An application under—

- (a) section 9(1)(b) of the Liner Conferences Act (application for registration for enforcement of a recommendation, determination or award), or
- (b) section 9(3) of that Act (application for registration for enforcement of a determination of costs),

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<sup>(177)</sup>1982 c. 37.

shall be made by petition.

(2) A petition under section 9(1)(b) of the Liner Conferences Act shall include averments in relation to—

- (a) the reasons for the petition; and
  - (b) where appropriate, the limited extent to which the recommendation is enforceable under section 9(2) of that Act.
- (3) There shall be produced with the petition—
- (a) a certified copy of the recommendation, the reasons for the recommendation and the record of settlement;
  - (b) a copy of the acceptance of the recommendation by the parties on whom it is binding.

(4) There shall be produced with a petition under section 9(3) of the Liner Conferences Act a certified copy of the determination of costs.

#### **Warrant for registration under the Liner Conferences Act**

**62.45.** The court, on being satisfied that the recommendation, determination or award may be registered, shall pronounce an interlocutor granting warrant for registration of the recommendation, determination or award, as the case may be.

#### **Registration under the Liner Conferences Act**

**62.46.—**(1) Where the court pronounces an interlocutor under rule 62.45 granting warrant for registration—

- (a) the Deputy Principal Clerk shall enter the warrant in the register of recommendations, determinations and awards to be registered under section 9 of the Liner Conferences Act; and
  - (b) the petitioner shall serve a copy of the interlocutor containing such warrant on the party against whom the recommendation, determination or award may be enforced.
- (2) On presentation by the petitioner to the Keeper of the Registers of—
- (a) a certified copy of the interlocutor under rule 62.45 granting warrant for registration,
  - (b) a certified copy of the recommendation, determination or award to be registered and any translation of it, and
  - (c) where necessary, a certificate of currency conversion under rule 62.2(2),

they shall be registered in the register of judgments of the Books of Council and Session.

(3) On registration under paragraph (2), the Keeper of the Registers shall issue an extract of the registered recommendation, determination or award, as the case may be, with a warrant for execution.

### **PART VI RECIPROCAL ENFORCEMENT OF ORDERS IN RELATION TO CONFISCATION OF PROCEEDS OF CRIME**

#### **Interpretation of this Part**

**62.47.** In this Part—

“the Act of 1987” means the Criminal Justice (Scotland) Act 1987<sup>(178)</sup>;

“the Act of 1988” means the Criminal Justice Act 1988<sup>(179)</sup>;

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<sup>(178)</sup> 1987 c. 41.

<sup>(179)</sup> 1988 c. 33.

“the Act of 1989” means the Prevention of Terrorism (Temporary Provisions) Act 1989<sup>(180)</sup>;

“money order” means an order for the payment of money;

“non-money order” means an order which is not a money order.

### **Applications for registration under the Act of 1987, 1988 or 1989**

**62.48.**—(1) An application to which this rule applies shall be made by petition.

(2) This rule applies to an application under any of the following provisions:—

- (a) section 28(1) of the Act of 1987 (application for registration of an order to which section 27 of the Act applies);
- (b) section 30A(1) of the Act of 1987<sup>(181)</sup> (application for registration of an external confiscation order);
- (c) section 91(1) of the Act of 1988 (application for registration of an order to which section 90 of that Act applies);
- (d) paragraph 19(2) of Schedule 4 to the Act of 1989 (application for registration of an England and Wales order, Northern Ireland order or Islands order).

(3) There shall be produced with a petition under paragraph (1) a certified copy of the order which is sought to be registered.

### **Warrant for registration under the Act of 1987, 1988 or 1989**

**62.49.** The court shall, on being satisfied that the application complies with the requirements of the Act of 1987, the Act of 1988 or the Act of 1989, as the case may be—

- (a) pronounce an interlocutor granting warrant for execution of a non-money order; or
- (b) pronounce an interlocutor granting warrant for the registration of a money order.

### **Registration under the Act of 1987, 1988 or 1989**

**62.50.**—(1) Where the court pronounces an interlocutor under rule 62.49, the Deputy Principal Clerk shall enter the order in the register for the registration of orders under the Act of 1987, the Act of 1988 or the Act of 1989.

(2) On presentation by the petitioner to the Keeper of the Registers of—

- (a) a certified copy of the interlocutor pronounced under rule 62.49(b), and
- (b) a certified copy of the order to be registered,

they shall be registered in the register of judgments of the Books of Council and Session.

(3) On registration under paragraph (2), the Keeper of the Registers shall issue an extract of the registered order with a warrant for execution.

### **Service of warrant for registration under the Act of 1987, 1988 or 1989**

**62.51.** The petitioner shall serve a copy of the interlocutor, pronounced under rule 62.49 granting warrant for registration, and a notice in Form 62.51 on the person against whom the order may be enforced.

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<sup>(180)</sup> 1989 c. 4.

<sup>(181)</sup> Section 30A of the Act of 1987 was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 63.

**Suspension of enforcement under the Act of 1987, 1988 or 1989**

**62.52.**—(1) Where an order has been registered under rule 62.50, the court may, on the application of the person against whom the order may be enforced, if satisfied that an application has been made to the court which made the order to have it set aside or quashed—

- (a) suspend enforcement of the order; and
- (b) sist any proceedings for enforcement of the order.

(2) Notwithstanding rule 60.2 (form of applications for suspension), an application under paragraph (1) shall be made by note in the process in the petition under rule 62.48(1).

**Modification and cancellation of registration**

**62.53.**—(1) An application to modify or cancel the registration of an order registered under rule 62.50 shall be made—

- (a) by the petitioner, by motion; or
- (b) by any other interested party, by note.

(2) There shall be produced with the application under paragraph (1) a certified copy of any order which modifies or revokes the registered order or which causes the order to cease to have effect.

(3) The court shall, on being satisfied—

- (a) that the registered order has been modified, revoked or has ceased to have effect, or
- (b) that the registration of an external confiscation order should be cancelled in terms of section 30A(3) of the Act of 1987,

pronounce an interlocutor so modifying or cancelling the registration, as the case may be, and grant warrant for the registration of a certified copy of the interlocutor in the Books of Council and Session.

(4) Where the court pronounces an interlocutor under paragraph (3), the Deputy Principal Clerk shall modify or cancel the registration in the register kept under rule 62.50(1) in accordance with that interlocutor.

**Applications for inhibition or arrestment**

**62.54.** An application under section 11(1) of the Act of 1987 as applied by subsection (6) of that section, section 92(1) of the Act of 1988 or paragraph 16(1) of Schedule 4 to the Act of 1989 for warrant for inhibition or arrestment shall be made—

- (a) where the prayer of the petition has previously been granted, by motion in the process of the petition under rule 62.48(1); or
- (b) in the prayer of that petition.

**PART VIII REGISTRATION OF AWARDS UNDER THE MULTILATERAL INVESTMENT GUARANTEE AGENCY ACT 1988****Registration of awards under the Multilateral Investment Guarantee Agency Act 1988**

**62.55.** Part III shall, with the necessary modifications, apply to an award under Article 4 of Annex II to the convention referred to in section 1(1) of the Multilateral Investment Guarantee Agency Act 1988<sup>(182)</sup> as it applies to an award under the convention mentioned in section 1(1) of the Arbitration (International Investment Disputes) Act 1966<sup>(183)</sup>.

**PART IX RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS UNDER THE MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION**


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<sup>(182)</sup> 1988 c. 8.

<sup>(183)</sup> 1966 c. 41.

### **Application and interpretation of this Part**

**62.56.**—(1) This Part applies to an application under article 35 of the Model Law in Schedule 7 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(**184**) (applications for enforcement of arbitral award).

(2) In this Part—

“the Act of 1990” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;

“arbitral award” means an award to which the Model Law, as applied by section 86 of the Act of 1990, applies;

“the Model Law” means the Model Law on International Commercial Arbitration as set out in Schedule 7 to the Act of 1990.

### **Applications for registration under the Act of 1990**

**62.57.**—(1) An application for enforcement of an arbitral award under article 35 of the Model Law shall be made by petition.

(2) There shall be produced with such a petition—

(a) the authenticated original arbitral award or a certified copy of it;

(b) the original arbitration agreement referred to in article 7 of the Model Law or a certified copy of it;

(c) an affidavit stating—

(i) the full name, title, trade or business and the usual or last known place of residence or, where appropriate, of the business of the petitioner and the party against whom the arbitral award was made;

(ii) the amount of the arbitral award which is unsatisfied;

(iii) that the arbitral award has become binding on the parties and has not been set aside or suspended by a court of the country in which, or under the law of which, that award was made; and

(iv) whether any application has been made under the Model Law which, if granted, might result in the setting aside of the award.

### **Registration under the Act of 1990**

**62.58.**—(1) The court, on being satisfied that the arbitral award may be registered, shall grant warrant for registration.

(2) Where the court pronounces an interlocutor under paragraph (1), the Deputy Principal Clerk shall enter the arbitral award in a register of arbitral awards under article 35 of the Model Law.

(3) On presentation by the petitioner to the Keeper of the Registers of—

(a) a certified copy of the interlocutor of the warrant for registration,

(b) a certified copy of the arbitral award to be registered and any translation of it, and

(c) any certificate of currency conversion under rule 62.2(2),

they shall be registered in the register of judgments of the Books of Council and Session.

(4) An extract of a registered arbitral award with warrant for execution shall not be issued by the Keeper of the Registers until a certificate of service under rule 62.59 (service on party against whom arbitral award made) is produced to him.

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(184) 1980 c. 40.

**Service on party against whom arbitral award made**

**62.59.** On registration under rule 62.58, the petitioner shall forthwith serve a notice of the registration on the party against whom the arbitral award was made in Form 62.16.

**Application for refusal of recognition or enforcement under the Act of 1990**

**62.60.—**(1) An application under article 36(1)(a) of the Model Law (request by party against whom arbitral award made for refusal of recognition or enforcement) shall be made by note.

(2) A note referred to in paragraph (1)—

(a) may crave—

(i) suspension or interdict of any past or future steps in the execution of the arbitral award, including registration or enforcement of the award; and

(ii) recall of any interlocutor pronounced under rule 62.58(1) (registration under the Act of 1990); and

(b) shall be supported by affidavit and any documentary evidence.

(3) Where any interlocutor pronounced under rule 62.58(1) is recalled, a certificate to that effect issued by the Deputy Principal Clerk shall be sufficient warrant to the Keeper of the Registers to cancel the registration and return the documents registered to the petitioner on whose application the interlocutor under the rule was pronounced.

*CHAPTER 63**APPLICATIONS RELATING TO TRUSTS***PART IV VARIATION OR REVOCATION OF TRUSTS****Interpretation of this Part**

**63.1.** In this Part, “the Act of 1961” means the Trusts (Scotland) Act 1961<sup>(185)</sup>.

**Form of petitions under section 1(4) of the Act of 1961**

**63.2.** In a petition under section 1(4) of the Act of 1961 (petition to vary or revoke purposes of an alimentary trust), it shall not be necessary to aver the amount or details of the income of an alimentary beneficiary from all sources.

**Service on certain persons**

**63.3.** In a petition under section 1 of the Act of 1961<sup>(186)</sup> (petition for variation or revocation of trust purposes or extension of trustees' powers), the order under rule 14.5 (first order in petitions)—

(a) shall include a requirement for the petition to be served—

(i) where the trust deed is registered in a register kept by the Keeper of the Registers or the Keeper of the Records, on the relevant Keeper; or

(ii) where the trust deed is registered in a sheriff court book, on the sheriff clerk who keeps the relevant sheriff court book; and

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<sup>(185)</sup>1961 c. 57.

<sup>(186)</sup>Section 1 was amended by the Age of Majority (Scotland) Act 1969 (c. 39), Schedule 1 and the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 1, paragraph 27 and Schedule 2.



- (b) may include a requirement for the petition to be served on a trustee or settlor or any other person who has contributed or is liable to contribute to the trust estate which may be affected by the petition.

## PART IIPETITIONS BY TRUSTEES FOR DIRECTIONS

### Application of this Part

**63.4.** This Part applies to an application for which provision may be made by virtue of section 6(vi) of the Act of 1988<sup>(187)</sup> (provision to enable trustees under any trust deed to obtain direction of the court).

### Form and service of application

**63.5.**—(1) An application to which rule 63.4 applies shall be made by petition.

(2) The petition shall set out the question on which the direction of the court is sought and may include, in an appendix, any relevant documents.

(3) The court may, in any order made under rule 14.5 (first order in petitions) or in any subsequent order, include a requirement to serve the petition on creditors, beneficiaries or other persons interested in the subject-matter of the petition.

### Determination of petition

**63.6.**—(1) The petition shall be disposed of at a hearing on the Summar Roll.

(2) At the hearing on the Summar Roll, the court may order inquiry by—

- (a) proof,
- (b) remit to a reporter, or
- (c) affidavit,

as it thinks fit.

## PART IIIPUBLIC TRUSTS

### Application and interpretation of this Part

**63.7.**—(1) This Part applies to—

- (a) an application to the *nobile officium* of the court for approval of a cy près scheme in relation to a public trust; or
- (b) an application to the court under—
  - (i) Part VI of the Education (Scotland) Act 1980<sup>(188)</sup> (reorganisation of endowments); or
  - (ii) Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(189)</sup> (charities and reorganisation of public trusts).

(2) In this Part, “the Act of 1990” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

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<sup>(187)</sup>1988 c. 36.

<sup>(188)</sup>1980 c. 44.

<sup>(189)</sup>1990 c. 40.

**Proceedings before nominated judge**

**63.8.** Subject to rule 63.9 (referral to Inner House), all proceedings in an application to which this Part applies shall be brought before a judge of the court nominated for that purpose by the Lord President or, where the nominated judge is not available, any other judge of the court (including the vacation judge); and, in this Part, “Lord Ordinary” shall be construed accordingly.

**Remit to Inner House**

**63.9.** The Lord Ordinary, if he thinks fit, may at any time remit a petition to which this Part applies to the Inner house to be determined by a Division of the Inner House.

**Form of applications**

**63.10.—**(1) Subject to the following paragraphs of this rule, an application to which this Part applies shall be made by petition.

(2) An application for an order in a petition to which this Part applies which is in dependence shall be made by motion.

(3) At the hearing of a motion under paragraph (2), the court may order that the application be made by note; and, in such a case, shall make an order for the lodging of answers to the note in process within such period as the court thinks fit.

(4) Intimation to the court by the Lord Advocate under section 1(6) or 5(13) of the Act of 1990 (interdict until intimation to court) shall be made by motion for recall of the interlocutor.

**Service on interested persons**

**63.11.** A petition to which this Part applies shall be served on all persons who may have an interest in the subject-matter of the petition.

**Procedure where no answers lodged**

**63.12.—**(1) if, on the expiry of the period of notice, no answers have been lodged, the petitioner may apply by motion for an order granting the prayer of the petition.

(2) On a motion under paragraph (1), the Lord Ordinary may, before determining that motion—

- (a) remit to a reporter to inquire into, and report on, the petition and any scheme appended to it;
- (b) order the petitioner to lodge evidence by affidavit or documentary evidence;
- (c) order a further hearing; or
- (d) make such other order as he thinks fit.

**Procedure where answers lodged**

**63.13.—**(1) Where answers are lodged in a petition, the parties may adjust the petition and answers during the period of 28 days from the date on which answers are lodged or from the expiry of the period of notice, whichever is the later.

(2) Within 14 days after the expiry of the period allowed for adjustment under paragraph (1), the petitioner shall enrol a motion for an order for such further procedure as he shall specify.

(3) On a motion under paragraph (2), the Lord Ordinary shall make such order as he thinks fit for the further procedure of the petition; and, in particular—

- (a) may—

- (i) remit to a reporter to inquire into, and report on, the petition and any scheme appended to it;
- (ii) order a party to lodge evidence by affidavit or documentary evidence; and
- (b) then, or thereafter, shall appoint the cause to a hearing.
- (4) At a hearing appointed under paragraph (3)(b), the Lord Ordinary shall—
  - (a) determine the petition; or
  - (b) make such order for further procedure as he thinks fit.
- (5) If at any stage answers are withdrawn, the petition shall proceed as if answers had not been lodged.

### **Warrants for registration**

**63.14.** An interlocutor approving a cy près scheme or a scheme for the variation or reorganisation of a public trust shall contain a warrant for the registration of an official certified copy of the interlocutor, and a copy of the scheme certified by the agent to the petitioner, in the Books of Council and Session or the books of a specified sheriff court.

### **Advertisement of court orders**

**63.15.** An order made under paragraph (a) or (g) of section 7(4) of the Act of 1990 (interim interdict or interdict of body holding itself out as a charity etc.) shall, unless the court otherwise directs, be advertised forthwith in one or more newspapers as the court shall direct for ensuring that it comes to the notice of persons dealing with a non-recognised body within the meaning of section 2(2) of that Act.

## **CHAPTER 64**

### **APPLICATIONS UNDER SECTION 1 OF THE ADMINISTRATION OF JUSTICE (SCOTLAND) ACT 1972**

#### **Application of this Chapter**

**64.1.** This Chapter applies to an application for an order under section 1 of the Administration of Justice (Scotland) Act 1972<sup>(190)</sup> made where a cause is not depending before the court in which the application may be made.

#### **Form of applications under the Act of 1972**

**64.2.** An application to which this Chapter applies shall be made by petition.

#### **Intimation and service**

**64.3.—**(1) Before granting the application, the court may order such intimation and service of the petition to be given or executed, as the case may be, as it thinks fit.

(2) Any person receiving intimation or service of the petition by virtue of an order under paragraph (1) may appear and oppose the application.

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<sup>(190)</sup> 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.

**Orders for caution or other security**

**64.4.** On granting, in whole or in part, the application, the court may order the petitioner to find such caution or other security as it thinks fit.

**CHAPTER 65****REFERENCES TO THE EUROPEAN COURT OF JUSTICE****Interpretation of this Chapter**

**65.1.**—(1) In this Chapter—

“appeal” includes an application for leave to appeal;

“the European Court” means the Court of Justice of the European Communities;

“reference” means a reference to the European Court for—

- (a) a preliminary ruling under Article 177 of the E.E.C. Treaty, Article 150 of the Euratom Treaty, or Article 41 of the E.C.S.C. Treaty;
- (b) a preliminary ruling on the interpretation of the Conventions, mentioned in Article 1 of Schedule 2 to the Civil Jurisdiction and Judgments Act 1982<sup>(191)</sup>, under Article 3 of that Schedule; or
- (c) a preliminary ruling on the interpretation of the instruments, mentioned in Article 1 of Schedule 3 to the Contracts (Applicable Law) Act 1990<sup>(192)</sup>, under Article 2 of that Schedule.

(2) The expressions “E.E.C. Treaty”, “Euratom Treaty” and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972<sup>(193)</sup>.

**Applications for reference**

**65.2.** A reference may be made by the court at its own instance or on the motion of a party in Form 65.2.

**Preparation of case for reference**

**65.3.**—(1) Where the court decides that a reference shall be made, it shall pronounce an interlocutor giving directions to the parties about the manner and time in which the reference is to be drafted and adjusted.

(2) When the reference has been drafted at the sight of the court, the court shall make and sign the reference.

(3) A certified copy of the interlocutor making the reference shall be annexed to the reference.

**Sist of cause**

**65.4.**—(1) Subject to paragraph (2), on a reference being made, the cause shall, unless the court when making such a reference otherwise orders, be sisted until the European Court has given a preliminary ruling on the question referred to it.

(2) The court may recall a sist made under paragraph (1) for the purpose of making an interim order which a due regard to the interests of the parties may require.

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<sup>(191)</sup>1982 c. 27.

<sup>(192)</sup>1990 c. 36.

<sup>(193)</sup>1972 c. 68.

### **Transmission of reference**

**65.5.**—(1) Subject to paragraph (2), a copy of the reference, certified by the Deputy Principal Clerk, shall be transmitted by him to the Registrar of the European Court.

(2) Unless the court otherwise directs, a copy of the reference shall not be sent to the Registrar of the European Court where a reclaiming motion or appeal against the making of the reference is pending.

(3) For the purpose of paragraph (2), a reclaiming motion or an appeal shall be treated as pending—

- (a) until the expiry of the time for marking that reclaiming motion or appeal; or
- (b) where a reclaiming motion or an appeal has been made, until it has been determined.

## *CHAPTER 66*

### *APPLICATIONS UNDER THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1975*

### **Interpretation of this Chapter**

**66.1.** In this Chapter—

“the Act of 1975” means the Evidence (Proceedings in Other Jurisdictions) Act 1975(194);

“civil proceedings” has the meaning assigned in section 9(1) of the Act of 1975;

“requesting court” has the meaning assigned in section 9(1) of the Act of 1975.

### **Disapplication of certain rules to this Chapter**

**66.2.** The following rules shall not apply to an application to which this Chapter applies:—

- rule 14.5 (first order in petitions),
- rule 14.6 (period of notice for lodging answers),
- rule 14.7 (intimation and service of petitions),
- rule 14.9 (unopposed petitions).

### **Form of applications under the Act of 1975**

**66.3.**—(1) An application under section 1 of the Act of 1975 (application for assistance in obtaining evidence for foreign civil proceedings) shall be made by petition.

(2) There shall be produced with such a petition a certificate—

- (a) certifying that the application is made by virtue of a request issued by or on behalf of a requesting court situated furth of Scotland; or
- (b) certifying that the evidence to be obtained is for the purposes of civil proceedings commenced or contemplated before that court; and
- (c) signed—
  - (i) in the case of a requesting court situated in England, Wales or Northern Ireland, by a duly authorised officer of that court;
  - (ii) in the case of a requesting court situated furth of the United Kingdom, a duly authorised diplomatic or consular representative of the country or territory within which that court is situated.

(3) Where the letter of request is in a language other than English, there shall be produced with the petition a translation into English certified as correct by the translator; and the certificate shall include his full name, address and qualifications.

#### **Intimation of order and citation**

**66.4.**—(1) Where the court pronounces an interlocutor making an order under section 2(1) of the Act of 1975, the petitioner shall—

- (a) intimate a certified copy of that interlocutor to any witness or haver named in the interlocutor; and
- (b) cite such witness or haver to give evidence.

(2) Rule 35.4(3) and (4) (citation of haver to commission) and rule 35.11(5) and (6) (citation of witness to commission) shall, with the necessary modifications, apply to the citation of a haver or witness, as the case may be, under this rule.

#### **Variation or recall of orders**

**66.5.** A witness or haver who has received intimation and citation under rule 66.4 may apply to the court by motion to have the order under section 2(1) of the Act of 1975 varied or recalled.

#### **Procedure where witness claims he is not compellable**

**66.6.**—(1) Where a witness or haver who has received intimation and citation under rule 66.4—

- (a) claims that he is not a compellable witness or haver by virtue of section 3(1)(b) of the Act of 1975, and
- (b) is required to give evidence,

the court or any commissioner appointed by the court shall take the evidence and record it in a document separate from the record of any other evidence; and that document shall be kept by the Deputy Principal Clerk.

(2) Where evidence is taken under paragraph (1) of this rule, the court or the commissioner, as the case may be, shall certify the grounds of the claim made under section 3(1)(b) of the Act of 1975.

(3) On certification under paragraph (2), the deputy Principal Clerk shall send the certificate to the requesting court with a request to it to determine the claim.

(4) On receipt of the determination from the requesting court, the Deputy Principal Clerk shall—

- (a) give written intimation of the determination to the witness or haver who made the claim; and
- (b) in accordance with the determination, send the document in which the evidence is recorded to, as the case may be—
  - (i) the requesting court, or
  - (ii) where the claim is upheld, the witness or haver.

#### **Applications for evidence for proceedings under the European Patent Convention**

**66.7.** Where the court makes an order under section 1 of the Act of 1975 as applied by section 92(1) of the Patents Act 1977<sup>(195)</sup>, an officer of the European Patent Office may apply by motion—

- (a) to examine any witness; or

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<sup>(195)</sup>1977 c. 37.

- (b) to request the court or commissioner, as the case may be, to put specified questions to any witness.

## CHAPTER 67

### APPLICATIONS UNDER THE ADOPTION (SCOTLAND) ACT 1978

#### PART I GENERAL PROVISIONS

##### Application and interpretation of this Chapter

**67.1.**—(1) This Chapter applies to applications under the Adoption (Scotland) Act 1978<sup>(196)</sup>.

(2) In this Chapter, unless the context otherwise requires—

“the Act of 1978” means the Adoption (Scotland) Act 1978;

“freeing for adoption order” means an order made in accordance with section 18(1) of that Act;

“Her Majesty’s Forces” means the Royal Navy, the regular armed forces as defined in section 225 of the Army Act 1955<sup>(197)</sup>, the regular air force as defined in section 223 of the Air Force Act 1955<sup>(198)</sup> and the Queen Alexandra’s Royal Naval Nursing Services;

“parental rights” has the meaning assigned in section 8 of the Law Reform (Parent and Child) (Scotland) Act 1986<sup>(199)</sup>;

“section 49 order” means an order made in accordance with section 49(1) of the Act of 1978<sup>(200)</sup>.

##### Disapplication of certain rules to this Chapter

**67.2.** Unless otherwise provided in this Chapter, the following rules shall not apply to a petition or note to which this Chapter applies:—

rule 14.5 (first order in petitions),

rule 14.6(1)(d) (period of notice for lodging answers where service by advertisement),

rule 14.7 (intimation and service of petitions),

rule 14.8 (procedure where answers lodged),

rule 14.9 (unopposed petitions).

##### Confidentiality of documents in process

**67.3.** Unless the court otherwise directs, in any cause to which this Chapter applies—

(a) any document lodged in process, including a report by a local authority, an adoption agency, a reporting officer or a curator *ad litem*, shall be treated as confidential and open only to the court, the parties, the reporting officer and the curator *ad litem*; and

(b) a reporting officer or curator *ad litem* shall treat any information obtained by him in relation to the cause as confidential, and shall not disclose any such information to any person unless it is necessary for the proper execution of his duties.

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<sup>(196)</sup> 1978 c. 28.

<sup>(197)</sup> 1955 c. 18.

<sup>(198)</sup> 1955 c. 19.

<sup>(199)</sup> 1986 c. 9; section 8 was amended by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 1, paragraph 43.

<sup>(200)</sup> Section 49(1) of the Act of 1978 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 42.

**Selection of reporting officer or curator *ad litem***

**67.4.** Where the court appoints a reporting officer or a curator *ad litem*, such person shall be selected from a panel established under the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 1984(**201**) unless the court considers that it would be appropriate to appoint a person who is not on the panel.

**Form of agreements and consents**

**67.5.**—(1) An agreement by a parent or guardian—

- (a) for the purposes of section 16(1)(b) of the Act of 1978 (agreement to adoption), shall be in form 67.5–A;
- (b) for the purposes of section 16(1)(b), by virtue of section 49(**202**) of that Act (adoption of child abroad), shall be in Form 67.5–A; or
- (c) for the purposes of section 18(1)(a) of that Act (agreement to freeing for adoption), shall be in form 67.5–B.

(2) A consent—

- (a) by a child for the purposes of section 12(8) of the Act of 1978(**203**) (consent to adoption), shall be in Form 67.5–C;
- (b) by a parent or guardian for the purposes of section 18(2)(a) of that Act (consent to application for freeing for adoption), shall be in Form 67.5–D; or
- (c) by a child for the purposes of section 18(8) of that Act(**204**) (consent to freeing for adoption), shall be in Form 67.5–E.

(3) An agreement or consent referred to in this rule which is executed furth of Scotland shall be witnessed—

- (a) where it is executed in England, Wales or Northern Ireland, by a justice of the peace or commissioner for oaths;
- (b) where it is executed furth of the United Kingdom—
  - (i) in the case of a parent or guardian serving in Her Majesty’s Forces, by an officer holding a commission in those forces; or
  - (ii) by a British consular official or any person authorised, by the law of the country where the agreement or consent is executed, to administer an oath for any legal purpose.

**Orders for evidence**

**67.6.**—(1) In a cause to which this Chapter applies, the court may, before determining the cause, order—

- (a) production of further documents (including affidavits); or
- (b) parole evidence.

(2) A party may apply by motion for the evidence of a person to be received in evidence by affidavit; and the court may make such order as it thinks fit.

(**201**) S.I. 1984/566, amended by S.I. 1985/1556.

(**202**) Section 49 of the Act of 1978 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 42.

(**203**) Section 12(8) of the Act of 1978 was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3)(a).

(**204**) Section 18(8) of the Act of 1978 was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3)(b).



## Expenses

**67.7.** In a cause to which this Chapter applies, the court may make such order as to expenses, including the expenses of a local authority or an adoption agency which prepared a report, a reporting officer, a curator *ad litem*, or any other person who attended a hearing, as it thinks fit.

## PART IIFREEING FOR ADOPTION

### Interpretation of this Part

**67.8.** In this Part, “petition” means the petition referred to in rule 67.9(1).

### Applications for freeing for adoption order

**67.9.—(1)** An application under section 18(1) of the Act of 1978 (freeing child for adoption) shall be made by petition.

(2) The petition shall include averments in relation to, or refer to a report or other documents produced which deal with—

- (a) whether the petition is presented with the consent of a parent or guardian;
  - (b) whether the petitioner is applying for dispensation with the agreement of a parent or guardian under section 18(2)(b) of the Act of 1978 (agreement to freeing for adoption) and the ground on which dispensation is sought;
  - (c) how the needs of the child came to the notice of the petitioner;
  - (d) any relevant family circumstances of the child;
  - (e) a description of the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
  - (f) the discussion by the petitioner with the parents or guardians of the child and, if appropriate, with the child about their wishes and the alternatives to adoption;
  - (g) the knowledge of the petitioner of the position of other relatives or persons likely to be involved;
  - (h) the search by the petitioner for any parent or guardian who cannot be found;
  - (i) the likelihood of placement of the child for adoption and whether a petition for an adoption order is likely in the near future;
  - (j) the arrangements of the petitioner for the care of the child in the event of the granting of the prayer of the petition;
  - (k) whether the petitioner has given each parent or guardian who can be found an opportunity to make a declaration for the purposes of section 18(6) of the Act of 1978<sup>(205)</sup> (declaration of preference not to be involved in future questions concerning the adoption);
  - (l) the enquiries by the petitioner into the circumstances of any reputed father; and
  - (m) whether the petitioner intends to give notice to a former parent or guardian under section 19(2) and (3) of that Act (progress reports).
- (3) On presentation of the petition, there shall be lodged in process as a production—
- (a) an extract or a certified copy of any entry in the register of births relating to the child; and
  - (b) any consent of a parent or guardian required by section 18(2)(a) of the Act of 1978 (consent to freeing for adoption).

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<sup>(205)</sup>Section 18(6) of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraph 40.

**Appointment of reporting officer and curator *ad litem***

**67.10.**—(1) On presentation of the petition, the court shall pronounce an interlocutor—

- (a) appointing a reporting officer; and
- (b) appointing a curator *ad litem* where it appears desirable in order to safeguard the interests of the child.

(2) Where a curator *ad litem* is appointed, the court may order—

- (a) the petitioner,
- (b) a local authority, or
- (c) the reporting officer,

to make available to the curator *ad litem* any report or information in relation to the child and the natural father and mother of the child.

(3) A person may, before presenting the petition, apply by letter to the Deputy Principal Clerk for the appointment of a reporting officer.

(4) An application under paragraph (3) shall—

- (a) set out the reasons for which the appointment is sought;
- (b) not require to be intimated to any person;
- (c) be accompanied by an interlocutor sheet; and
- (d) be placed by the Deputy Principal Clerk before the Lord Ordinary for his decision.

(5) The Deputy Principal Clerk shall give written intimation to the applicant under paragraph (3) of the decision of the Lord Ordinary.

(6) The decision of the Lord Ordinary on an application under paragraph (3) shall be final and not subject to review.

(7) The letter and the interlocutor sheet in an application under paragraph (3) shall be kept in the Petition Department and subsequently placed in the process of the petition.

**Duties of reporting officer and curator *ad litem***

**67.11.**—(1) A reporting officer appointed under rule 67.10 shall—

- (a) inquire into the facts and circumstances averred in the petition;
- (b) ascertain the whereabouts of each parent or guardian and, if practicable, meet him;
- (c) witness any execution in Scotland of any agreement in Form 67.5–B by a parent or guardian under section 18(1)(a) of the Act of 1978 (agreement to freeing for adoption) and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved and, where the reporting officer has been appointed before the petition has been presented, any consent in Form 67.5–D by a parent or guardian under section 18(2)(a) of that Act (consent to freeing for adoption);
- (d) where a parent or guardian is furth of Scotland, confirm his views in writing, ensure that any agreement under section 18(1) of the Act of 1978 is witnessed in accordance with rule 67.5(3) and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (e) ensure that each parent or guardian who can be found and who has executed an agreement for the purposes of section 18(1)(a) of the Act of 1978 understands that he may renounce that agreement at any time before a freeing for adoption order is made;

- (f) witness any execution in Scotland of a consent of child in Form 67.5–E under section 18(8) of the Act of 1978 (consent to freeing for adoption) and ensure that he understands the consequences of that consent;
  - (g) where a child in respect of whom a consent under section 18(8) of the Act of 1978 is required is furth of Scotland confirm his consent in writing and ensure that the consent is witnessed in accordance with rule 67.5(3);
  - (h) consider whether the petitioner has made every reasonable effort to find every person whose agreement is required;
  - (i) investigate whether there are any other persons with a relevant interest and whether they should be informed of the petition;
  - (j) ascertain whether the petitioner has considered the position of any reputed father;
  - (k) where the father of the child does not have parental rights, consider the prospect of any application by him for parental rights and whether such an application would be likely to be refused;
  - (l) discuss alternatives to adoption with each parent or guardian who can be found;
  - (m) explain the consequences of a freeing for adoption order to each parent or guardian who can be found;
  - (n) ensure that each parent or guardian who can be found understands he may be able to apply under section 20 of the Act of 1978(206) and rule 67.14 for revocation of a freeing for adoption order, and the procedure for making such an application;
  - (o) ensure that each parent or guardian who can be found has been given an opportunity to make a declaration under section 18(6) of the Act of 1978 that he prefers not to be involved in future questions concerning the adoption of the child;
  - (p) consider why the application is for a freeing for adoption order and not a full adoption order;
  - (q) consider whether the account by the petitioner of the likelihood of arranging adoption after a freeing for adoption order is correct;
  - (r) consider whether any payment or reward prohibited by section 51 of the Act of 1978 (prohibition on certain payments) has been received or agreed upon;
  - (s) ensure that each parent or guardian who can be found is aware of the date (if known) of the hearing to determine the application if he wishes to appear, and confirm that such person whose agreement is required and has not been dispensed with understands that he may withdraw his agreement at any time before the freeing for adoption order is made;
  - (t) draw to the attention of the court any matter which may be of assistance; and
  - (u) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (2) A curator *ad litem* appointed under rule 67.10(1)(b) shall–
- (a) safeguard generally the interests of the child;
  - (b) inquire, so far as he considers necessary, into the facts and circumstances averred in the petition;
  - (c) confirm any consent by a child under section 18(8) of the Act of 1978 (consent to freeing for adoption);
  - (d) inquire into any matters not averred in the petition which appear to him to be relevant to the making of a freeing for adoption order;

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(206) Section 20 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 36.

- (e) ascertain the current circumstances and care of the child;
  - (f) where the agreement or consent of a parent or guardian or the consent of a child is sought to be dispensed with, consider whether the ground of dispensation has been made out;
  - (g) consider whether, in his opinion, the child should be present at the hearing to determine the petition;
  - (h) perform such other duties as appear to him to be necessary or as the court may require; and
  - (i) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (3) The reporting officer shall, on completion of his report, send to the Deputy Principal Clerk—
- (a) the report and a copy of it for each party;
  - (b) any agreement for the purposes of section 18(1)(a) of the Act of 1978 (agreement of parent or guardian to freeing for adoption);
  - (c) any declaration for the purposes of section 18(6) of the Act of 1978 (declaration of preference not to be involved in future questions concerning adoption); and
  - (d) any consent under section 18(8) of the Act of 1978 (consent of child to freeing for adoption).
- (4) The curator *ad litem* shall, on completion of his report, send the report, and a copy of it for each party, to the Deputy Principal Clerk.

#### **Declaration of preference not to be involved**

**67.12.**—(1) A declaration under section 18(6) or 19(4) of the Act of 1978 (declaration of preference not to be involved in future questions concerning adoption) shall be in Form 67.12.

(2) A declaration referred to in paragraph (1) which is executed furth of Scotland shall be witnessed in accordance with rule 67.5(3).

(3) The making of a declaration referred to in paragraph (1) shall be recorded in an interlocutor pronounced by the court.

(4) For the purposes of section 19(4)(a) of the Act of 1978, the adoption agency shall—

- (a) lodge the declaration, and
- (b) apply to the court by motion,

in the process of the petition to which the declaration relates to have that declaration recorded.

#### **Hearing of freeing for adoption petition**

**67.13.**—(1) On receipt of the reports mentioned in rule 67.11(3) and (4), the Deputy Principal Clerk shall—

- (a) cause the reports and any other documents to be lodged in process;
- (b) give written intimation to each party of the lodging of those documents and make them available to each party; and
- (c) within 7 days thereafter, cause—
  - (i) the petition to be put out on the By Order Roll before the Lord Ordinary; and
  - (ii) written intimation of the date of the hearing on the By Order Roll to be given to each party.

(2) At the hearing on the By Order Roll, the court—

- (a) shall pronounce an interlocutor appointing the petition to a hearing to determine the petition; and
- (b) may, in such interlocutor—
  - (i) order any person whose agreement or consent is required to be given or dispensed with to attend the hearing;
  - (ii) order intimation of the date of the hearing to any person not mentioned in paragraph (3)(a), (b) or (c); and
  - (iii) order the reporting officer or curator *ad litem*, as the case may be, to perform any additional duties to assist the court in determining the petition.
- (3) The petitioner shall intimate the date of the hearing ordered under paragraph (2)(a) in Form 67.13 to—
  - (a) every person whose whereabouts are known to him and whose agreement or consent is required to be given or dispensed with;
  - (b) the reporting officer appointed under rule 67.10(1)(a);
  - (c) any curator *ad litem* appointed under rule 67.10(1)(b); and
  - (d) any person on whom intimation was ordered under paragraph (2)(b)(ii) of this rule.
- (4) At the hearing ordered under paragraph (2)(a)—
  - (a) the petitioner, the reporting officer and, where one has been appointed, the curator *ad litem* shall, if required by the court, appear and may be represented;
  - (b) any person required by the court to attend the hearing shall appear and may be represented; and
  - (c) any other person to whom intimation was made under paragraph (3)(a) or (d) may appear or be represented.

#### **Applications for revocation of freeing for adoption order**

**67.14.**—(1) An application under section 20(1) of the Act of 1978 (application for revocation of freeing for adoption order) shall be made by note.

- (2) On presentation of a note under paragraph (1), the court shall pronounce an interlocutor—
  - (a) ordering service of the note on—
    - (i) the petitioner;
    - (ii) any person who appeared or was represented at the hearing for the freeing for adoption order except a parent or guardian who has made a declaration under section 18(6) or 19(4) of the Act of 1978 (declaration of preference not to be involved in future questions concerning adoption); and
    - (iii) the adoption agency having the parental rights and duties in respect of the child or any substitute agency; and
  - (b) where it appears desirable in order to safeguard the interests of the child, appointing a curator *ad litem*.
- (3) A note under paragraph (1) shall not be intimated on the walls of the court or advertised.
- (4) Where a curator *ad litem* is appointed under paragraph (2)(b), the court may order—
  - (a) the adoption agency,
  - (b) a local authority, or
  - (c) the reporting officer appointed in the petition,

to make available to the curator *ad litem* any report or information in relation to the child and the natural father and mother of the child.

- (5) A curator *ad litem* appointed under paragraph (2)(b) shall—
  - (a) inquire into the facts and circumstances averred in the note;
  - (b) ascertain whether 12 months have elapsed between the making of the freeing for adoption order and the date of presentation of the note;
  - (c) where a previous application under section 20(1) of the Act of 1978 was refused, inquire whether there has been any change of circumstances or other reason for the current application of which the court should be aware in determining the note;
  - (d) inquire into any other matter which appears to him to be relevant for determination of the note;
  - (e) consider whether, in his opinion, the child should be present at the hearing to determine the note;
  - (f) perform such other duties as appear to him to be necessary or as the court may require; and
  - (g) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (6) The curator *ad litem* shall, on completion of his report, send the report, and a copy of it for each party, to the Deputy Principal Clerk.

#### **Hearing of application for revocation of freeing for adoption order**

**67.15.**—(1) Where no curator *ad litem* has been appointed under rule 67.14(2)(b), the noter shall, within 7 days after the expiry of the period of notice for lodging answers, apply by motion for a hearing to determine the note.

- (2) Where a curator *ad litem* has been appointed under rule 67.14(2)(b)—
  - (a) the Deputy Principal Clerk shall—
    - (i) cause the report sent to him under rule 67.14(5) to be lodged in process; and
    - (ii) give written intimation of the lodging of the report to the noter and any person on whom service was executed by virtue of rule 67.14(2)(a) and make that report available to them; and
  - (b) within 7 days after receipt of the intimation under sub-paragraph (a)(ii), the noter shall apply by motion for a hearing to determine the note.

(3) Where a noter has previously made an application under section 20(1) of the Act of 1978 (application for revocation of freeing for adoption order) which has been refused by any court, he shall, in his motion under paragraph (1) or (2), seek leave under section 20(5) of that Act to allow the note to proceed.

(4) On a date being fixed for a hearing to determine the note, the noter shall intimate the date of the hearing in Form 67.15 to any person to whom intimation was given by virtue of rule 67.14(2).

(5) At the hearing to determine the note, the noter and any person who received intimation under paragraph (4) shall appear and may be represented.

#### **Applications to place child for adoption**

**67.16.** An application under section 20(2) of the Act of 1978 (application by adoption agency for leave to place a child) shall be made by motion.

### **Applications for transfer of parental rights and duties between adoption agencies**

**67.17.** An application under section 21 of the Act of 1978~~(207)~~ (transfer of parental rights and duties between adoption agencies) shall be made by note.

### **Applications relating to return, removal or prohibition of removal of child**

**67.18.** An application under section 29 of the Act of 1978~~(208)~~ (order to return a child to, or not to remove a child from, the care of the applicant)–

- (a) in relation to a breach of section 27(2) of the Act of 1978~~(209)~~ (restrictions on removal of child where application for freeing for adoption order pending), an application under section 29 of that Act, or
- (b) an application for leave under section 27(2) of that Act (leave to remove a child where application for freeing for adoption order pending),

shall be made by note.

## **PART IIIADOPTION**

### **Interpretation of this Part**

**67.19.** In this Part, unless the context otherwise requires, “the petition” means the petition referred to in rule 67.22(1).

### **Protection of identity of petitioner**

**67.20.**—(1) Where a person, who seeks to apply for an adoption order, wishes to prevent his identity being disclosed to any person whose agreement is required under section 16(1)(b) of the Act of 1978 (agreement of parent or guardian to adoption), he may, before presenting a petition, apply by letter to the Deputy Principal Clerk for a serial number to be assigned to him.

(2) On receipt of such a letter, the Deputy Principal Clerk shall assign a serial number to the applicant and shall enter a note of it opposite the name of the applicant in a register of serial numbers.

(3) Where a serial number has been assigned under paragraph (2)–

- (a) the record of the serial number and the person to whom it applies shall be treated as confidential and disclosed only to the court;
- (b) any agreement under section 16(1)(b) of the Act of 1978 shall not name or design the petitioner but shall refer to him by means of the serial number; and
- (c) it shall be used to name or design the petitioner for all purposes connected with the petition.

### **Reports by local authority or adoption agency**

**67.21.**—(1) A report by a local authority under section 22(2), or by an adoption agency under section 23, of the Act of 1978 shall include the following matters:–

- (a) information about how the needs of the child came to the notice of the local authority or the adoption agency;
- (b) the family circumstances of the child;

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~~(207)~~Section 21 of the Act of 1978 (c. 28) was substituted by the Children Act 1989 (c. 41), Schedule 10, paragraph 37.

~~(208)~~Section 29 of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983, Schedule 2, paragraphs 43 and 44 and by the Children Act 1989, Schedule 10, paragraph 39.

~~(209)~~Section 27(2) of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraph 43.

*Status: This is the original version (as it was originally made).*

- (c) where the child was placed for adoption by an adoption agency, a description of the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
  - (d) where the child is not subject to a freeing for adoption order, an account of the discussion with the parents or guardians of the child about their wishes and the alternatives to adoption;
  - (e) where appropriate, an account of the discussion with the child about his wishes and, if the child is of or over the age of 12 years, his capability to decide to consent to the making of the adoption order;
  - (f) the position of other relatives or persons likely to be involved;
  - (g) an account of the search for a parent or guardian who cannot be found;
  - (h) information about the mutual suitability of the petitioner and the child for the relationship created by adoption and the ability of the petitioner to bring up the child including an assessment of the personality of the petitioner and, where appropriate, that of the child;
  - (i) particulars of all members of the household of the petitioner and their relationship to the petitioner;
  - (j) a description of the accommodation in the home of the petitioner;
  - (k) where a sole petitioner is married, why the other spouse has not joined in the petition;
  - (l) whether the petitioner understands the nature and effect of an adoption order and in particular that the order, if made, will make the petitioner responsible for the maintenance and upbringing of the child;
  - (m) whether the means and standing of the petitioner are such as to enable him to maintain and bring up the child suitably;
  - (n) what right or interest in property the child has;
  - (o) whether any payment or reward prohibited by section 51 of the Act of 1978 (prohibition on certain payments), other than an approved adoption allowance, has been received or agreed upon;
  - (p) whether the life of the child has been insured and for what sum;
  - (q) the religious persuasion, if any, of the petitioner;
  - (r) considerations arising from the difference in age between the petitioner and the child if this is more or less than the normal difference in age between parents and children;
  - (s) whether adoption is likely to safeguard and promote the welfare of the child throughout its childhood; and
  - (t) any other information which may be of assistance to the court.
- (2) On completion of the report referred to in paragraph (1), the local authority or the adoption agency, as the case may be, shall send the report, and a copy of it for each party, to the Deputy Principal Clerk.
- (3) On receipt of the report referred to in paragraph (2), the Deputy Principal Clerk shall—
- (a) where the petition has been presented, cause the report to be lodged in process; and
  - (b) where the petition has not yet been presented, cause the report to be retained in the Petition Department for lodging in process when the petition is presented.

### **Applications for adoption order**

- 67.22.**—(1) An application for an adoption order shall be made by petition in Form 67.22.
- (2) On presentation of the petition, there shall be lodged in process as productions—



- (a) an extract or a certified copy of any entry in the register of births relating to the birth of the child;
- (b) an extract or a certified copy of any entry in the register of births relating to the birth of the petitioner;
- (c) where the petition is by a married couple, an extract or a certified copy of the entry in the register of marriages relating to their marriage;
- (d) where the child was not placed for adoption with the applicant by an adoption agency, a medical report showing the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
- (e) a medical certificate of the health of the petitioner except where the petitioner is a parent of the child; and
- (f) where the child has been freed for adoption, a certified copy of the interlocutor granting the freeing for adoption order in respect of that child.

**Notice of petition and appointment of reporting officer and curator *ad litem***

**67.23.**—(1) On the presentation of the petition, the court shall pronounce an interlocutor—

- (a) requiring the petitioner to serve a notice in Form 67.23—
    - (i) where the child has been placed for adoption, on the adoption agency which placed the child; and
    - (ii) where the child has not been placed for adoption, on the local authority within whose area the petitioner has his home;
  - (b) appointing a reporting officer unless the child is free for adoption and under the age of 12 years; and
  - (c) appointing a curator *ad litem* where it appears desirable in order to safeguard the interests of the child.
- (2) Where a curator *ad litem* is appointed under paragraph (1), the court may order—
- (a) the adoption agency,
  - (b) the local authority, or
  - (c) the reporting officer,

to make available to the curator *ad litem* any report or information in relation to the child and the natural father and mother of the child.

(3) A person may, before presenting the petition, apply by letter to the Deputy Principal Clerk for the appointment of a reporting officer.

- (4) An application under paragraph (3) shall—
- (a) set out the reasons for which the appointment is sought;
  - (b) not require to be intimated to any person;
  - (c) be accompanied by an interlocutor sheet; and
  - (d) be placed by the Deputy Principal Clerk before the Lord Ordinary for his decision.

(5) The Deputy Principal Clerk shall give written intimation to the applicant under paragraph (3) of the decision of the Lord Ordinary.

(6) The decision of the Lord Ordinary on an application under paragraph (3) shall be final and not subject to review.

(7) The letter and the interlocutor sheet in an application under paragraph (3) shall be kept in the Petition Department and subsequently placed in the process of the petition.

**Duties of reporting officer and curator *ad litem***

**67.24.**—(1) A reporting officer appointed under rule 67.23(1)(b) shall, where appropriate—

- (a) inquire into the facts and circumstances averred in the petition and the report of the local authority or adoption agency;
- (b) where the child is not free for adoption, ascertain the whereabouts of each parent or guardian and, if practicable, meet him;
- (c) witness any execution in Scotland of any agreement in Form 67.5–A by a parent or guardian under section 16(1)(b) of the Act of 1978 (agreement to adoption), and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (d) where a parent or guardian is furth of Scotland, confirm his views in writing, ensure that any agreement under section 16(1)(b) of the Act of 1978 is witnessed in accordance with rule 67.5(3) and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (e) witness any consent of a child in Form 67.5–C under section 12(8) of the Act of 1978<sup>(210)</sup>
- (f) ensure that each parent or guardian whose agreement is required understands that in agreeing to the adoption he is giving up all future claims to the child and that all parental rights and duties will vest in the adopter;
- (g) where the child is not free for adoption, consider whether the local authority or adoption agency has made every reasonable effort to find every person whose agreement is required;
- (h) investigate whether there are any other persons with a relevant interest and whether they should be informed of the petition;
- (i) ascertain from any parent or guardian who can be found whether alternatives to adoption have been discussed with him;
- (j) ensure that each parent or guardian whose agreement is required or may be dispensed with is aware of the date (if known) of the hearing to determine the application if he wishes to appear, and confirm that such person whose agreement is required and has not been dispensed with understands that he may withdraw his agreement at any time before the adoption order is made;
- (k) draw to the attention of the court any matter which may be of assistance; and
- (l) prepare a report in relation to the exercise of his duties within such period as the court may specify.

(2) A curator *ad litem* appointed under rule 67.23(1)(c) shall—

- (a) safeguard generally the interests of the child;
- (b) inquire, so far as he considers necessary, into the facts and circumstances averred in the petition;
- (c) ascertain particulars of the condition of, and accommodation in, the home of the petitioner;
- (d) ascertain particulars of all members of the household of the petitioner and their relationship to the petitioner;
- (e) where a sole petitioner is married, ascertain why the other spouse has not joined in the petition;
- (f) ascertain whether the means and status of the petitioner are sufficient to enable him to maintain and bring up the child suitably;

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<sup>(210)</sup> Section 12(8) of the Act of 1978 (c. 28) was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3)(a).

- (g) ascertain any rights or interests in property of the child;
  - (h) ascertain whether a payment or reward prohibited by section 51 of the Act of 1978 (prohibition on certain payments) has been received or agreed upon;
  - (i) establish that the petitioner understands that the nature and effect of an adoption order is to transfer the parental rights and duties in relation to the child to the petitioner and make him responsible for the maintenance and upbringing of the child;
  - (j) where applicable, ascertain when the mother of the child ceased to have the care and possession of the child and to whom care and possession were transferred;
  - (k) ascertain whether the proposed adoption is likely to safeguard and promote the welfare of the child throughout his childhood;
  - (l) ascertain whether the life of the child has been insured and for what sum;
  - (m) ascertain whether it may be in the interests of the child that the court should pronounce an interlocutor making an order under section 25 of the Act of 1978 (interim orders), or make an adoption order subject to particular conditions including the making of special provision for the child, or whether an order for custody should be made;
  - (n) where the petitioner is not ordinarily resident in the United Kingdom, ascertain whether a report has been obtained on the house and living conditions of the petitioner from a reliable agency in the country of his ordinary residence;
  - (o) ascertain the reasons why the petitioner wishes to adopt the child;
  - (p) ascertain the religious persuasion, if any, of the petitioner;
  - (q) where the difference in age between the petitioner and the child is greater or less than the normal difference between parent and child, assess the implications of that difference in relation to the petition;
  - (r) consider any other matter, including the personality of the petitioner and where appropriate, that of the child which might affect the suitability of the petitioner to be a parent bringing up the child;
  - (s) ascertain, so far as practicable, the wishes and feelings of the child regarding the proposed adoption;
  - (t) ascertain, where the father of the child does not have parental rights, the likelihood of the father gaining any such parental rights, whether by marriage or as the result of any order by any court;
  - (u) where the agreement of a parent or guardian or the consent of a child is sought to be dispensed with, consider whether the ground of dispensation has been made out;
  - (v) consider whether, in his opinion, the child should be present at the hearing to determine the petition;
  - (w) perform such other duties as appear to him to be necessary or as the court may require; and
  - (x) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (3) The reporting officer shall, on completion of his report, send to the Deputy Principal Clerk—
- (a) the report and a copy of it for each party;
  - (b) any agreement for the purposes of section 16(1)(b) of the Act of 1978 (agreement of parent or guardian to adoption); and
  - (c) any consent under section 12(8) of the Act of 1978 (consent of child to adoption).
- (4) The curator *ad litem* shall, on completion of his report, send the report, and a copy of it for each party, to the Deputy Principal Clerk.

**Hearing of adoption petition**

**67.25.**—(1) On receipt of the reports referred to in rules 67.21 and 67.24, the Deputy Principal Clerk shall—

- (a) cause the reports and any other documents to be lodged in process;
- (b) give written intimation to each party of the lodging of those documents and make them available to each party; and
- (c) within 7 days thereafter, cause—
  - (i) the petition to be put out on the By Order Roll before the Lord Ordinary; and
  - (ii) written intimation of the date of the hearing on the By Order Roll to be given to each party.

(2) At the hearing on the By Order Roll, the court—

- (a) shall pronounce an interlocutor appointing the petition to a hearing to determine the petition; and
- (b) may, in such interlocutor—
  - (i) order any person whose agreement or consent is required to be given or dispensed with to attend the hearing;
  - (ii) order intimation of the date of the hearing to any person not mentioned in paragraph (3)(a), (b), (c) or (d); and
  - (iii) order the reporting officer or curator *ad litem* to perform additional duties to assist the court in determining the petition.

(3) The petitioner shall intimate the date of the hearing ordered under paragraph (2)(a) in Form 67.25 to—

- (a) every person whose whereabouts are known to him and whose agreement or consent is required to be given or dispensed with;
- (b) the reporting officer appointed under rule 67.23(1)(b);
- (c) any curator *ad litem* appointed under rule 67.23(1)(c);
- (d) the local authority or adoption agency referred to in rule 67.21; and
- (e) any person on whom intimation has been ordered under paragraph (2)(b)(ii).

(4) At the hearing ordered under paragraph (2)(a)—

- (a) the petitioner, the adoption agency, the reporting officer and, where one has been appointed, the curator *ad litem* shall, if required by the court, appear and may be represented;
- (b) any person required by the court to attend the hearing shall appear and may be represented;
- (c) any other person to whom intimation was made under paragraph (3)(a) or (e) may appear or be represented.

**Supervision by or committal to care of local authority**

**67.26.**—(1) Where, in relation to a child under the age of 16 years, the court refuses to make an adoption order and considers—

- (a) that the child should be placed under the supervision of a specified local authority, or
- (b) that the child should be committed to the care of a specified local authority,

the court shall order intimation of the terms of the proposed order to be made to the local authority and give the local authority an opportunity to make representations.

(2) Any representations of the local authority shall be made by minute.

(3) On the expiry of the period allowed for answers to a minute under paragraph (2), the cause shall be put out on the By Order Roll before the Lord Ordinary for a hearing to determine the matter.

### **Applications under section 49(1) of the Act of 1978**

**67.27.**—(1) An application under section 49(1) of the Act of 1978(**211**) (application to adopt a child abroad) shall be made by petition.

(2) The provisions of this Part shall, with the necessary modifications, apply to an application under section 49(1) of the Act of 1978 as they apply to an application for an adoption order.

(3) Evidence that the child in respect of whom the application is made may be adopted under the law of or in the country in which the petitioner is domiciled may be given by a signed statement by a person qualified in the law of that country.

### **Applications for return, removal or prohibition of removal of child**

**67.28.**—(1) An application under section 29 of the Act of 1978(**212**) (order to return a child to, or not to remove a child from, the care of the applicant) shall be made—

(a) in relation to a breach of section 27(1) or 28(1) of that Act(**213**) (restrictions on removal of child where application for adoption order pending), by note in the process of the petition for an adoption order or a section 49 order to which it relates; or

(b) in relation to a breach of section 28(3) (restriction on removal where child was or is in care of the local authority) of that Act, by petition.

(2) An application for leave—

(a) under section 27(1) or 28 of the Act of 1978 (leave to remove a child) shall be made by note in the process of the petition for an adoption order or a section 49 order to which it relates;

(b) under section 30(2) of that Act (leave to adoption agency to give notice of intention to remove child) shall be made by note in the process of the petition for an adoption order or the application for a section 49 order to which it relates.

(3) Subject to paragraph (4), rule 67.2 (disapplication of certain rules to this Chapter) shall not apply to an application mentioned in paragraph (1) or (2) of this rule.

(4) An application mentioned in paragraph (1) or (2) shall not be intimated on the walls of the court or advertised.

### **Applications to amend or revoke a direction in, or revoke, an adoption order**

**67.29.**—(1) An application—

(a) under paragraph 4(1) of Schedule 1 to the Act of 1978 (amendment, or revocation of a direction in, an adoption order), or

(b) under section 46 of that Act(**214**) (revocation of an adoption order on legitimisation),

shall be made by petition.

(2) Subject to paragraph (3), rule 67.2 (disapplication of certain rules to this Chapter) shall not apply to an application mentioned in paragraph (1) of this rule.

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(211) Section 49(1) of the Act of 1978 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 42.

(212) Section 29 of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraphs 43 and 44 and by the Children Act 1989 (c. 41), Schedule 10, paragraph 39.

(213) Sections 27(1) and 28(1) of the Act of 1978 were amended by the said Act of 1983, Schedule 2, paragraph 43.

(214) Section 46(1) of the Act of 1978 was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1, paragraph 18(3).

(3) An application mentioned in paragraph (1) shall not be intimated on the walls of the court or advertised.

### **Registration of certified copy interlocutor**

**67.30.** On the court pronouncing an interlocutor making—

- (a) an adoption order,
- (b) an amendment to, or a revocation of a direction in, an adoption order,
- (c) a revocation of an adoption order,
- (d) a section 49 order, or
- (e) a Convention adoption order,

the clerk of court shall forthwith send a certified copy of that interlocutor to the Registrar General for Scotland in a sealed envelope marked “confidential”.

### **Extract of order**

**67.31.** An extract of an adoption order or a section 49 order shall not be issued except by order of the court on an application to it—

- (a) where there is a petition for the adoption order or the section 49 order, as the case may be, depending before the court, by motion; or
- (b) where there is no such petition depending before the court, by petition.

### **Procedure after intimation to Registrar General or issue of extract**

**67.32.—**(1) After a certified copy of an interlocutor mentioned in rule 67.29 has been sent to the Registrar General for Scotland, the clerk of court or the Extractor, as the case may be, shall—

- (a) place the whole process in an envelope bearing only—
  - (i) the name of the petitioner;
  - (ii) the full name of the child to whom the process relates; and
  - (iii) the date of the order; and
- (b) seal the envelope and mark it “confidential”.

(2) No person shall open a process referred to in paragraph (1) or inspect its contents within 100 years after the date of the adoption order or the section 49 order, as the case may be, except—

- (a) the person adopted under the order after he has reached the age of 17 years;
- (b) any other person or body entitled under section 45(5) of the Act of 1978 to access to the registers and books kept under section 45(4) of that Act, with the written authority of the adopted person;
- (c) the Deputy Principal Clerk or Extractor, as the case may be, on the written application to him by an adoption agency with the written agreement of the adopted person for the purpose of ascertaining the name of the adoption agency responsible for the placement of that person for adoption;
- (d) by order of the court on an application made by petition presented by another court or authority (whether within the United Kingdom or not) having the power to authorise an adoption for the purpose of obtaining information in connection with an application to it for adoption;
- (e) by order of the court on an application made by petition presented by any person; and

- (f) a person who is authorised in writing by the Secretary of State to obtain information from the process for the purpose of research designed to improve the working of adoption law and practice.

## **PART IV CONVENTION ADOPTION ORDERS**

### **Interpretation of this Part**

**67.33.**—(1) In this Part—

“Convention country” has the meaning assigned in section 65(1) of the Act of 1978;

“the petition” means the petition referred to in rule 67.35 or 67.41, as the case may be.

(2) Any reference in this Part to the nationality of a person who is not solely a United Kingdom national means the nationality of that person as determined in accordance with section 63 of the Act of 1978.

### **Application of Part III to this Part**

**67.34.** Part III (adoption), except the following rules, shall apply to the petition:—

rule 67.19 (interpretation of Part III),

rule 67.20 (protection of identity of petitioner),

rule 67.27 (applications under section 49(1) of the Act of 1978),

rule 67.29 (applications to amend or revoke a direction in, or revoke, an adoption order).

### **Applications for Convention adoption order**

**67.35.**—(1) An application for a Convention adoption order shall be made by petition in Form 67.22.

(2) The petition shall include averments in relation to—

- (a) the nationality of the petitioner;
- (b) the nationality of the child;
- (c) the place and the country where the petitioner habitually resides;
- (d) the place and the country where the child habitually resides;
- (e) whether the child is, or has been, married;
- (f) where the petitioner is a national of a Convention country, or where both petitioners are nationals of the same Convention country, whether there is a specified provision within the meaning of section 17(8) of the Act of 1978 in respect of that country which prohibits the adoption; and
- (g) where the child is not a United Kingdom national, any provision relating to consents and consultations, of the internal law with respect to adoption of the Convention country of which the child is a national.

(3) The prayer of the petition shall include a crave that the court direct the Registrar General for Scotland—

- (a) to insert the words “Convention Order” in the entry to be made by him in the Adopted Children Register regarding the adoption;
- (b) to intimate the terms of the order to the appropriate authorities referred to in rule 67.39(2) or (3) or 67.41(5)(b) (designated authorities of Convention country), as the case may be.

**Investigations by curator *ad litem***

**67.36.**—(1) The curator *ad litem* appointed under rule 67.23(1)(b) by virtue of rule 67.34 (application of Part III to this Part) shall also investigate the averments referred to in rule 67.35(2) and shall include the results of his investigations in his report.

(2) Where in the course of his investigations, the curator *ad litem* requires a report from any authority outside Great Britain, he shall request the local authority to request that other authority to provide that report.

**Evidence of nationality**

**67.37.** There shall be lodged in process as productions—

- (a) any document relied on as evidence of the nationality of the petitioner or that of the child; and
- (b) where the nationality of the petitioner or that of the child is of a Convention country, a signed statement by a person qualified in the law of that country confirming such nationality under that law.

**Petition in respect of a non-U.K. child**

**67.38.**—(1) This rule applies to a petition where the child is not a United Kingdom national.

(2) On presentation of the petition, there shall be lodged in process as a production a signed statement by a person qualified in the law of the Convention country of which the child is a national setting out the consent or consultation required by the internal law of that country with respect to adoption.

(3) A consent referred to in section 17(7) of the Act of 1978 shall be in a form which complies with any requirement of the internal law with respect to adoption of the Convention country of which the child is a national, but where the court is not satisfied that such consent has been made with full understanding of what is involved, it may call for further evidence.

(4) A document mentioned in paragraph (2) or (3) may be received in evidence without being spoken to.

(5) Where a consent or consultation referred to in paragraph (2) or (3) could properly be dispensed with under the internal law of the country concerned, the court may dispense with that consent or consultation in accordance with the provisions of that law.

(6) Where the court pronounces an interlocutor appointing the petition to a hearing under rule 67.25(2)(a) by virtue of rule 67.34 (application of Part III to this Part), the requirements of rule 67.25(3) (intimation of date of hearing to certain persons) shall include a requirement to intimate the date of the hearing in Form 67.25 to—

- (a) any person whose consent is referred to in section 17(7) of the Act of 1978 but who has not given such consent;
- (b) any person who, in accordance with the internal law with respect to adoption of the Convention country of which the child is a national, has to be consulted, but does not have to consent to, the adoption.

(7) For the purposes of section 17(7)(a) of the Act of 1978, the proper officer of the court shall be the Deputy Principal Clerk.

**Additional notice to Registrar General**

**67.39.**—(1) The Deputy Principal Clerk shall send to the Registrar General for Scotland—



- (a) with any Convention adoption order, a notice specifying the authorities mentioned in paragraph (2) and requesting him to inform them of the terms of the order;
  - (b) with any order made under section 46(2) of the Act of 1978 revoking a Convention adoption order, a notice specifying the authorities mentioned in paragraph (3) of this rule and requesting him to inform them of the terms of the order under that section.
- (2) The authorities referred to in paragraph (1)(a) are the designated authorities of any Convention country—
- (a) of which the child is a national;
  - (b) in which the child was born;
  - (c) in which a petitioner habitually resides; or
  - (d) of which a petitioner is a national.
- (3) The authorities referred to in paragraph (1)(b) are the designated authorities of any Convention country—
- (a) of which the adopted person is a national; or
  - (b) in which the adopted person was born.

### **Interim orders**

**67.40.** Where the petitioner is a national, or both petitioners are nationals, of a Convention country, the court shall take account of any specified provision (as defined in section 17(8) of the Act of 1978<sup>(215)</sup>) of the internal law of that country before making any order under section 25 of that Act (interim orders).

### **Revocation or annulment of regulated adoptions**

**67.41.**—(1) This rule applies to an application for an order under section 46(2) (revocation of regulated adoption), or section 47 (annulment etc. of regulated adoption, Convention adoption order or overseas adoption), of the Act of 1978.

(2) An application mentioned in paragraph (1) shall be made by petition.

(3) An application under section 47(1) of the Act of 1978 (annulment) shall not, except with the leave of the court, be made later than two years after the date of the regulated adoption, to which it relates.

(4) Where the adopted person is under the age of 18 years on the date of the presentation of a petition under this rule, the court shall appoint a curator *ad litem* with the duties mentioned in rule 67.24(2).

(5) On the court pronouncing an interlocutor making an order referred to in paragraph (1), the Deputy Principal Clerk shall—

- (a) send a notice of the order to the Registrar General for Scotland specifying—
  - (i) the date of the adoption;
  - (ii) the name and address of the authority which granted the adoption;
  - (iii) the names of the adopter or adopters and of the adopted person as given in that petition;
  - (iv) the country in which the adoption was granted;
  - (v) the country of which the adopted person is a national; and
  - (vi) the country in which the adopted person was born; and

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(215) 1978 c. 28.

- (b) where any such country is a Convention country, request the Registrar General for Scotland to inform the designated authorities of that country of the terms of the order.

## CHAPTER 68

### *APPLICATIONS UNDER THE SOLICITORS (SCOTLAND) ACT 1980*

#### **Application and interpretation of this Chapter**

**68.1.**—(1) This Chapter applies to an application or appeal under the Solicitors (Scotland) Act 1980(216).

(2) In this Chapter—

“the Act of 1980” means the Solicitors (Scotland) Act 1980;

“the Council” means the Council of the Law Society of Scotland;

“the Discipline Tribunal” means the tribunal constituted under section 50 of the Act of 1980.

#### **Applications and appeals under the Act of 1980**

**68.2.**—(1) An application or appeal under the Act of 1980 shall be made by petition.

(2) An appeal under any of the following provisions of the Act of 1980 shall specify the date on which the decision appealed against was intimated to the petitioner:—

- (a) section 16(2) (appeal in respect of issue of practising certificate);
- (b) section 39A(8)(217) (appeal against withdrawal of practising certificate);
- (c) section 40(3)(218) (appeal against decision to withdraw practising certificate or to refuse to terminate suspension);
- (d) section 54(1)(219) (appeal against decision of tribunal relating to discipline); and
- (e) paragraph 3 of Schedule 2 (appeal in respect of restoration to roll of solicitors).

(3) An application under paragraph 5(4) of Schedule 3 to the Act of 1980 (application for order for return of documents) shall specify the date on which the notice was served on the petitioner.

(4) An application under section 54(2) of the Act of 1980 (application to vary or quash direction of the tribunal) shall specify the date on which the decision containing the direction or order was intimated to the petitioner.

#### **Applications for admission as notary public**

**68.3.**—(1) An application under section 57(2) of the Act of 1980(220) (application for admission as notary public) shall be made by either the Council on behalf of named persons seeking appointment as notaries public or the person seeking appointment as a notary public.

(2) The Council shall—

- (a) nominate authorised representatives to administer the oath of the office of notary public;
- (b) issue all commissions as notary public;

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(216) 1980 c. 46.

(217) Section 39A of the Act of 1980 was inserted by the Solicitors (Scotland) Act 1988 (c. 42), section 4.

(218) Section 40(3) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 1, paragraph 18.

(219) Section 54(1) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 29.

(220) Section 57(2) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 37.

- (c) keep the register of notaries public; and
- (d) on request by a notary public, and on payment of such reasonable fee as the Council may impose, supply him with a duly certified and docquetted protocol book of ninety one folios.

### **Intimation and service in causes under this Chapter**

**68.4.**—(1) A petition to which this Chapter applies shall be brought before a Division of the Inner House in chambers, and the Division may, without hearing parties and subject to the following paragraphs, make such order for intimation and service as it thinks fit.

(2) In a cause under any of the following provisions of the Act of 1980, the court shall order service of the petition on the Council:—

- (a) section 16(1)(221) (application following refusal of practising certificate to body corporate);
- (b) section 19(8) (appeal in respect of decision of Council in relation to suspension);
- (c) section 39A(8) (appeal against withdrawal of practising certificate);
- (d) section 40(3) (appeal against decision to withdraw practising certificate or to refuse to terminate suspension); and
- (e) paragraph 5(4) of Schedule 3 (application for order for return of documents).

(3) In an appeal under section 54(1) (appeal against decision of tribunal relating to discipline), or in an application under section 54(2)(222) (application to vary or quash direction of the tribunal), of the Act of 1980, the court shall—

- (a) order service on the Discipline Tribunal and the Law Society of Scotland; and
- (b) ordain the Discipline Tribunal to lodge in process within the period for lodging answers—
  - (i) the decision of the Discipline Tribunal in respect of which the appeal or application is made; and
  - (ii) if available, the notes of evidence adduced before the Discipline Tribunal.

(4) In an application under any of the following provisions of the Act of 1980, the court shall order service of the petition on the respondent:—

- (a) section 41(223) (application for appointment of judicial factor);
- (b) paragraph 5(1) of Schedule 3 (application for order to produce documents); and
- (c) paragraph 12 of Schedule 4 (petition to cite witnesses for recovery of evidence).

(5) In an application under section 55(3) of the Act of 1980 (application for restoration to roll of solicitors), the court shall order service on the Discipline Tribunal and the Council.

### **Procedure after order for intimation and service**

**68.5.** The court shall, after an order for intimation and service under rule 68.4, proceed on the petition summarily in such manner as it thinks fit.

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(221) Section 16(1) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 1.

(222) Section 54(2) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 29.

(223) Section 41 of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 19 and by the Solicitors (Scotland) Act 1988 (c. 42), Schedule 1, paragraph 13 and Schedule 2.

**Appeals under section 54(1) of the Act of 1980**

**68.6.** In an appeal under section 54(1) of the Act of 1980 (appeal against decision of tribunal relating to discipline)—

- (a) the court may substitute any other punishment for that imposed by the decision appealed against, or make any order in relation to it which it thinks fit;
- (b) where the petitioner is a person or one of the persons who complained of the alleged professional misconduct of the solicitor, the court may order that person to give security for expenses (including the cost of extending the notes of evidence adduced before the Discipline Tribunal) as a condition of proceeding with the petition.

**Remits for further inquiry**

**68.7.**—(1) In an application or appeal under the Act of 1980, the court may remit to any person to make further inquiry into the facts, or to take further evidence and to report to the Court.

(2) On completion of a report made under paragraph (1), the person to whom the remit was made shall send his report and three copies of it, and a copy of it for each party, to the Deputy Principal Clerk.

(3) On receipt of such a report, the Deputy Principal Clerk shall—

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that he may uplift a copy of the report from process.

(4) After the lodging of such a report, any party may apply by motion for an order in respect of the report or for further procedure.

*CHAPTER 69**ELECTION PETITIONS***Interpretation of this Chapter**

**69.1.** In this Chapter—

“the Act of 1983” means the Representation of the People Act 1983(224);

“election court” has the meaning assigned in section 123 of the Act of 1983;

“election petition” means a petition presented under Part III of the Act of 1983.

**Form of election petitions**

**69.2.**—(1) An election petition shall be in Form 69.2.

(2) Such a petition shall—

- (a) specify the name, designation and address of—
  - (i) each petitioner, and
  - (ii) each person referred to as, or deemed to be, the respondent by virtue of section 121(2) of the Act of 1983; and
- (b) set out in numbered paragraphs—
  - (i) the title of the petitioner under section 121(1) of the Act of 1983 to present the petition;

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(224) 1983 c. 2.

- (ii) the proceedings at, and the result of, the election; and
- (iii) the facts relied on in support of the prayer of the petition.

### **Presentation of petition**

**69.3.** The election petition shall be lodged in the Petition Department with—

- (a) a process;
- (b) six copies of the petition; and
- (c) a letter signed by or on behalf of the petitioner—
  - (i) giving the name and address of a solicitor whom he authorises to act on his behalf or stating that he acts for himself, as the case may be; and
  - (ii) specifying an address within Scotland at which notices addressed to him may be delivered.

### **Security for expenses**

**69.4.—**(1) On presentation of an election petition, the petitioner shall apply by motion for—

- (a) an order for intimation and service of the petition within such period as the court thinks fit after the giving of security,
- (b) for an order for the respondent to lodge any objections in writing under section 136(4) of the Act of 1983<sup>(225)</sup> (objections to form of security) within such period as the court thinks fit, and
- (c) the fixing of the amount of security for expenses;

and the petition shall be placed forthwith before the Lord Ordinary or the vacation judge, in court or in chambers, who shall fix the security to be given.

(2) A motion under paragraph (1) shall not be intimated to any person.

(3) Where the security to be given by the petitioner under section 136 of the Act of 1983 is given in whole or in part by bond of caution, the bond shall be in Form 69.4.

### **Service and intimation of election petition**

**69.5.—**(1) On serving the election petition on the respondent under subsection (3) of section 136 of the Act of 1983, the petitioner shall intimate a copy of each of the documents mentioned in that subsection to the Lord Advocate.

(2) The notice of presentation of the petition mentioned in section 136(3) of the Act of 1983<sup>(226)</sup> shall be in Form 69.5.

(3) Within 5 days after serving the petition under section 136 of the Act of 1983, the petitioner shall lodge in process an execution copy of the election petition containing the certificate of service and a copy of the notice mentioned in that subsection which was served on the respondent.

### **Objections to form of security**

**69.6.—**(1) Where the respondent makes an objection under section 136(4) of the Act of 1983 (objection to form of security), he shall—

- (a) set out in writing the grounds of the objection;

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<sup>(225)</sup> Section 136(4) of the Act of 1983 was amended by the Representation of the People Act 1985 (c. 50), Schedule 4, paragraph 48(e).

<sup>(226)</sup> Section 136(3) of the Act of 1983 was substituted by the Representation of the People Act 1985, Schedule 4, paragraph 48(d).

*Status: This is the original version (as it was originally made).*

- (b) lodge the objection in process; and
  - (c) intimate a copy of the objection to the petitioner.
- (2) As soon as possible after the lodging of an objection under paragraph (1), the Keeper of the Rolls shall—
- (a) fix a diet for a hearing on the objections before one of the judges on the rota for the trial of election petitions or the vacation judge; and
  - (b) give written intimation of the time and place of the diet to the parties.
- (3) The period within which the petitioner may, under section 136(7) of the Act of 1983<sup>(227)</sup>, remove the objection shall be such period from the date of the decision on the objection as the court thinks fit.

#### **Consequences of failure to give security etc.**

**69.7.** If no security is given, or an objection to a security is allowed and not removed, the respondent may apply by motion to have the prayer of the petition refused.

#### **List of election petitions**

**69.8.—**(1) In preparing the list of election petitions in terms of section 138(1) of the Act of 1983, the Deputy Principal Clerk shall insert the names of the solicitors, if any, acting for the petitioner and respondent, and the addresses, if any, to which any notices may be sent.

(2) The list of election petitions may be inspected in the Petition Department at any time during its normal office hours.

#### **Time and place of trial**

**69.9.—**(1) The time and place of the trial of an election petition shall be fixed by the Keeper of the Rolls, who shall give written intimation of the date of the trial by post to—

- (a) the parties;
- (b) the Lord Advocate;
- (c) the returning officer for the relevant constituency; and
- (d) the House of Commons shorthand writer.

(2) On receipt of intimation given under paragraph (1), the returning officer shall forthwith publish the date of the diet of trial in the constituency to which it relates.

#### **Postponement of trial**

**69.10.—**(1) The election court or any of the judges on the rota for the trial of election petitions, may, at its or his own instance or on the motion of a party, postpone the trial of a petition to such day as may be specified.

(2) Written intimation of such postponement shall be given by the Keeper of the Rolls to the returning officer who shall forthwith publish the postponement and its new date in the constituency.

#### **Procedure where seat claimed**

**69.11.—**(1) Where a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of, and the party defending, the return, not less than 6 days before the date of the trial, shall each—

<sup>(227)</sup>Section 136(7) of the Act of 1983 was amended by the Representation of the People Act 1985, Schedule 4, paragraph 48(e).

- (a) lodge in process a list of the voters intended to be objected to, and of the objections to each voter; and
- (b) intimate a copy of that list to—
  - (i) every other party; and
  - (ii) the Lord Advocate.

(2) No evidence shall be allowed to be given against any vote or in support of any objection which is not specified in the list, except by leave of the election court or, on a motion heard before the date of the trial, of any of the judges on the rota for the trial of election petitions, on such terms as to amendment of the list, postponement of the trial and payment of expenses as may be ordered.

### **Evidence under section 139(5) of the Act of 1983**

**69.12.**—(1) Where the respondent intends to give evidence permitted under section 139(5) of the Act of 1983 (evidence to prove person not duly elected), he shall, not less than 6 days before the date of the trial—

- (a) lodge in process a list of the objections to the election on which he intends to rely; and
- (b) intimate a copy of that list to—
  - (i) every other party; and
  - (ii) the Lord Advocate.

(2) No evidence shall be allowed to be given on behalf of the respondent in support of any objection to the return not specified in the list, except with leave of the election court or, on a motion heard before the date of the trial, of any of the judges on the rota for the trial of election petitions, on such terms as to amendment of the list, postponement of the trial and payment of expenses as may be ordered.

### **Lodging of statement of evidence to be led**

**69.13.**—(1) Subject to paragraph (2), any party shall, not less than 6 days before the date of the trial, lodge in process a statement of the matters on which he intends to lead evidence.

(2) Before lodging such a statement in process, the party proposing to lodge it shall intimate a copy of the statement to—

- (a) every other party; and
- (b) the Lord Advocate.

### **Evidence at trial**

**69.14.**—(1) No evidence shall be led at the trial of an election petition other than matters contained in—

- (a) the list lodged under rule 69.11 (procedure where seat claimed) or 69.12 (evidence under section 139(5) of the Act of 1983),
- (b) the statement lodged under rule 69.13 (statement of evidence to be led), or
- (c) matters which have been sufficiently set out in the petition,

except with the leave of the election court or one of the judges on the rota for the trial of election petitions, on such conditions as to postponement of the trial, payment of expenses or otherwise, as may be ordered.

(2) The admissibility of any evidence sought to be led on the matters referred to in paragraph (1) shall be within the discretion of the election court.

**Warrant to cite witnesses**

**69.15.** The warrant for the citation of a witness to the trial of an election petition shall be granted on the motion of any party and shall be in Form 69.15.

**Clerk of court at trial**

**69.16.** At an election court held for the trial of an election petition, a clerk of session nominated by the Principal Clerk and appointed by the court shall discharge the duties of clerk of court of the election court.

**Expenses of witnesses**

**69.17.—**(1) The prescribed officer for the purposes of section 143(1) of the Act of 1983 shall be the clerk of session appointed to act as clerk of court under rule 69.16.

(2) The expenses of a witness permitted under section 143(1) of the Act of 1983 shall be ascertained by the clerk of court.

(3) The expenses allowed under section 143(1) of the Act of 1983 shall, in the first instance, be paid by the party adducing that witness.

**Applications for special case**

**69.18.** An application under section 146(1) of the Act of 1983 for a special case, shall be made by motion to the Inner House or the vacation judge.

**Applications for leave to withdraw election petitions**

**69.19.—**(1) A notice of intention to withdraw an election petition under section 147(2) of the Act of 1983 shall be in Form 69.19–A.

(2) A copy of such notice shall be intimated by the petitioners to—

- (a) the respondent;
- (b) the Lord Advocate;
- (c) the returning officer for the relevant constituency; and
- (d) the Deputy Principal Clerk.

(3) On receipt of a notice under paragraph (2), the returning officer shall publish it in the constituency to which it relates.

(4) An application for leave to withdraw an election petition shall—

- (a) be in Form 69.19–B;
- (b) state the ground on which the application to withdraw is made;
- (c) be signed by the person making the application and by the consenters, if any, or by their respective solicitors; and
- (d) be lodged in the process of the election petition.

**Applications to be substituted as petitioner on withdrawal**

**69.20.—**(1) A person who seeks to apply under section 150(1) of the Act of 1983 to be substituted as a petitioner, shall, within 5 days after the date on which the notice of intention to withdraw has been given under section 147(2) of the Act of 1983 and rule 69.19 (applications for leave to withdraw election petitions), give notice in writing signed by him or on his behalf to the Deputy Principal Clerk



of his intention to apply, at the hearing of the application for leave to withdraw, to be substituted as the petitioner.

- (2) A copy of the notice given under paragraph (1) shall be intimated by the applicant to—
- (a) the respondent;
  - (b) the Lord Advocate; and
  - (c) the returning officer for the relevant constituency.

(3) Any informality in such a notice shall not defeat an application to be substituted as the petitioner if it is made at the hearing of the application to withdraw, subject to such order as to postponement of that hearing and expenses as the election court thinks fit.

### **Hearing of applications for leave to withdraw**

**69.21.**—(1) Subject to paragraph (2), the time and place for hearing an application for leave to withdraw an election petition shall be fixed by one of the judges on the rota for the trial of election petitions or by the vacation judge, who shall hear and determine the application unless he considers that the application should be determined by the Inner House.

(2) The time fixed under paragraph (1) shall not be earlier than 7 days after the expiry of the period specified in rule 69.20.

- (3) The Keeper of the Rolls shall give written intimation of the diet fixed under paragraph (1) to—
- (a) the petitioner;
  - (b) the respondent;
  - (c) the Lord Advocate;
  - (d) the returning officer for the relevant constituency; and
  - (e) to any person who has given notice under rule 69.20 of his intention to apply to be substituted as the petitioner.

### **Security of substituted petitioner**

**69.22.**—(1) The period within which security shall be given on behalf of a substituted petitioner before he proceeds with the petition shall be 5 days after the order of substitution.

(2) The substituted petitioner shall lodge the letter referred to in rule 69.3(c) (name and address of solicitor etc.) within 5 days after the order of substitution.

### **Death of petitioner**

**69.23.**—(1) In the event of the death of the petitioner or the surviving petitioner, the notice for the purpose of section 152(3) of the Act of 1983 (notice of abatement of petition by death) shall be intimated in Form 69.23 by the solicitor acting for the petitioner, the respondent, the returning officer or any other person interested to whose knowledge the death of the petitioner shall come, to, as the case may be—

- (a) the respondent;
- (b) the Lord Advocate;
- (c) the returning officer for the relevant constituency; and
- (d) the Deputy Principal Clerk.

(2) The returning officer shall, on receipt of such a notice, or, where he is giving notice under paragraph (1), on intimating such notice to those persons mentioned in that paragraph, publish the notice in the constituency to which it relates.

**Applications to be substituted on death of petitioner**

**69.24.**—(1) An application to be substituted as a petitioner on the death of the petitioner or surviving petitioner shall be made by motion within 5 days after the publication of the notice.

(2) A motion under paragraph (1) shall be intimated to—

- (a) the respondent;
- (b) the Lord Advocate; and
- (c) the returning officer for the relevant constituency where he is not a respondent.

**Notice that respondent does not oppose**

**69.25.**—(1) A notice, for the purposes of section 153(1) of the Act of 1983, by a respondent other than a returning officer, that he does not intend to oppose an election petition shall be—

- (a) signed by him; and
- (b) lodged in process not less than 6 days before the date of the trial.

(2) Where a respondent lodges a notice under paragraph (1), he shall forthwith intimate a copy of it to—

- (a) the petitioner;
- (b) any other respondent;
- (c) the Lord Advocate; and
- (d) the returning officer for the relevant constituency.

(3) On receipt of a notice under paragraph (1), the returning officer shall publish it in the constituency to which it relates.

**Death or peerage of respondent**

**69.26.**—(1) Where, for the purposes of section 153(1) of the Act of 1983—

- (a) a respondent other than a returning officer dies,
- (b) in the case of a parliamentary election, a respondent other than a returning officer is summoned to Parliament as a Peer of Great Britain, or
- (c) a respondent other than a returning officer has vacated his seat following a resolution by the House of Commons,

the agent for the respondent shall give notice of that fact in the constituency to which the election petition relates.

(2) Such a notice shall be published in at least one newspaper circulating in the constituency, and by intimating a copy of the notice, signed by him to—

- (a) the petitioner;
- (b) any other respondent;
- (c) the Lord Advocate;
- (d) the returning officer for the relevant constituency; and
- (e) the Deputy Principal Clerk.

**Applications to be admitted as respondent**

**69.27.** The period of time within which a person may apply to be admitted as a respondent under section 153 of the Act of 1983 shall be—

- (a) 5 days after the notice is intimated under rule 69.25 (notice that respondent does not oppose);
- (b) 10 days after the notice is intimated under rule 69.26 (death or peerage of respondent); or
- (c) such other period as the court thinks fit.

### **Expenses in election petitions**

**69.28.** Where any expenses are awarded by the election court in the course of proceedings under the Act of 1983, such an award shall be deemed equivalent to a finding of expenses in the Court of Session.

### **Motions in election petitions**

**69.29.—**(1) Subject to any other provision in this Chapter or the Act of 1983, all applications shall be dealt with by motion.

(2) Subject to the provisions of this Chapter, Chapter 23 (motions) shall apply to a motion in an election petition.

(3) A motion in an election petition shall be intimated to—

- (a) the Lord Advocate; and
- (b) the returning officer for the relevant constituency.

### **Intimation to Lord Advocate**

**69.30.** All applications to the court in an election petition other than a motion under rule 69.4(1) (security for expenses) shall be intimated to the Lord Advocate; and the Lord Advocate shall be entitled to appear or be represented at the hearing of that application.

### **Evidence of publication by returning officer**

**69.31.—**(1) Where a returning officer publishes a notice in accordance with a provision in this Chapter or an order of the election court, he shall forthwith send to the Deputy Principal Clerk a letter—

- (a) certifying that the appropriate notice has been published; and
- (b) detailing the manner in which the publication has been made.

(2) Where publication has been made by inserting a notice in a newspaper or other publication, the letter under paragraph (1) shall be accompanied by—

- (a) a copy of the newspaper or other publication containing the notice; or
- (b) a certificate of publication by the publisher stating the date of publication and the text of the notice.

## **CHAPTER 70**

### **APPLICATIONS UNDER THE CHILD ABDUCTION AND CUSTODY ACT 1985** **PART I GENERAL PROVISIONS**

#### **Interpretation of this Chapter**

**70.1.** In this Chapter—

“the Act of 1985” means the Child Abduction and Custody Act 1985<sup>(228)</sup>;

“the European Convention” means the convention defined in section 12(1) of the Act of 1985 and as set out in Schedule 2 to the Act of 1985;

“the Hague Convention” means the convention defined in section 1(1) of the Act of 1985 and as set out in Schedule 1 to the Act of 1985;

“relevant authority” means—

- (a) in the United Kingdom, a sheriff court, a children’s hearing within the meaning of Part III of the Social Work (Scotland) Act 1968<sup>(229)</sup>, the High Court, a county court or magistrates’ court in England and Wales, the High Court, a county court or magistrates’ court in Northern Ireland, or the Secretary of State, as the case may be; or
- (b) in a specified dependent territory, the appropriate authority or the appropriate court as defined in an Order in Council made under section 28 of the Act of 1985;

“specified dependent territory” means a dependent territory specified in an Order in Council made under section 28 of the Act of 1985.

### **Translations of documents**

**70.2.** Where any document lodged in process in a cause to which this Chapter applies is in a language other than English, there shall be lodged with that document a translation into English certified as correct by the translator; and the certificate shall include his full name, address and qualifications.

### **Applications for certified copy or extract**

**70.3.—**(1) An application for a certified copy or extract of a decree or any other interlocutor relating to a child, in respect of whom the applicant wishes to apply under the Hague Convention or the European Convention in another Contracting State, shall be made by letter to the Deputy Principal Clerk.

(2) A certified copy or extract issued on an application under paragraph (1) shall be supplied free of charge.

### **Disclosure of information**

**70.4.** Where the court pronounces an interlocutor under section 24A of the Act of 1985<sup>(230)</sup> (order to a person to disclose information to the court as to a child’s whereabouts), it may order that person to appear before it or to lodge an affidavit.

### **PART III INTERNATIONAL CHILD ABDUCTION (THE HAGUE CONVENTION)**

### **Form of applications under this Part**

**70.5.—**(1) An application for the return of a child under the Hague Convention shall be made by petition and—

- (a) shall include averments in relation to—
  - (i) the identity of the petitioner and the person alleged to have removed or retained the child;
  - (ii) the identity of the child and his date of birth;

<sup>(228)</sup> 1985 c. 60.

<sup>(229)</sup> 1968 c. 49.

<sup>(230)</sup> 1985 c. 60; section 24A was inserted by the Family Law Act 1986 (c. 55), section 67(4).

- (iii) the whereabouts or suspected whereabouts of the child;
    - (iv) the date on which the child is alleged to have been wrongfully removed or retained;
    - (v) the grounds on which the petition is based; and
    - (vi) any civil cause in dependence before any other court or authority in respect of the child, or any proceedings mentioned in section 9 of the Act of 1985<sup>(231)</sup> relating to the merits of the rights of custody of the child in or before a relevant authority; and
  - (b) there shall be produced with the petition and lodged as a production—
    - (i) a certified or authorised copy of any relevant decision or agreement; and
    - (ii) a certificate or affidavit from a Central Authority or other competent authority of the Contracting State where the child habitually resides concerning the relevant law of that State.
- (2) An application for access to a child under the Hague Convention shall be made by petition and—
- (a) shall include averments in relation to—
    - (i) the identity of the petitioner;
    - (ii) the identity of the child and his date of birth;
    - (iii) the parents or guardians of the child;
    - (iv) the whereabouts of the child;
    - (v) the factual and legal grounds on which access is sought; and
    - (vi) any civil cause in dependence before any other court or authority in respect of the child, or any proceedings mentioned in section 9 of the Act of 1985 relating to the merits of the rights of custody of the child in or before a relevant authority; and
  - (b) there shall be produced with the petition and lodged as a production a certified copy of any relevant decision or agreement.
- (3) An application under section 8 of the Act of 1985 (application for declarator that removal or retention of child was wrongful) shall be made by petition and—
- (a) shall include averments in relation to—
    - (i) the identity of the petitioner and of the person who is alleged to have removed or retained the child;
    - (ii) the identity of the child and his date of birth;
    - (iii) the whereabouts or suspected whereabouts of the child;
    - (iv) the date on which the child is alleged to have been wrongfully removed or retained;
    - (v) the proceedings which gave custody to the petitioner; and
    - (vi) the proceedings under the Hague Convention in relation to which the petition is necessary; and
  - (b) there shall be produced with the petition any relevant document.

#### **Period of notice, service of causes and first hearing under this Part**

**70.6.**—(1) Subject to rule 14.6(2), the period of notice for lodging answers to a petition to which rule 70.5 applies shall be 4 days.

(2) Such a petition shall be served on—

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<sup>(231)</sup> Section 9 of the Act of 1985 was amended by the Family Law Act 1986 (c. 55), Schedule 1, paragraph 28 and by the Children Act 1989 (c. 41), Schedule 13, paragraph 47 and Schedule 15.

- (a) the person alleged to have brought the child into the United Kingdom;
- (b) the person with whom the child is presumed to be;
- (c) any parent or guardian of the child if he or she is within the United Kingdom, or a specified dependent territory and not otherwise a party;
- (d) the chief executive of the local authority, and the reporter to the children's panel, in the local authority area in which the child resides; and
- (e) any other person who may have an interest in the child.

(3) The first order under rule 14.5 (first order in petitions) in a petition to which rule 70.5 applies shall specify a date within 7 days after the expiry of the period of notice for a hearing to determine the further progress of the petition.

### **Notice of other proceedings**

**70.7.**—(1) Where a petition is presented under paragraph (1) of rule 70.5 and there are proceedings mentioned in section 9 of the Act of 1985 relating to the merits of the rights of custody of the child depending in or before a relevant authority, the court shall give written intimation of the petition and, in due course of the outcome of the petition, to that relevant authority.

(2) Where the court receives a notice equivalent to that under paragraph (1) from a relevant authority, all proceedings in any cause mentioned in section 9 of the Act of 1985 relating to the merits of the rights of custody of the child shall be sisted by the court until the dismissal of the proceedings in that other court under the Hague Convention; and the Deputy Principal Clerk shall give written intimation to each party of the sist and of any such dismissal.

### **Transfer of causes**

**70.8.**—(1) At any stage of a cause mentioned in paragraph (1) of rule 70.5, the court may, at its own instance or on the motion of any party, pronounce an interlocutor transmitting the cause to the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory, as the case may be.

(2) Where a cause is transferred under paragraph (1), the Deputy Principal Clerk shall—

- (a) transmit the process to the appropriate officer of the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified territory, as the case may be;
- (b) give written intimation of such transfer to each party; and
- (c) certify on the interlocutor sheet that such written intimation has been given.

(3) Where a cause is transferred under paragraph (1), the question of expenses shall not be determined by the court, but shall be at the discretion of the court to which the cause is transferred.

(4) Where such a cause is transferred to the court from the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory—

- (a) the Deputy Principal Clerk shall, on receipt of the order transferring the cause and any documents in the cause, give written intimation to each party of the transfer;
- (b) the cause shall be deemed to have been commenced by petition; and
- (c) the Deputy Principal Clerk shall, within two sederunt days of the receipt of it, cause it to be put out on the By Order Roll before the Lord Ordinary.

PART III RECOGNITION AND ENFORCEMENT OF CUSTODY DECISIONS (THE EUROPEAN CONVENTION)

### **Form of applications under this Part**

**70.9.**—(1) An application under any of the following provisions shall be made by petition:—

- (a) section 15 of the Act of 1985 (application to declare a decree for custody not to be recognised);
- (b) section 16 of the Act of 1985 (application for registration of custody decision); and
- (c) section 18 of the Act of 1985 (application for enforcement of custody decision).

(2) An application under section 17(4) of the Act of 1985 (application for variation or revocation of registered decision), shall be made by note in the process of the petition for registration.

(3) An application under section 23(2) of the Act of 1985 (application in custody proceedings for declarator that removal of a child was unlawful), shall be made—

- (a) by minute in the process of a cause depending before the court commenced by summons; or
- (b) by note in the process of a cause depending before the court commenced by petition.

(4) In an application mentioned in this rule—

- (a) the petition, minute or note, as the case may be, shall include averments in relation to—
  - (i) the identity of the petitioner, minuter or noter, as the case may be, and his interest in the cause;
  - (ii) the identity of the child and his date of birth;
  - (iii) the parents or guardians of the child;
  - (iv) the order which is required to be registered, enforced, declared unlawful, declared not recognised, varied or revoked, as the case may be;
  - (v) the whereabouts or suspected whereabouts of the child; and
  - (vi) any civil cause in dependence before any other court or authority in respect of the child, or any proceedings specified in section 20(2) of the Act of 1985(232) in dependence in or before a relevant authority; and
- (b) there shall be produced with the petition, minute or note, as the case may be—
  - (i) a certified or authorised copy of any decision to be registered or enforced;
  - (ii) where a decision to be registered was given in the absence of the person against whom the decision was made or in the absence of his legal representative, a document which establishes (subject to Article 9(1)(a) of the European Convention) that that person was duly served with the document which instituted the original proceedings;
  - (iii) a certificate or affidavit to the effect that any decision to be registered is enforceable in accordance with the law of the State in which the decision was made; and
  - (iv) any other relevant document.

### **Period of notice, service of causes and first hearing under this Part**

**70.10.**—(1) Subject to rule 14.6(2), the period of notice for lodging answers in a petition to which rule 70.9 applies shall be 4 days.

(2) Such a petition shall be served on—

- (a) the person alleged to have brought the child into, or removed the child from, the United Kingdom, or a specified dependent territory, as the case may be;
- (b) the person with whom the child is presumed to be in the United Kingdom or a specified dependent territory;

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(232) Section 20(2) was amended by the Children Act 1989 (c. 41), Schedule 13, paragraph 57 and Schedule 15.

- (c) the mother and father of the child if he or she is within the United Kingdom, or a specified dependent territory, and not otherwise a party;
- (d) the chief executive of the local authority, and the reporter to the children's panel, in the local authority area in which the child resides; and
- (e) any other person who may have an interest in the child.

(3) The first order under rule 14.5 (first order in petitions) in a petition to which rule 70.9 applies shall specify a date within 7 days after the expiry of the period of notice for a hearing to determine the further progress of the petition.

### **Registration**

**70.11.** Where the court pronounces an interlocutor ordering registration under section 16 of the Act of 1985, the Deputy Principal Clerk shall record that interlocutor in a register of decisions pronounced under that Act.

### **Other proceedings**

**70.12.—**(1) Where a petition is presented under section 16 (application for registration and enforcement of custody decision), or section 18 (application for enforcement of a custody decision), of the Act of 1985 and there are proceedings<sup>2</sup>/<sub>3</sub> mentioned in section 20(2) of that Act depending or such proceedings are commenced after the petition has been presented—

- (a) the petitioner shall inform the court by including averments or lodging an affidavit, as the case may be, to that effect containing a concise statement of the nature of those proceedings; and
- (b) the court shall give written intimation of the petition and, in due course of the outcome of the petition, to the relevant authority.

(2) Where the court receives a notice equivalent to that under paragraph (1)(b) from the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory, the Deputy Principal Clerk shall give written intimation to each party to any cause which is one mentioned in section 20(2) of the Act of 1985.

### **Transfers**

**70.13.—**(1) At any stage of a cause mentioned in rule 70.9, the court may, at its own instance or on the motion of any party, pronounce an interlocutor transferring the cause to the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory, as the case may be.

(2) Where a cause is transferred under paragraph (1), the Deputy Principal Clerk shall forthwith—

- (a) transmit the process to the appropriate officer of the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory, as the case may be;
- (b) give written intimation of such transfer to each party; and
- (c) certify on the interlocutor sheet that such written intimation has been given.

(3) Where a cause is transferred under paragraph (1), the question of expenses shall not be determined by the court, but shall be at the discretion of the court to which the case is transferred.

(4) Where such a cause is transferred to the court from the High Court in England and Wales or Northern Ireland, or the appropriate court of a dependent territory—

- (a) the Deputy Principal Clerk shall, on receipt of the order transferring the cause and any papers in the cause, give written intimation to the parties of the transfer;



- (b) the cause shall be deemed to have been commenced by petition; and
- (c) the Deputy Principal Clerk shall, within two days of the receipt of it, cause it to be put out on the By Order Roll before the Lord Ordinary.

### **Variation and revocation of registered decision**

**70.14.**—(1) Where a decision registered under section 16 of the Act of 1985 is varied or revoked by an authority in the Contracting State in which the decision was made, the court shall—

- (a) on cancelling the registration of a decision which it has been notified has been revoked, give written intimation of that cancellation to—
  - (i) the person appearing to the court to have actual custody of the child;
  - (ii) the petitioner in the petition for registration; and
  - (iii) any other party to that petition; and
- (b) on being notified of the variation of a decision, give written intimation to—
  - (i) the person having custody in fact of the child; and
  - (ii) any party to the petition for registration of the decision, of the variation.

(2) Any person to whom intimation of a variation has been given under paragraph (1)(b) may apply by note for the purpose of making representations before the registration is varied.

(3) An application under section 17(4) of the Act of 1985 (application to cancel or vary registration) shall be made by note.

## *CHAPTER 71*

### *REGISTRATION AND ENFORCEMENT OF CUSTODY ORDERS UNDER THE FAMILY LAW ACT 1986*

### **Interpretation of this Chapter**

**71.1.** In this Chapter—

“the Act of 1986” means the Family Law Act 1986(233);

“appropriate court” means the High Court in England and Wales or the High Court in Northern Ireland or, in relation to a specified dependent territory, the corresponding court in that territory, as the case may be;

“custody order” has the meaning assigned in section 32 of the Act of 1986;

“proper officer” means the Secretary of the principal registry of the Family Division of the High Court in England and Wales or the Master (care and protection) of the High Court in Northern Ireland or, in relation to a specified dependent territory, the corresponding officer of the appropriate court in that territory, as the case may be;

“register” means the custody orders register kept under rule 71.2;

“specified dependent territory” means a dependent territory specified in an Order in Council made under section 43 of the Act of 1986.

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(233) 1986 c. 55.

**Custody orders register**

**71.2.**—(1) The Deputy Principal Clerk shall maintain a register to be called the custody orders register for the purposes of Chapter V of Part I of the Act of 1986<sup>(234)</sup>.

(2) In Part I of the register there shall be recorded applications for registration of a custody order in another part of the United Kingdom; and in Part II of the register there shall be recorded custody orders registered for enforcement in Scotland.

(3) The register may be inspected by—

- (a) the person who applied for registration; and
- (b) any other person who satisfies the Deputy Principal Clerk that he has an interest to do so.

**Applications for registration of custody orders in another court**

**71.3.**—(1) An application under section 27 of the Act of 1986 to register a custody order made by the Court of Session in an appropriate court shall be made by letter to the Deputy Principal Clerk.

(2) An application under paragraph (1) shall be accompanied by—

- (a) a copy of the letter of application;
- (b) an affidavit by the applicant;
- (c) a copy of that affidavit;
- (d) a certified copy of the interlocutor of the custody order;
- (e) a certified copy of the interlocutor of any variation which is in force in respect of the custody order; and
- (f) any other document relevant to the application and a copy of it.

(3) An affidavit required under this rule shall set out—

- (a) the name and address of the applicant and his right under the custody order;
- (b) the name and date of birth of the child in respect of whom the custody order was made, the present whereabouts or suspected whereabouts of the child and the name of any person with whom he is alleged to be;
- (c) the name and address of any other person who has an interest in the custody order;
- (d) whether the custody order is to be registered in England and Wales, Northern Ireland or a specified dependent territory, and the court in which it is to be registered;
- (e) whether the custody order is in force;
- (f) whether the custody order is already registered and, if so, where it is registered; and
- (g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the custody order is to be registered.

(4) Where the Deputy Principal Clerk refuses to send an application under this rule to the appropriate court on the ground that the custody order is no longer in force, he shall give written intimation to the applicant; and the applicant shall have the right to have the application brought before the Lord Ordinary for determination.

(5) The Deputy Principal Clerk shall retain the letter of application under this rule and any documents which accompany it and which are not transmitted to the appropriate court under section 27(3) of the Act of 1986.

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(234) Part I was amended by the Children Act 1989 (c. 41), Schedule 13, paragraph 2.

### **Transmission of applications for registration**

**71.4.**—(1) Where the Deputy Principal Clerk is satisfied that the custody order is in force, he shall send the documents mentioned in section 27(3) of the Act of 1986 to the proper officer of the court in which the custody order is to be registered.

(2) For the purposes of section 27(3)(b) of the Act of 1986, the prescribed particulars of any variation which is in force in respect of a custody order shall be a certified copy of the interlocutor of any such variation.

(3) On sending an application under paragraph (1), the Deputy Principal Clerk shall make an entry in Part I of the register recording the date and particulars of the application and the custody order.

(4) On receiving notification from a proper officer of an appropriate court that the custody order has been registered in that court under section 27(4) of the Act of 1986, the Deputy Principal Clerk shall record the date of registration in Part I of the register.

### **Registration of custody orders from another court**

**71.5.**—(1) The prescribed officer under section 27(4) of the Act of 1986 shall be the Deputy Principal Clerk.

(2) Where the Deputy Principal Clerk receives a certified copy of a custody order from a court for registration under section 27(4) of the Act of 1986, he shall enter the following particulars in Part II of the register:—

- (a) the name and address of the applicant and his interest under the custody order;
- (b) a brief description of the nature of the custody order, its date and the court which made it; and
- (c) the name and whereabouts or suspected whereabouts of the child who is the subject of the custody order, his date of birth and the date on which he will attain the age of 16 years.

(3) On registering the custody order, the Deputy Principal Clerk shall—

- (a) retain the application and the documents which accompanied it; and
- (b) give written intimation to—
  - (i) the court from which he received the application, and
  - (ii) the applicant who applied for registration,that the custody order has been registered.

(4) Where the Deputy Principal Clerk gives written intimation to an applicant under paragraph (3), he shall state the date when the registration of the custody order will automatically cease to have effect on the child attaining the age of 16 years.

### **Cancellation or variation of registered custody orders**

**71.6.**—(1) Where the Court of Session revokes, recalls or varies a custody order which it has made, the Deputy Principal Clerk, on being informed by the party who applied for the revocation, recall or variation that the custody order has been registered in an appropriate court, shall—

- (a) send a certified copy of the interlocutor of the revocation, recall or variation, as the case may be, to the proper officer of the court in which the custody order is registered;
- (b) record the transmission of the certified copy of that interlocutor in Part I of the register; and
- (c) record the revocation, recall or variation, as the case may be, in Part I of the register.

(2) On receiving notification from the proper officer of the court in which the custody order is registered that he has amended his record, the Deputy Principal Clerk shall record the fact that the amendment has been made in Part II of the register.

*Status: This is the original version (as it was originally made).*

(3) Where the Deputy Principal Clerk receives a certified copy of an order which revokes, recalls or varies a custody order registered in the Court of Session from an appropriate court, he shall—

- (a) note the change and its date in Part II of the register; and
- (b) give written intimation to—
  - (i) the court from which he received the certified copy of the order which revokes, recalls or varies, as the case may be, the custody order,
  - (ii) the person who applied for registration of the custody order, and
  - (iii) the person, if different, who applied for the revocation, recall or variation, as the case may be, of the custody order,

that he has amended the register.

(4) An application to the Court of Session under section 28(2) of the Act of 1986 to cancel all or a part of the registration of a custody order which it has registered shall be made by petition and shall be served on—

- (a) the person who applied for registration, if he is not the petitioner; and
- (b) any other interested person.

(5) Where, under section 28(2) of the Act of 1986, the court cancels all or a part of the registration of a custody order which it has registered, the Deputy Principal Clerk shall—

- (a) note the cancellation and its date in Part II of the register; and
- (b) give written intimation to—
  - (i) the court which made the custody order;
  - (ii) the person who applied for registration; and
  - (iii) the person, if different, who applied for cancellation of the custody order.

### **Enforcement of registered custody orders in Scotland**

**71.7.**—(1) An application under section 29(1) of the Act of 1986 to enforce a custody order registered in the Court of Session shall be made by petition.

(2) Where the petitioner in an application under paragraph (1) is not the person who applied for registration of the custody order, the petition shall be served on that person.

### **Applications to sist or refuse enforcement proceedings**

**71.8.**—(1) An application under section 30(1) of the Act of 1986 to sist enforcement proceedings, or under section 31(1) or (2) of the Act of 1986 to dismiss a petition for enforcement of a custody order, shall be made by lodging answers at any time in the process of the petition for enforcement; and the answers shall be served on every other party and, if he is not a party, the applicant for registration of the custody order.

(2) An application under section 30(3) of the Act of 1986 (recall of sist of enforcement proceedings) shall be made by motion.

(3) Where the court pronounces an interlocutor under section 30(2) or (3) or section 31(3) of the Act of 1986, the Deputy Principal Clerk shall—

- (a) make an entry in Part II of the register noting the terms of the interlocutor and the date; and
- (b) give written intimation to—
  - (i) the person who applied for registration where he was not a party to the application under section 30(1) or section 31(1) or (2) of the Act of 1986; and
  - (ii) the court from which the application for registration was received,

of the terms of the interlocutor.

### **Orders for disclosure of information**

**71.9.** Where the court makes an order under section 33(1) of the Act of 1986 (order on person to disclose information as to child's whereabouts), it may ordain the person against whom the order was made to appear before it or to lodge an affidavit.

### **Applications for interdict under section 35(3) of the Act of 1986**

**71.10.** An application by a person mentioned in section 35(4)(b) or (c) of the Act of 1986<sup>(235)</sup> for interdict or interim interdict under section 35(3) of the Act of 1986 (prohibition of removal of child from United Kingdom) shall be made—

- (a) by note in the process of a petition depending before the court to which this Chapter applies; or
- (b) where there is no such depending process, by petition.

## *CHAPTER 72*

### *BANKRUPTCY (SCOTLAND) ACT 1985*

### **Interpretation of this Chapter**

**72.1.—(1)** In this Chapter, “the Act of 1985” means the Bankruptcy (Scotland) Act 1985<sup>(236)</sup>.

(2) Unless the context otherwise requires, words and expressions used in this Chapter which are also used in the Act of 1985 have the same meaning as in that Act.

### **First order in petitions for sequestration**

**72.2.** A petition for sequestration to which subsection (2) of section 12 of the Act of 1985 (petition for sequestration of debtor's estate by creditor or trustee) applies shall, on being presented, be brought before the Lord Ordinary in court or in chambers for an order for a warrant to cite the debtor as required by that subsection.

### **Notice of concurrent proceedings**

**72.3.** A person seeking to bring to the attention of the court a fact referred to in section 10(1) of the Act of 1985<sup>(237)</sup> (concurrent proceedings for sequestration or analogous remedy) shall do so by motion in the process of the petition which may be affected.

### **Applications for transfer or remit of sequestration**

**72.4.—(1)** An application under section 15(2) (transfer of sequestration from one sheriff to another), or section 63(3)(b) (application for a direction to remit an application under section 63(1)), of the Act of 1985 from the sheriff to the court shall be made—

- (a) where sequestration has been awarded by the court, by motion; or
- (b) where sequestration has been awarded by the sheriff, by petition.

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<sup>(235)</sup>Section 35(4)(b) was amended by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 2, paragraph 47.

<sup>(236)</sup>1985 c. 66.

<sup>(237)</sup>Section 10(1) was amended by the Financial Services Act 1986 (c. 60), Schedule 16, paragraph 29.

(2) The applicant under section 15(2) of the Act of 1985 shall intimate such motion to or serve such petition on—

- (a) the debtor;
- (b) any person who was a petitioner or concurred in the petition for sequestration;
- (c) the interim trustee or permanent trustee;
- (d) the Accountant in Bankruptcy; and
- (e) the sheriff clerk.

(3) A copy of the application under section 63(1) of the Act of 1985 (application to sheriff to cure defects in procedure), certified by the sheriff clerk, shall be lodged with any application under section 63(3)(b) of that Act.

(4) Where the court has determined an application under section 15(2) or section 63(3)(b) of the Act of 1985, the applicant shall intimate a certified copy of the interlocutor of the court forthwith to—

- (a) the sheriff clerk; and
- (b) the Accountant in Bankruptcy.

(5) Where the court grants an application under section 15(2) of the Act of 1985, the sheriff clerk shall, on receipt of a certified copy of the interlocutor of the court, transmit those parts of the sequestration process in his custody to the sheriff clerk of the sheriff court specified in the interlocutor.

(6) Where the court grants an application under section 63(3)(b) of the Act of 1985, the sheriff clerk shall, on receipt of a certified copy of the interlocutor of the court, transmit the application under section 63(1) of that Act, and those parts of the sequestration process in his custody, to the Deputy Principal Clerk.

(7) Where the court has determined the matters raised by the application under section 63(1) of the Act of 1985—

- (a) the applicant under section 63(3)(b) of that Act shall intimate a certified copy of the interlocutor of the court forthwith to—
  - (i) the sheriff clerk; and
  - (ii) the Accountant in Bankruptcy; and
- (b) the Deputy Principal Clerk shall transmit the parts of process transmitted to him under paragraph (6) to the sheriff clerk.

### **Holding of sederunt book by Accountant in Bankruptcy**

**72.5.** The Accountant in Bankruptcy shall hold the sederunt book for a period of at least 6 months from the date he receives it from the permanent trustee by virtue of section 57(1) of the Act of 1985 and—

- (a) shall make it available for public inspection during office hours; and
- (b) may allow such extracts to be made of entries in the Sederunt Book by such persons as he thinks fit.

### **Prescribed forms**

**72.6.—**(1) The register of insolvencies kept by the Accountant in Bankruptcy under section 1A(1) (b) of the Act of 1985(**238**) shall contain the information required in Form 72.6–A.

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(238) Section 1A of the Act of 1985 was inserted by the Bankruptcy (Scotland) Act 1993 (c. 6), section 1.

(2) An undertaking by the interim trustee under section 2(3)(c) of the Act of 1985(**239**) shall be in Form 72.6–B.

(3) The memorandum to be sent by a permanent trustee to the Keeper of the Register of Inhibitions and Adjudications under section 14(4) of the Act of 1985(**240**) shall be in Form 72.6–C.

(4) A notice by a trustee under a trust deed for creditors to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Act of 1985 (registration of notice of inhibition) shall be in Form 72.6–D.

(5) A notice under paragraph 2(2) of Schedule 5 to the Act of 1985 recalling a notice registered under paragraph 2(1) of that Schedule shall be in Form 72.6–E.

## CHAPTER 73

### RECTIFICATION OF DOCUMENTS

#### Application of this Chapter

**73.1.** This Chapter applies to an application under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985(**241**) (rectification of defectively expressed documents).

#### Form of applications

**73.2.**—(1) Subject to paragraph (2), an application to which this Chapter applies shall be made by petition.

(2) An application to which this Chapter applies may be made in an action by a conclusion ancillary to other conclusions in a summons.

## CHAPTER 74

### COMPANIES

#### PART I GENERAL PROVISIONS

#### Application and interpretation of this Chapter

**74.1.**—(1) This Chapter applies to causes under—

(a) the following provisions of the Insolvency Act 1986(**242**):—

- (i) Part I (company voluntary arrangements);
- (ii) Part II (administration orders);
- (iii) Part III (receivership); and
- (iv) Chapter VI of Part IV (winding up by the court); and

(b) the Company Directors Disqualification Act 1986(**243**).

(2) In this Chapter—

“the Act of 1986” means the Insolvency Act 1986;

“the Insolvency Rules” means the Insolvency (Scotland) Rules 1986(**244**);

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(**239**) Section 2(3)(c) of the Act of 1985 was substituted by the Act of 1993, section 2.

(**240**) Section 14(4) of the Act of 1985 was amended by the Act of 1993, Schedule 1, paragraph 3.

(**241**) 1985 c. 73.

(**242**) 1986 c. 46.

(**243**) 1986 c. 45.

(**244**) S.I. 1986/1915, amended by S.I. 1987/1921.

*Status: This is the original version (as it was originally made).*

“registered office” means—

- (i) the place specified in the statement of the company delivered to the register of companies under section 10 of the Companies Act 1985<sup>(245)</sup> as the intended place of its registered office on incorporation, or
- (ii) where notice has been given by the company to the registrar of companies under section 287 of the Companies Act 1985<sup>(246)</sup> of a change of registered office, the place specified in the last such notice.

(3) Unless the context otherwise requires, words and expressions used in this Chapter which are also used in the Act of 1986 or the Insolvency Rules have the same meaning as in that Act or those Rules, as the case may be.

### **Proceedings before insolvency judge**

**74.2.** All proceedings in the Outer House in a cause under or by virtue of the Act of 1986 or the Company Directors Disqualification Act 1986 shall be brought before a judge of the court nominated by the Lord President as the insolvency judge or, where the insolvency judge is not available, any other judge of the court (including the vacation judge); and “insolvency judge” shall be construed accordingly.

### **Notices and reports, etc., sent to the court**

**74.3.** Where, under the Act of 1986 or the Insolvency Rules—

- (a) notice of a fact is to be given to the court,
- (b) a report is to be made, or sent, to the court, or
- (c) any other document is to be sent to the court,

it shall be sent to the Deputy Principal Clerk who shall cause it to be lodged in the process to which it relates.

## **PART IICOMPANY VOLUNTARY ARRANGEMENTS**

### **Lodging of nominee’s report (company not in liquidation etc.)**

**74.4.—**(1) This rule applies where the company is not being wound up by the court and an administration order is not in force in respect of it pronounced by the court.

(2) A report of a nominee submitted to the court under section 2(2) of the Act of 1986 (procedure where nominee is not the liquidator or administrator) shall be—

- (a) lodged, with a covering letter, in the Petition Department;
- (b) marked by the clerk of session receiving it with the date on which it is received; and
- (c) placed before the insolvency judge for consideration of any direction which he may make under section 3(1) of that Act (which relates to the summoning of meetings).

(3) An application by a nominee to extend the time within which he may submit his report under section 2(2) of the Act of 1986 shall be made by letter addressed to the Deputy Principal Clerk who shall—

- (a) place the letter before the insolvency judge for determination;
- (b) intimate that determination by a written reply; and

<sup>(245)</sup> 1985 c. 6.

<sup>(246)</sup> Section 287 was substituted by the Companies Act 1989 (c. 40), section 136.



- (c) attach the letter, and a copy of the reply, to the nominee's report when it is subsequently lodged.

#### **Lodging of nominee's report (company in liquidation etc.)**

**74.5.**—(1) This rule applies where the company is being wound up by the court or there is an administration order in force in respect of it pronounced by the court.

(2) In this rule, "process" means the process of the petition under section 9(247) (petition for administration order), or section 124(248) (petition to wind up a company), of the Act of 1986, as the case may be.

(3) A report of a nominee submitted to the court under section 2(2) of the Act of 1986 (procedure where nominee is not the liquidator or administrator) shall be—

- (a) lodged in process; and
- (b) placed before the insolvency judge for consideration of any direction which he may make under section 3(1) of that Act.

(4) An application by a nominee to extend the time within which he may submit his report under section 2(2) of the Act of 1986 shall be made by letter addressed to the Deputy Principal Clerk who shall—

- (a) place the letter before the insolvency judge for determination;
- (b) intimate that determination by a written reply; and
- (c) lodge the letter, and a copy of the reply, in the process of the petition to which it relates.

#### **Inspection of nominee's report**

**74.6.** A person who states in a letter addressed to the Deputy Principal Clerk that he is a creditor, member or director of the company or his agent, may, on payment of the appropriate fee, inspect the nominee's report lodged under rule 74.4(2) (company not in liquidation etc.) 74.5(3) (company in liquidation etc.), as the case may be.

#### **Report of meetings to approve arrangement**

**74.7.** The report of the result of a meeting to be sent to the court under section 4(6) of the Act of 1986 shall be sent to the Deputy Principal Clerk who shall lodge it—

- (a) in a case to which rule 74.4 (lodging of nominee's report (company not in liquidation etc.)) applies, with the nominee's report lodged under that rule; or
- (b) in a case to which rule 74.5 (lodging of nominee's report (company in liquidation etc.)) applies, in process as defined by paragraph (2) of that rule.

#### **Abstracts of supervisor's receipts and payments and notices of completion of arrangement**

**74.8.** An abstract of receipts and payments prepared by a supervisor and sent to the court under rule 1.21(2) of the Insolvency Rules or a notice of completion of the arrangement (and a copy of the supervisor's report) to be sent to the court under rule 1.23(3) of those Rules shall be sent to the Deputy Principal Clerk who shall cause it to be lodged—

- (a) in a case to which rule 74.4 (lodging of nominee's report (company not in liquidation etc.)) applies, with the nominee's report lodged under that rule; or

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(247) Section 9 was amended by the Criminal Justice Act 1988 (c. 33), section 62(2) and by the Companies Act 1989 (c. 40), Schedule 16, paragraph 3(2).

(248) Section 124 was amended by the said Act of 1988, section 62(2) and by the said Act of 1989, section 60(2).

*Status: This is the original version (as it was originally made).*

- (b) in a case to which rule 74.5 (lodging of nominee's report (company in liquidation etc.)) applies, in process as defined by paragraph (2) of that rule.

### **Form of other applications**

- 74.9.**—(1) An application to which this rule applies shall be made—
- (a) where the company is not being wound up by the court and an administration order is not in force in respect of it pronounced by the court, by petition; or
  - (b) where the company is being wound up by the court or there is an administration order in force in respect of it pronounced by the court, by note in the process to which it relates.
- (2) This rule applies to an application under—
- (a) section 2(4) of the Act of 1986 (for the replacement of a nominee);
  - (b) section 6 of that Act (to challenge a decision made in relation to an arrangement);
  - (c) section 7(3) of that Act (to challenge the actings of a supervisor);
  - (d) section 7(4)(a) of that Act (by a supervisor for directions);
  - (e) section 7(5) of that Act (for the appointment of a supervisor);
  - (f) rule 1.21(5) of the Insolvency Rules (to dispense with sending abstracts or reports or to vary the dates on which the obligation to send abstracts or reports arises);
  - (g) rule 1.23(4) of those Rules (to extend the period for sending a notice of implementation of arrangement or report); or
  - (h) any other provision in the Act of 1986 or the Insolvency Rules relating to company voluntary arrangements not mentioned in this Part.

## **PART IIIADMINISTRATION ORDERS**

### **Form of petition for administration order**

- 74.10.**—(1) In this Part, “the petition” means a petition under section 9 of the Act of 1986 (petition for an administration order).
- (2) The petition shall include averments in relation to—
- (a) the petitioner and the capacity in which he presents the petition, if other than the company;
  - (b) whether it is believed that the company is, or is likely to become, unable to pay its debts and the grounds of that belief;
  - (c) which of the purposes specified in section 8(3) of the Act of 1986 is expected to be achieved by the making of an administration order;
  - (d) the company's financial position specifying, so far as known, assets and liabilities, including contingent and prospective liabilities;
  - (e) any security known or believed to be held by creditors of the company, whether in any case the security confers power on the holder to appoint a receiver, and whether a receiver has been appointed;
  - (f) so far as known to the petitioner, whether any steps have been taken for the winding up the company;
  - (g) other matters which, in the opinion of the petitioner, will assist the court in deciding whether to grant an administration order;
  - (h) whether an independent report on the affairs of the company has been prepared under rule 2.1 of the Insolvency Rules and, if not, an explanation why not; and

- (i) the name and address of the person proposed to be appointed, and his qualification to act, as administrator.
- (2) Where a report has been prepared under rule 2.1 of the Insolvency Rules, a copy of that report shall be lodged with the petition.

#### **Notice of petition**

##### **74.11. Where—**

- (a) the petition is to be served on a person mentioned in rule 2.2 of the Insolvency Rules, and
- (b) by virtue of paragraph (2) of that rule, notice requires to be given to that person,

it shall be sufficient for the petitioner, where such notice and service is to be executed by post, to enclose the statutory notice and a copy of the petition in one envelope and to certify the giving of such notice and the execution of such service by one certificate.

#### **Report of proposals of administrator**

**74.12.**—(1) A report of the meeting to approve the proposals of the administrator to be sent to the court under section 24(4) of the Act of 1986 shall be sent to the Deputy Principal Clerk of Session, who shall—

- (a) cause it to be lodged in the process of the petition to which it relates; and
- (b) give written intimation to the parties of the receipt and lodging of the report.

(2) Where a report under section 24(4) of the Act of 1986 discloses that the meeting has declined to approve the proposals of the administrator, the Keeper of the Rolls shall put the cause out on the By Order Roll for determination by the insolvency judge for any order he may make under section 24(5) of that Act.

#### **Abstracts of administrator's receipts and payments**

**74.13.** An abstract of receipts and payments of an administrator to be sent to the court under rule 2.17(1) of the Insolvency Rules shall be sent to the Deputy Principal Clerk who shall—

- (a) cause it to be lodged in the process of the petition to which it relates; and
- (b) give written intimation to the parties of the receipt and lodging of the report.

#### **Extension of time for accounts of receipts and payments**

**74.14.** An application by an administrator under rule 2.17(2) of the Insolvency Rules to extend the period for sending an abstract of accounts of receipts and payments to the court under rule 2.17(1) of those Rules shall be made by motion.

#### **Form of certain applications and appeals**

**74.15.**—(1) An application under any of the following provisions shall be made by note:—

- (a) section 13(2) of the Act of 1986 (for an appointment to fill a vacancy in the office of administrator);
- (b) section 14(3) of that Act (by an administrator for directions);
- (c) section 15(2) of that Act (by an administrator for power to dispose of property subject to a security);
- (d) section 18(1) of that Act (by an administrator for discharge or variation of an administration order);

- (e) section 19(1) of that Act for removal from office of an administrator;
- (f) section 22(5) of that Act (for release from, or extension of time for fulfilling an obligation to submit a statement of affairs);
- (g) section 27(1) of that Act (for protection of the interests of creditors and members);
- (h) rule 2.16(3) of the Insolvency Rules (by an administrator for an increase of his remuneration); and
- (i) any other provision in the Act of 1986 or the Insolvency Rules relating to an administration order not mentioned in this Part.

(2) An appeal under rule 2.6(2) of the Insolvency Rules (appeal against decision of administrator as to expenses of submitting statement of affairs) shall be made by note.

(3) Where a petition for an administration order has been presented or an administration order has been made, any person having an interest who wishes to apply to the court for an order under section 175(2) of the Companies Act 1989(249) shall apply by note in the process of the petition for the administration order.

(4) The court shall not make an order under section 175(2) of the Companies Act 1989 unless intimation has been made to such persons having an interest as the court thinks fit and any such person has had an opportunity to be heard.

#### PART IV RECEIVERS

#### Interpretation of this Part

**74.16.** In this Part, “the petition” means a petition under section 54(1) of the Act of 1986 (petition to appoint a receiver).

#### Petition to appoint a receiver

**74.17.** The petition shall include averments in relation to—

- (a) any floating charge and the property over which it is secured;
- (b) so far as known to the petitioner, whether any application for an administration order has been made in respect of the company;
- (c) other matters which, in the opinion of the petitioner, will assist the court in deciding whether to appoint a receiver; and
- (d) the name and address of the person proposed to be appointed, and his qualification to act, as receiver.

#### Intimation, service and advertisement under this Part

**74.18.—**(1) Unless the court otherwise directs, the order under rule 14.5 (first order in petitions) for intimation, service and advertisement of the petition shall include a requirement—

- (a) to serve the petition—
  - (i) on the company; and
  - (ii) where an application for an administration order has been presented, on that applicant and any respondent to that application; and
- (b) to advertise the petition forthwith—
  - (i) once in the Edinburgh Gazette; and
  - (ii) once in one or more of such newspapers as the court shall direct.

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(249) 1989 c. 40.

(2) Subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to the petition shall be 8 days.

(3) An advertisement under paragraph (1) shall include—

- (a) the name and address of the petitioner;
- (b) the name and address of the agent for the petitioner;
- (c) the date on which the petition was presented;
- (d) the nature of the order sought;
- (e) the period of notice for lodging answers; and
- (f) a statement that any person who intends to appear in the petition must lodge answers within the period of notice.

### **Form of other applications and appeals**

**74.19.**—(1) An application under—

- (a) section 61(1) of the Act of 1986 (by a receiver for authority to dispose of property or an interest in property),
- (b) section 62 of that Act<sup>(250)</sup> (for removal of a receiver),
- (c) section 63(1) of that Act (by a receiver for directions),
- (d) section 69(1) of that Act (to enforce the receiver’s duty to make returns etc.), or
- (e) any other provision of the Act of 1986 or the Insolvency Rules relating to receivers not mentioned in this Part,

shall, where the court has appointed the receiver, be made by note or, in any other case, by petition.

(2) An appeal against a decision of a receiver as to expenses of submitting a statement of affairs under rule 3.3(2) of the Insolvency Rules shall, where the receiver was appointed by the court, be made by note or, in any other case, by petition.

(3) An application by a receiver—

- (a) under section 67(1) or (2) of the Act of 1986 (to extend the time for sending a report),
- (b) under rule 3.9(2) of the Insolvency Rules (to extend the time for sending an abstract of his receipts and payments),

shall, where the court has appointed the receiver, be made by motion or, in any other case, by petition.

### **PART VWINDING UP OF COMPANIES**

### **Interpretation of this Part**

**74.20.** In this Part, “the petition” means a petition under section 124 of the Act of 1986 (petition to wind up a company).

### **Petition to wind up a company**

**74.21.**—(1) The petition shall include averments in relation to—

- (a) the petitioner, if other than the company, and his title to present the petition;
- (b) in respect of the company—
  - (i) its current and any previous registered name;

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(250) Section 62 was amended by the Companies Act 1989 (c. 40), Schedule 16, paragraph 3(3) and Schedule 24.

- (ii) the address of its registered office, and any previous such address within 6 months immediately before the presentation of the petition so far as known to the petitioner;
- (iii) a statement of the nature of its business and objects, the amount of its capital (nominal and issued) indicating what part is called up, paid up or credited as paid up, and the amount of the assets of the company so far as known to the petitioner;
- (c) whether, to the knowledge of the petitioner, a receiver has been appointed in respect of any part of the property of the company or a liquidator has been appointed for the voluntary winding up of the company;
- (d) the grounds on which the petition proceeds; and
- (e) the name and address of the person proposed to be appointed, and his qualification to act, as interim liquidator.

### **Intimation, service and advertisement under this Part**

**74.22.**—(1) Unless the court otherwise directs, the order under rule 14.5 (first order in petitions) for intimation, service and advertisement of the petition shall include a requirement—

- (a) to serve the petition—
  - (i) where the petitioner is not the company, on the company;
  - (ii) where the company is being wound up voluntarily and a liquidator has been appointed, on the liquidator; and
  - (iii) where a receiver or administrator has been appointed, on the receiver or administrator, as the case may be;
- (b) where the company is an authorised institution or former authorised institution within the meaning assigned in section 106(1) of the Banking Act 1987<sup>(251)</sup> and the petitioner is not the Bank of England, to serve the petition on the Bank of England; and
- (c) to advertise the petition forthwith—
  - (i) once in the Edinburgh Gazette; and
  - (ii) once in one or more of such newspapers as the court shall direct.

(2) Subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to the petition shall be 8 days.

(3) An advertisement under paragraph (1) shall include—

- (a) the name and address of the petitioner and, where the petitioner is the company, its registered office;
- (b) the name and address of the agent for the petitioner;
- (c) the date on which the petition was presented;
- (d) the nature of the order sought;
- (e) where a provisional liquidator has been appointed by the court, his name, address and the date of his appointment;
- (f) the period of notice for lodging answers; and
- (g) a statement that any person who intends to appear in the petition must lodge answers within the period of notice.

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<sup>(251)</sup> 1987 c. 22.

### **Remits from one court to another**

**74.23.**—(1) An application under section 120(3)(a)(i) of the Act of 1986<sup>(252)</sup> (application for remit of petition to a sheriff court) shall be made by motion.

(2) An application under—

(a) section 120(3)(a)(ii) of the Act of 1986 (application for remit of petition from a sheriff court to the court), or

(b) section 120(3)(b) of that Act (application for remit of petition from one sheriff court to another),

shall be made by petition.

### **Substitution of creditor or contributory for petitioner**

**74.24.**—(1) Where a petitioner in the petition—

(a) is subsequently found not entitled to present the petition,

(b) fails to make intimation, service and advertisement as directed by the court,

(c) moves or consents to withdraw the petition or to allow it to be dismissed or refused,

(d) fails to appear when the petition is called for hearing, or

(e) appears, but does not move for an order in terms of the prayer of the petition,

the court may, on such terms as it thinks fit, sist as petitioner in place of the original petitioner any creditor or contributory who, in the opinion of the court, is entitled to present the petition.

(2) An application by a creditor or a contributory to be sisted under paragraph (1)—

(a) may be made at any time before the petition is dismissed or refused, and

(b) shall be made by note;

and, if necessary, the court may continue the petition for a specified period to allow a note to be presented.

### **Provisional liquidator**

**74.25.**—(1) An application to appoint a provisional liquidator under section 135 of the Act of 1986 may be made—

(a) by the petitioner, in the prayer of the petition or, if made after the petition has been presented, by note; or

(b) by a creditor or contributory of the company, the company, the Secretary of State or a person entitled under any enactment to present a petition, by note.

(2) The application mentioned in paragraph (1) shall include averments in relation to—

(a) the grounds for the appointment of the provisional liquidator;

(b) the name and address of the person proposed to be appointed, and his qualification to act, as provisional liquidator; and

(c) whether, to the knowledge of the applicant, an administrator has been appointed to the company or a receiver has been appointed in respect of any part of its property or a liquidator has been appointed voluntarily to wind it up.

(3) Where the court decides to appoint a provisional liquidator—

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<sup>(252)</sup>1986 c. 46.

- (a) it shall pronounce an interlocutor making the appointment and specifying the functions to be carried out by him in relation to the affairs of the company; and
  - (b) the applicant shall forthwith send a certified copy of such interlocutor to the person appointed.
- (4) On receiving a certified copy of an interlocutor pronounced under paragraph (3), the provisional liquidator shall intimate his appointment forthwith—
- (a) once in the Edinburgh Gazette; and
  - (b) once in one or more of such newspapers as the court has directed.
- (5) An application for the discharge of a provisional liquidator shall be made by note.

### **Appointment of a liquidator**

- 74.26.**—(1) Where the court pronounces an interlocutor appointing a liquidator—
- (a) the Deputy Principal Clerk shall send a certified copy of that interlocutor to the liquidator;
  - (b) the court may, for the purposes of rule 4.18(4) of the Insolvency Rules (liquidator to give notice of appointment), give such direction as it thinks fit as to advertisement of such appointment.
- (2) An application to appoint a liquidator under section 139(4) of the Act of 1986 shall be made by note.

### **Applications and appeals in relation to a statement of affairs**

- 74.27.**—(1) An application under section 131(5) of the Act of 1986 for—
- (a) release from an obligation imposed under section 131(1) or (2) of that Act, or
  - (b) an extension of time for the submission of a statement of affairs,
- shall be made by note.
- (2) A note under paragraph (1) shall be served on the liquidator or provisional liquidator, as the case may be, who may lodge—
- (a) answers to the note; or
  - (b) a report on any matters which he considers should be drawn to the attention of the court.
- (3) Where the liquidator or provisional liquidator lodges a report under paragraph (2), he shall forthwith send a copy of it to the noter.
- (4) Where the liquidator or the provisional liquidator does not appear at any hearing on the note, a certified copy of the interlocutor disposing of the note shall be sent to him forthwith by the noter.
- (5) An appeal under rule 4.9(6) of the Insolvency Rules (appeal against refusal by liquidator of allowance towards expenses of preparing statement of affairs) shall be made by note.

### **Appeals against adjudication of claims**

- 74.28.**—(1) An appeal under section 49(6) of the Bankruptcy (Scotland) Act 1985(253) as applied by rule 4.16 of the Insolvency Rules (appeal by a creditor or contributory of the company against a decision of the liquidator), shall be made by note.
- (2) A note under paragraph (1) shall be served on the liquidator.

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(253) 1985 c. 66.



(3) On such a note being served on him, the liquidator shall send the claim in question, and a copy of his adjudication, forthwith to the Deputy Principal Clerk who shall cause them to be lodged in process.

(4) After the note has been disposed of, the Deputy Principal Clerk shall return the claim and the adjudication to the liquidator with a copy of the interlocutor disposing of the note.

### **Removal of liquidator**

**74.29.** An application by a creditor of the company for an order—

- (a) under section 171(3) of the Act of 1986 (order directing a liquidator to summon a meeting of creditors for the purpose of removing him), or
- (b) under section 172 of that Act (order for removal of a liquidator),

shall be made by note.

### **Application in relation to remuneration of liquidator**

**74.30.—**(1) An application—

- (a) by a liquidator under rule 4.34 of the Insolvency Rules (application to increase remuneration), or
- (b) by a creditor of the company under rule 4.35 of those Rules (application to reduce liquidator's remuneration),

shall be made by note.

- (2) A note under paragraph (1)(b) shall be served on the liquidator.

### **Application to appoint a special manager**

**74.31.—**(1) An application under section 177 of the Act of 1986 (application for the appointment of a special manager) shall be made by note.

(2) A bond of caution certified by the noter under rule 4.70(4) of the Insolvency Rules shall be sent to the Petition Department by the noter.

(3) After the Deputy Principal Clerk has satisfied himself as to the sufficiency of caution under rule 33.7(1) of these Rules, the clerk of session shall issue to the person appointed to be special manager a certified copy of the interlocutor appointing him.

(4) A special manager may, before the expiry of the period for finding caution, apply to the insolvency judge for an extension of that period.

### **Other applications**

**74.32.—**(1) An application under the Act of 1986 or any subordinate legislation made under that Act, or Part VII of the Companies Act 1989, in relation to a winding up by the court not mentioned in this Part shall—

- (a) if made by a party to the petition, be made by motion; or
- (b) in any other case, be made by note.

(2) At the hearing of a motion under paragraph (1)(a), the court may order that the application be made by note; and, in such a case, shall make an order for the lodging of answers to the note in process within such period as it thinks fit.

### **PART VIDISQUALIFICATION OF COMPANY DIRECTORS**

**Applications in relation to disqualification orders**

**74.33.** An application—

- (a) under section 3(2) of the Company Directors Disqualification Act 1986 (for disqualification for persistent breaches of companies legislation);
- (b) under section 6(1) of that Act (to disqualify unfit directors of insolvent companies);
- (c) under section 8 of that Act<sup>(254)</sup> (for disqualification of unfit director after investigation of a company);
- (d) under section 11(1) of that Act (for leave by an undischarged bankrupt to be concerned in a company),
- (e) for leave under that Act; or
- (f) by the Secretary of State under rule 4(2) of the Insolvent Companies (Reports on Conduct of Directors (No. 2) (Scotland) Rules 1986<sup>(255)</sup> (application for direction to comply with requirements to furnish information etc.),

shall be made by petition.

**Intimation, service and advertisement under this Part**

**74.34.**—(1) Rule 74.22, except paragraphs (1)(c) and (2) of that rule, shall apply to the intimation, service and advertisement of a petition referred to in rule 74.33 (applications in relation to disqualification orders) as it applies to a petition under that rule.

(2) A petition presented under rule 74.33 shall be intimated to the Secretary of State for Trade and Industry unless it is presented by him.

*CHAPTER 75**APPLICATIONS UNDER THE FINANCIAL SERVICES ACT 1986***Application and interpretation of this Chapter**

**75.1.**—(1) This Chapter applies to an application, under the Financial Services Act 1986<sup>(256)</sup>, mentioned in rule 75.2.

(2) In this Chapter—

“the Act of 1986” means the Financial Services Act 1986;

“designated agency” has the meaning assigned in section 114(3) of the Act of 1986.

**Form of applications under the Act of 1986**

**75.2.**—(1) An application under any of the following provisions of the Act of 1986 shall be made by petition:—

- (a) sections 6, 61, 71(1), 91(4), 104(4), 131(8) and 184(8) (applications by Secretary of State or designated agency for interdict or restitution);
- (b) sections 12, 20, 37(8) and 39(8) (applications by Secretary of State or designated agency for compliance orders);

<sup>(254)</sup>Section 8 was amended by the Financial Services Act 1986 (c. 60), section 198(2) and by the Companies Act 1989 (c. 40), Section 79.

<sup>(255)</sup>S.I. 1986/1916.

<sup>(256)</sup>1986 c. 60.

- (c) section 93 (applications by Secretary of State or designated agency to remove or replace a manager or trustee or to wind up a unit trust scheme); and
  - (d) Schedule 11(257)–
    - (i) paragraph 6(1) (applications by the Friendly Societies Commission for compliance orders);
    - (ii) paragraph 7(4) (applications by recognised self regulating organisations to set aside a direction);
    - (iii) paragraph 22 (applications by the Friendly Societies Commission for interdict or to remedy a contravention); and
    - (iv) paragraph 23(1) so far as it modifies section 61 as applied by section 71(1) (applications by the Friendly Societies Commission for interdict or restitution).
- (2) Certification by inspectors or the court by virtue of section 94(3)(258), or under section 178(1)(259), of the Act of 1986 shall be made by petition.

### **Intimation and service**

**75.3.** An order under any of the following provisions of the Act of 1986 shall only be made following intimation and service of the petition to the person against whom the order is to be made:–

- (a) section 6 (interdict and restitution orders);
- (b) section 61 (interdict and restitution orders);
- (c) section 71(1) (orders in respect of breach of prohibition or requirement);
- (d) section 91(4) (orders in respect of contravention of a direction);
- (e) section 104(4) (orders in respect of contravention of a requirement);
- (f) section 131(8) (orders in respect of contravention of restrictions on promotion of contracts of insurance);
- (g) section 184(8) (orders in respect of contravention of notice of restriction of investment or insurance business); and
- (h) paragraph 22 of Schedule 11 (interdict of regulated friendly society).

### **Questions relating to interpretation of rules or regulations**

**75.4.** Where a question of the interpretation of any of the rules or regulations referred to in section 61(1)(a) of the Act of 1986 arises in a petition under this rule, the Secretary of State, a designated agency, or any person referred to in section 61(1)(a)(iv) of that Act, and not already a party in the cause, shall be given the opportunity to make representations to the court by lodging answers to the petition.

## **CHAPTER 76**

### **CAUSES IN RELATION TO CONFISCATION OF PROCEEDS OF CRIME**

#### **PART I CAUSES UNDER THE CRIMINAL JUSTICE (SCOTLAND) ACT 1987**

### **Interpretation of this Part**

**76.1.** In this Part–

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(257) Schedule 11 was amended by the Friendly Societies Act 1992 (c. 40), Schedule 18.

(258) Section 94(3) was amended by the Companies Act 1989 (c. 40), Schedule 24.

(259) Section 178 was amended by the Criminal Justice Act 1993 (c. 36), Schedule 5, paragraph 10.

“the Act of 1987” means the Criminal Justice (Scotland) Act 1987(260);  
 “administrator” and “restraint order” shall be construed respectively in accordance with section 47(1) of the Act of 1987.

### **Disapplication of certain rules to this Part**

**76.2.** The following rules shall not apply to a petition or note mentioned in this Part:—

- rule 14.5 (first order in petitions),
- rule 14.6(1) (period of notice for lodging answers),
- rule 14.7 (intimation and service of petitions),
- rule 14.9 (unopposed petitions).

### **Applications for restraint orders**

**76.3.**—(1) An application under section 8(1) of the Act of 1987 (application for restraint order) shall be made by petition.

(2) Where the court pronounces an interlocutor making a restraint order, the Lord Advocate shall serve a certified copy of that interlocutor on every person named in the interlocutor as restrained by the order.

### **Applications in relation to protective measures**

**76.4.**—(1) An application under any of the following provisions of the Act of 1987 shall be made by note in the process containing the interlocutor making the restraint order to which the application relates:—

- (a) section 8(2) (variation or recall of restraint order);
- (b) section 8(5) (recall of restraint order); and
- (c) section 11(5) (recall or restriction of arrestment or inhibition).

(2) In respect of an application by note under paragraph (1) by a person having an interest for an order under section 8(2)(b) of the Act of 1987—

- (a) the note shall be lodged in process within 21 days after service of the restraint order on that person; and
- (b) subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to the note shall be 14 days.

(3) An application under paragraph (1) by the Lord Advocate under section 8(2)(a) of the Act of 1987 to extend a restraint order shall not be intimated, served or advertised before the application is granted.

(4) An application under section 11(1) of the Act of 1987 by the Lord Advocate for warrant for arrestment or inhibition may be made—

- (a) in the prayer of the petition under section 8(1) of that Act; or
- (b) if made after the petition has been presented, by motion which shall not be intimated.

(5) An application under section 11(1) of the Act of 1987 to loose, restrict or recall an arrestment or to recall an inhibition shall be made by motion.

(6) An application under section 12 of the Act of 1987 (interdict) may be made—

- (a) in the prayer of the petition under section 8(1) of that Act; or

(b) if made after the petition has been presented, by note in the process of that petition.

(7) An application by note under paragraph (6)(b) shall not be intimated, served or advertised before the application is granted.

(8) Where the court pronounces an interlocutor granting an application mentioned in paragraph (3) or (4), the Lord Advocate shall serve a certified copy of that interlocutor on the persons affected by it.

#### **Applications for variation of confiscation order or compensation**

**76.5.** An application under section 25(1) (variation of confiscation order), or section 26(1) (compensation), of the Act of 1987 shall be made by petition.

#### **Applications for disclosure of information by government departments**

**76.6.** An application under section 41 of the Act of 1987 (disclosure of information held by government departments) may be made—

- (a) by petition;
- (b) where there is a restraint order in force, by note in the process of the petition for that restraint order; or
- (c) where an administrator has been appointed, by note in the process of the petition to appoint him.

#### **Applications for appointment of administrators**

**76.7.—**(1) An application under section 13(1) of the Act of 1987 (appointment of administrators) shall be made—

- (a) where a restraint order has been made, by note in the process of the petition for that restraint order; or
- (b) in any other case, by petition.

(2) The notification to be made by the clerk of court under section 13(3)(a) of the Act of 1987 shall be made by intimation of a certified copy of the interlocutor to the person required to give possession of property to an administrator.

#### **Incidental applications in an administration**

**76.8.—**(1) An application under any of the following provisions of the Act of 1987 shall be made by note in the process of the petition for appointment of the administrator:—

- (a) section 13(1) (appointment not made in the petition for appointment of an administrator);
- (b) section 13(4) (making or altering a requirement or removal of administrator);
- (c) section 13(5) (appointment of new administrator on death, resignation or removal of administrator);
- (d) section 14(1)(n) (directions as to functions of administrator); and
- (e) section 16 (directions for application of proceeds).

(2) An application under any of the following provisions of the Act of 1987 shall be made in the prayer of the petition for appointment of an administrator under section 13(1) of the Act of 1987 or, if made after the petition has been presented, by note in that process:—

- (a) section 4(1)(o) (special powers of administrator);
- (b) section 14(3) (vesting of property in administrator); and

- (c) section 24 (orders of realisation of property).

### **Requirements where order to facilitate realisation of property considered**

**76.9.** Where the court considers making an order under section 24(1) of the Act of 1987 (order to facilitate the realisation of property)–

- (a) the court shall fix a date for a hearing on the Motion Roll in the first instance; and
- (b) the petitioner or noter, as the case may be, shall serve a notice in Form 76.9 on any person who has an interest in the property.

### **Documents for Accountant of Court**

**76.10.**—(1) A person who has lodged any document in the process of an application for the appointment of an administrator shall forthwith send a copy of that document to the Accountant of Court.

(2) The clerk of session in the Petition department shall transmit to the Accountant of Court any part of the process as the Accountant of Court may request in relation to an administration which is in dependence before the court unless such part of the process is, at the time of request, required by the court.

### **Procedure for finding caution**

**76.11.**—(1) Rule 61.9 (finding caution in judicial factories), except paragraph (4), shall, with the necessary modifications, apply to the finding of caution by an administrator under this Part as it applies to the finding of caution by a judicial factor.

(2) A certified copy of the interlocutor appointing an administrator shall not be issued by a clerk of session until the Accountant of Court has given written intimation to the Petition Department that caution has been found or other security given.

### **Administrator's title to act**

**76.12.** An administrator shall not be entitled to act until he has obtained a certified copy of the interlocutor appointing him.

### **Duties of administrator**

**76.13.**—(1) The administrator shall, as soon as possible, but within 3 months after the date of his appointment, lodge with the Accountant of Court–

- (a) an inventory of the property in respect of which he has been appointed;
- (b) all vouchers, securities, and other documents which are in his possession; and
- (c) a statement of that property which he has in his possession or intends to realise.

(2) An administrator shall maintain accounts of his intromissions with the property in his charge and shall, subject to paragraph (3)–

- (a) within 6 months after the date of his appointment, and
- (b) at 6 monthly intervals after the first account during the subsistence of his appointment,

lodge with the Accountant of Court an account of his intromissions in such form, with such supporting vouchers and other documents, as the Accountant of Court may require.

(3) The Accountant of Court may waive the lodging of an account where the administrator certifies that there have been no intromissions during a particular accounting period.

### **State of funds and scheme of division**

**76.14.**—(1) The administrator shall—

- (a) where there are funds available for division, prepare a state of funds after application of sums in accordance with section 16(1) of the Act of 1987 and a scheme of division amongst those who held property which has been realised under that Act and lodge them and all relevant documents with the Accountant of Court; or
- (b) where there are no funds available for division, prepare a state of funds only and lodge it with the Accountant of Court, and give to the Accountant of Court such explanations as he shall require.

(2) The Accountant of court shall—

- (a) make a written report on the state of funds and any scheme of division including such observations as he considers appropriate for consideration by the Lord Ordinary; and
- (b) return the state of funds and any scheme of division to the administrator with his report.

(3) The administrator shall, on receiving the report of the Accountant of Court—

- (a) lodge in process the report, the state of funds and any scheme of division;
- (b) intimate a copy of it to the Lord Advocate; and
- (c) intimate to each person who held property which has been realised under the Act of 1987 a notice stating—
  - (i) that the state of funds and scheme of division or the state of funds only, as the case may be, and the report of the Accountant of Court, have been lodged in process;
  - (ii) the amount for which that person has been ranked, and whether he is to be paid in full, or by a dividend, and the amount of it, or that no funds are available for payment.

### **Objections to scheme of division**

**76.15.**—(1) A person wishing to be heard by the court in relation to the distribution of property under section 16(2) of the Act of 1987 shall lodge a note of objection in the process to which the scheme of division relates within 21 days of the date of the notice intimated under rule 76.14(3)(c).

(2) After the period for lodging a note of objection has expired and no note of objection has been lodged, the administrator may apply by motion for approval of the scheme of division and state of funds, or the state of funds only, as the case may be.

(3) After the period for lodging a note of objection has expired and a note of objection has been lodged, the Lord Ordinary shall dispose of such objection after hearing any objector and the administrator and making such inquiry as he thinks fit.

(4) If any objection is sustained to any extent, the necessary alterations shall be made to the state of funds and any scheme of division and shall be approved by the Lord Ordinary.

### **Application for discharge of administrator**

**76.16.**—(1) Where the scheme of division is approved by the court and the administrator has paid, delivered or conveyed to the persons entitled the sums or receipts allocated to them in the scheme, the administrator may apply for his discharge.

(2) An application for discharge of the administrator shall be made by note in the process of the application under section 13(1) of the Act of 1987.

**Appeals against determination of outlays and remuneration**

**76.17.**—(1) An appeal under section 18(2) of the Act of 1987 (appeal against a determination by the Accountant of Court), shall be made by note in the process of the petition under section 13(4) of the Act of 1987.

(2) Where a note is lodged under paragraph (1), the Keeper of the Rolls shall put the cause out on the By Order Roll on the first available day for a hearing before the Lord Ordinary.

**Remits from High Court of Justiciary**

**76.18.**—(1) This rule applies where the High Court of Justiciary remits a case to the court under section 3(5) of the Act of 1987 (question of fact or law on assessment of proceeds of drug trafficking).

(2) The Deputy Principal Clerk shall, on receiving a case remitted from the High Court of Justiciary, cause—

- (a) the case to be put out on the By Order Roll for hearing before a Division of the Inner House on the first available day for an order for further procedure; and
- (b) written intimation of the date of the hearing to be given to the prosecutor and the accused.

(3) Before the date of the hearing on the By Order Roll, the prosecutor shall lodge in the Petition Department—

- (a) a process in accordance with rule 4.4 (steps of process);
- (b) four copies of the relevant indictment; and
- (c) four copies of all other documents to be referred to by him at that hearing.

(4) Not later than 48 hours before any hearing to be held after the hearing on the By Order Roll, each party shall lodge four copies of any additional documents to be referred to by him at the later hearing.

(5) On the Inner House deciding the question in the case remitted to it, the Deputy Principal Clerk shall transmit the decision of the court to the Deputy Principal Clerk of Justiciary.

PART II APPLICATIONS UNDER THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989

**Application and interpretation of this Part**

**76.19.** In this Part—

“the act of 1989” means the Prevention of Terrorism (Temporary Provisions) Act 1989<sup>(261)</sup>;

“administrator” shall be construed in accordance with paragraph 11(1)(b) of Schedule 4 to the Act of 1989;

“restraint order” means an order made under paragraph 13(1) of Schedule 4 to the Act of 1989.

**Disapplication of certain rules to this Part**

**76.20.** The following rules shall not apply to a petition or note mentioned in this Part:—

- rule 14.5 (first order in petitions),
- rule 14.6 (1) (period of notice for lodging answers),
- rule 14.7 (intimation and service of petitions),
- rule 14.9 (unopposed petitions).

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(261) 1989 c. 4.



### **Applications for restraint orders**

**76.21.**—(1) An application under paragraph 14(1) of Schedule 4 to the Act of 1989 (restraint order), shall be made by petition.

(2) Where the court pronounces an interlocutor making a restraint order, the Lord Advocate shall serve a certified copy of that interlocutor on every person named in the interlocutor as restrained by the order.

### **Applications in relation to protective measures**

**76.22.**—(1) An application under any of the following provisions of Schedule 4 to the Act of 1989 shall be made by note in the process containing the interlocutor making the restraint order to which the application relates:—

- (a) paragraph 13(4) (discharge of a restraint order);
- (b) paragraph 14(2) (variation or recall of restraint order); and
- (c) paragraph 14(3) (recall of restraint order).

(2) Subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to a note under paragraph (1)(b) by any person affected by a restraint order shall be 14 days.

(3) An application under paragraph 16(1) of Schedule 4 to the Act of 1989 (warrant for arrestment or inhibition) may be made—

- (a) in the prayer of the petition under paragraph 13(1) of Schedule 4 to the Act of 1989; or
- (b) if made after the petition has been presented, by motion which shall not be intimated.

(4) Any of the following applications under Schedule 4 to the Act of 1989 shall be made by motion:—

- (a) an application to loose or restrict or recall an arrestment or recall an inhibition under paragraph 16(1)(a); and
- (b) an application under paragraph 16(6)(a) (recall or restriction of arrestment and inhibition).

### **Applications for compensation**

**76.23.** An application under paragraph 17(1) of Schedule 4 to the Act of 1989 (compensation) shall be made by petition.

### **Powers and duties of administrator**

**76.24.** Subject to any condition or exception specified by the court, an administrator appointed under paragraph 11(1)(b) of Schedule 4 to the Act of 1989—

- (a) may take possession of the property in respect of which he has been appointed and of any document which—
  - (i) is in the possession or control of the person in whom the property is vested; and
  - (ii) relates to the property;
- (b) may have access to, and copy, any document relating to the property and not in such possession or control as is mentioned in sub-paragraph(a);
- (c) may bring, defend or continue any legal proceedings relating to the property;
- (d) may borrow money in so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property;

- (e) may, if the administrator considers that to do so would be beneficial for the management and the realisation of the property, enter into any contract, or execute any deed, with respect to the property;
  - (f) may effect or maintain insurance policies with respect to the property;
  - (g) may, where the person in whom the property is vested has not completed title to any of the property, complete title to it: provided that completion of title in the name of the person in whom the property is vested shall not validate by accretion any unperfected right in favour of any person other than the administrator;
  - (h) may sell (but not to himself or an associate of his) the property and redeem any obligation secured on that property;
  - (i) may discharge any of his functions through agents or employees: provided that the administrator shall be personally liable to meet the fees and expenses of any such agents or employees out of such remuneration as is payable to the administrator by virtue of paragraph 12(2) and (3) of Schedule 4 to the Act of 1989;
  - (j) may take such professional advice as he considers necessary for the proper discharge of his functions;
  - (k) may at any time apply to the court for directions with respect to the exercise of his powers and duties;
  - (l) may exercise any power conferred on him by the court whether such power was conferred at the time of his appointment or on his subsequent application to the court; and
  - (m) may do anything incidental to the above powers and duties.
- (2) Subject to the proviso to sub-paragraph (g) of paragraph (1)–
- (a) a person dealing with an administrator in good faith and for value shall not require to determine whether the administrator is acting within the powers mentioned in that sub-paragraph; and
  - (b) the validity of any title shall not be challengeable by reason only of the administrator having acted outwith those powers.
- (3) The exercise of a power mentioned in any of sub-paragraphs (c) to (h) of paragraph (1) shall be in the name of the person in whom the property is vested.

#### **Duties of administrator in relation to accounts**

**76.25.**—(1) The administrator shall, as soon as possible, but within 3 months after the date of his appointment, lodge with the Accountant of Court–

- (a) an inventory of the property in respect of which he has been appointed;
  - (b) all land certificates, title deeds, vouchers and other documents which relate to that property and are in his possession; and
  - (c) a statement of the property which he has in his possession or intends to realise.
- (2) An administrator shall maintain accounts of his intromissions with the property in his charge and shall–
- (a) lodge an account of his intromissions with the Accountant of Court in such form as the Accountant of Court may require–
    - (i) 6 months after the date of his appointment; and
    - (ii) at 6 monthly intervals after the first account during the subsistence of his appointment, unless the Accountant of Court agrees to waive the lodging of an account where the administrator certifies that there have been no intromissions during a particular accounting period; and

- (b) lodge, with the account of his intromissions, all such supporting vouchers and other documents as the Accountant of Court may require.

### **Money received by administrator**

**76.26.**—(1) Subject to paragraph (2), any money received by an administrator in the exercise of his powers and duties shall be deposited by him in an appropriate bank or institution, in the name of the person in whom the property is vested.

(2) The administrator may, at any time, retain in his hands a sum of money not exceeding £200.

(3) In paragraph (1), “appropriate bank or institution” means the Bank of England, an institution authorised under the Banking Act 1987(**262**) or a person for the time being specified in Schedule 2 to that Act.

## *CHAPTER 77*

### *SUMMARY TRIALS*

### **Application of this Chapter**

**77.1.** This Chapter applies to a petition under section 26 of the Act of 1988(**263**) (summary trials).

### **Disapplication of certain rules to this Chapter**

**77.2.** The following rules shall not apply to a petition under this Chapter:—

- 14.5 (first order in petitions),
- 14.6 (period of notice for lodging answers),
- 14.7 (intimation and service of petitions),
- 14.8 (procedure where answers lodged),
- 14.9 (unopposed petitions).

### **Form of petition**

**77.3.** A petition for a summary trial shall contain—

- (a) a concise narrative in numbered paragraphs of the facts or circumstances in relation to which the dispute or question arises;
- (b) where the parties are agreed on the facts—
  - (i) a statement to that effect; and
  - (ii) a note of the questions which have arisen between them;
- (c) where the parties are not agreed on the facts—
  - (i) a statement to that effect;
  - (ii) specification of the facts which are in dispute; and
  - (iii) a note of any further questions which may arise when the dispute of fact has been determined, or a reservation of such questions; and
- (d) a prayer that the dispute or question be referred to a particular Lord Ordinary for his determination.

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(262) 1987 c. 22.

(263) 1988 c. 36.

**Presentation to Lord Ordinary**

**77.4.**—(1) The petition shall be placed before the Lord Ordinary named in the petition on the earliest available day but, subject to paragraph (2), within 7 days after the date of presentation of the petition.

(2) Where the last day of the period specified in paragraph (1) falls in vacation without the petition having been brought before the Lord Ordinary, the petition shall be placed before the Lord Ordinary on the first sederunt day of the following term.

(3) On the petition being placed before the Lord Ordinary, he shall—

- (a) where it appears that the parties are agreed on the facts, appoint the cause to be heard before him, in court or in chambers, on a date within 6 weeks (excluding days in vacation) after the date of the interlocutor appointing the hearing;
- (b) where it appears that the parties are not agreed on the facts, appoint a proof to be taken before him in court or in chambers.

(4) The Lord Ordinary may take any hearing or proof, or any continuation of such hearing or proof, during session or vacation.

**Procedure in summary trials**

**77.5.** Subject to any other provision in this Chapter, the petition shall follow such procedure as the parties may, with the consent of the Lord Ordinary, agree, or, failing such agreement, as the Lord Ordinary shall direct.

**Recording of evidence at proof**

**77.6.** The evidence led at a proof allowed under rule 77.4(3)(b) shall not be recorded, unless the parties so agree.

**Reports to Inner House**

**77.7.**—(1) If at any stage of the cause it appears to the Lord Ordinary that the determination of the petition may affect the status of any person, the Lord Ordinary shall report the matter to the Inner House in accordance with Chapter 34.

(2) On receiving a report under paragraph (1), the Lord President may appoint the parties to show cause before a Division of the Inner House why the petition should proceed under section 26 of the Act of 1988; and the Inner House shall, after hearing parties and subject to any conditions as it thinks fit, direct that the petition shall proceed or refuse the prayer of the petition.

**Disposal of petitions**

**77.8.** Any decision of the Lord Ordinary shall be given effect to in an interlocutor and he may—

- (a) pronounce any interlocutor which he thinks fit to enable his decision to be carried into effect; and
- (b) dispose of all questions of expenses.

**Finality of interlocutors**

**77.9.** An interlocutor of the Lord Ordinary shall be final, binding only on the parties to the petition, and shall not be subject to review.

### **Transfer to another Lord Ordinary**

**77.10.**—(1) In the event of the death, disability or absence of the Lord Ordinary before the petition has been determined, the petitioners may lodge a joint minute in Form 77.10 in process for the cause to be referred to another Lord Ordinary named in that minute.

(2) On such a joint minute being lodged in process, the cause shall be transferred to the Lord Ordinary named in that minute who shall take up the procedure at the point which had been reached by his predecessor.

(3) The Lord Ordinary to whom the cause is transferred under paragraph (2) may re-hear the evidence of any witness heard by his predecessor.

### **Agreement to adopt summary trial procedure in action in dependence**

**77.11.**—(1) Where the parties to an action propose to adopt summary trial procedure by virtue of section 26(2) of the Act of 1988 (agreement to adopt summary trial procedure in action in dependence), they shall lodge in the process of the action a joint minute in Form 77.11.

(2) On such a joint minute being lodged in process, the Lord Ordinary shall pronounce an interlocutor directing that the action shall proceed as a summary trial.

(3) On an interlocutor being pronounced under paragraph (2), rules 77.3 to 77.10 shall, with the necessary modifications and the following modifications, apply to the further procedure in the action:—

- (a) subject to sub-paragraph (b) of this paragraph, in rule 77.4, for the word “petition” there shall be substituted the words “record or other pleading”; and
- (b) in rule 77.4, for the words “date of presentation of the petition”, there shall be substituted the words “date of the interlocutor pronounced under rule 77.11(2)”.

## **CHAPTER 78**

### ***SPECIAL CASES UNDER SECTION 27 OF THE COURT OF SESSION ACT 1988***

#### **Application of this Chapter**

**78.1.** This Chapter applies to a special case under section 27 of the Act of 1988.

#### **Lodging and hearing of special case**

**78.2.**—(1) A special case shall be lodged with a process in the General Department.

(2) A special case shall, without appearance, be put out for hearing in the Summar Roll before the Inner House.

#### **Amendment of case**

**78.3.**—(1) A special case may be amended by consent of the parties.

(2) Where parties seek to amend a special case, any one of them may apply by motion for leave to amend of consent.

#### **Appointment of curator *ad litem* to party *incapax***

**78.4.**—(1) Where a party to a special case is *incapax* by reason of nonage, insanity or otherwise, it shall be the duty of the other parties (which duty may be performed by any of them), on the lodging

of the special case under rule 78.2(1), to apply by motion for the appointment of a curator *ad litem* to such *incapax*.

(2) A curator *ad litem* appointed under paragraph (1) shall be given all necessary information and facilities by the other parties to enable him to perform his duties.

(3) Where a curator *ad litem* is satisfied that the special case is fully and accurately stated in relation to the interests of the *incapax*, he may sign it as curator *ad litem*.

(4) Where a curator *ad litem* is not given all necessary information and facilities by the other parties, or is not satisfied that the special case is fully and accurately stated in relation to the interest of the *incapax*, he shall report the position to the Inner House which may then recall his appointment and dispose of the special case as it thinks fit.

(5) An award of expenses—

- (a) may not be made against a curator *ad litem*; and
- (b) may be made in favour of a curator *ad litem* as the court thinks fit.

## CHAPTER 79

### APPLICATIONS UNDER THE ACCESS TO HEALTH RECORDS ACT 1990

#### Application and interpretation of this Chapter

**79.1.**—(1) This Chapter applies to an application under section 8(1) of the Access to Health Records Act 1990(**264**) (application for order for holder of health record to comply with requirement of the Act).

(2) In this Chapter—

“the Act of 1990” means the Access to Health Records Act 1990;

“the Regulations” means the Access to Health Records (Steps to Secure Compliance and Complaints Procedures) (Scotland) Regulations 1991(**265**);

“complaint” means a written notice of complaint under regulation 3 or 4 of the Regulations;

“report” means a report under regulation 6 of the Regulations.

#### Form of applications etc.

**79.2.**—(1) An application under section 8(1) of the Act of 1990 shall be made by petition.

(2) A petition under paragraph (1) shall state those steps prescribed in the Regulations which have been taken to secure compliance with the Act of 1990.

(3) On presentation of the petition, there shall be lodged in process as productions—

- (a) a copy of the application under section 3 (access to health record) or section 6 (correction of inaccurate health record), as the case may be, of the Act of 1990;
- (b) a copy of the complaint; and
- (c) if applicable, a copy of the report.

#### Time-limit for applications

**79.3.** An application under section 8(1) of the Act of 1990 may not be made unless the petition is presented—

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(**264**) 1990 c. 23.

(**265**) S.I. 1991/2295.

- (a) where the applicant has received a report, within one year of the date after the report; or
- (b) where the applicant has not received a report, within 18 months after the date of the complaint.

## CHAPTER 80

### APPLICATIONS IN RESPECT OF QUALIFIED CONVEYANCERS AND EXECUTRY PRACTITIONERS

#### **Application and interpretation of this Chapter**

**80.1.**—(1) This Chapter applies to an application made under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(266) in respect of a qualified conveyancer or executry practitioner.

(2) In this Chapter, “the Act of 1990” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(3) The expressions “the Board”, “executry practitioner” and “qualified conveyancer” have the meanings assigned respectively in section 23 of the Act of 1990.

#### **Applications and appeals in respect of qualified conveyancers and executry practitioners**

**80.2.**—(1) Subject to paragraph (4), an application under any of the following provisions of the Act of 1990 shall be made by petition:—

- (a) section 17(6) (application following refusal to register as qualified conveyancer);
- (b) section 18(7) (application following refusal to register as executry practitioner);
- (c) section 20(7) (application for order to require practitioner to comply with direction);
- (d) section 20(11)(b) (application following review of certain decisions of Board following misconduct etc.);
- (e) section 21(5) (application following direction relating to assets);
- (f) section 21(7) (application to secure compliance with direction);
- (g) section 21(10) (application by the Board for interdict); and
- (h) paragraph 20 of Schedule 1 (application for order to produce documents).

(2) An application under section 17(6), 18(7) or 20(11)(b) of the Act of 1990 shall state the date on which the outcome of the review was intimated to the petitioner.

(3) An application under section 21(5) of the Act of 1990 shall state the date on which the direction was received by the petitioner.

(4) An application for leave under section 21(10) of the Act of 1990 shall be made by motion.

#### **Intimation and service in petitions under this Chapter**

**80.3.**—(1) A petition to which this Chapter applies shall be brought before a Division of the Inner House in chambers, and the Division may, without hearing parties and subject to the following paragraphs, make such order for intimation and service as it thinks fit.

(2) In an application under any of the following provisions of the Act of 1990, the court shall order service of the petition on the Board:—

- (a) section 17(6) (application in respect of review of refusal to register as qualified conveyancer);

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(266) 1986 c. 45.

*Status: This is the original version (as it was originally made).*

- (b) section 18(7) (application following review of refusal to register as executry practitioner);
  - (c) section 20(11)(b) (application following review of certain decisions of the Board following misconduct etc.); and
  - (d) section 21(5) (application following direction relating to assets).
- (3) In an application under any of the following provisions of the Act of 1990, the court shall order service of the petition on the executry practitioner or qualified conveyancer, as the case may be:—
- (a) section 20(7) (application for order to require practitioner to comply with directions);
  - (b) section 21(7) (application to secure compliance with direction); and
  - (c) paragraph 20 of Schedule 1 (application for order to produce documents).
- (4) In an application under section 21(10) of the Act of 1990 (application by the Board for interdict), the court shall order service of the petition on the executry or qualified practitioner, as the case may be, and on the bank, building society or other deposit holder.

#### **Procedure after order for intimation and service**

**80.4.** The court shall, after an order for intimation and service under rule 80.3, proceed on the petition summarily in such manner as it thinks fit.

#### **Remit for further inquiry in petitions under this Chapter**

**80.5.—**(1) In a petition to which this Chapter applies, the court may remit to any person to make further inquiry into the facts, or to take further evidence and to report to the court.

(2) On completion of a report made under paragraph (1), the person to whom the remit was made shall send his report and three copies of it, and a copy of it for each party, to the Deputy Principal Clerk.

(3) On receipt of such a report, the Deputy Principal Clerk shall—

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that he may uplift a copy of the report from process.

(4) After the lodging of such a report, any party may apply by motion for an order in respect of the report or for further procedure.



## APPENDIX

Rule 1.4

FORM 5.2Form of caveat

*Status: This is the original version (as it was originally made).*

Rule 5.2(1)

## APPENDIX

Rule 1.4

### FORM 5.2

Rule 5.2(1)

#### Form of caveat

#### CAVEAT

for

[A.B.] (*designation and address\**)

Should any application be made to the court for (*specify the nature of the application(s) to which the caveat is to apply*) against ..... [*or by* [C.D.] (*designation and address*)], it is requested that intimation be made to the undernoted before any order is pronounced.

(*Signed*)

[A.B.]

[*or* Solicitor [*or* Agent for [A.B.]]

Caveator's telephone number  
(only when caveat not lodged by a solicitor) .....

Particulars of solicitor or person having a right to conduct the litigation.

Name .....

Address .....

Tel. No. ....

Reference .....

Out of hours contacts

Name and telephone number 1 .....

2 .....

\* Where appropriate state whether the caveat is lodged in an individual capacity, a specified representative capacity (e.g. as trustee of a named trust) or both such capacities. Where appropriate, state also the nature of the caveator's interest (e.g. shareholder; debenture holder).

FORM 6.2 Form for information for fixing and allocation of diet for hearing in Outer House

Rule 6.2(6)

FORM 6.2

Rule 6.2(6)

Form for information for fixing and allocation of diet for hearing in Outer House

PART I – Estimated length of hearing

(To be signed by counsel or other person having a right of audience)

NAME OF CASE ..... v. ....

FOR PURSUER/DEFENDER/OTHER .....

NATURE OF HEARING (e.g. proof) .....

I estimate that the hearing will last .....days

Date ..... (Signed)  
..... (Name)

PART II – Supplementary information

(To be completed by the agent only if information is available and can be disclosed: such information will be treated IN CONFIDENCE by court officials)

A: PROOF OR JURY TRIAL

TOTAL NUMBER OF WITNESSES .....

EXPERT WITNESSES (state number and nature of evidence, eg medical) .....

WITNESSES FROM ABROAD or having to travel long distances to court (provide appropriate details) .....

B: ALL CASES

ALL OTHER RELEVANT INFORMATION .....

PART III – Notice of allocation of diet

(To be completed by the agent)

Allocation of diet at short notice is/is not\* acceptable. The minimum notice required is ..... weeks.

\* Delete as necessary.

Date ..... 344 ..... (Signed)  
..... (Name of firm)

N.B. There is an obligation on a party to intimate to the Keeper of the Rolls any alternation to the estimate in Part I of this form (see R.C.S. 1994, r.6.2(11)).

FORM 6.3 Form for information for fixing and allocation of diet for hearing in Inner House

*Status: This is the original version (as it was originally made).*

Rule 6.3.(2)

**FORM 6.3****Rule 6.3(2)****Form for information for fixing and allocation of diet for hearing in Inner House****PART I – Estimated length of hearing**

*(To be signed by counsel or other person having a right of audience)*

NAME OF CASE ..... v. ....  
 .....

FOR APPELLANT/RESPONDENT/OTHER .....

NATURE OF HEARING (e.g. reclaiming motion).....

I estimate that the hearing will last .....days

Date ..... (Signed)  
 ..... (Name)

**PART II – Supplementary information**

*(To be completed by the agent only if information is available and can be disclosed: such information will be treated IN CONFIDENCE by court officials)*

ANY RELEVANT INFORMATION .....  
 .....  
 .....  
 .....  
 .....  
 .....

**PART III – Notice of allocation of diet**

*(To be completed by the agent)*

Allocation of diet at short notice is/is not\* acceptable. The minimum notice required is ..... weeks.

\* Delete as necessary.

Date ..... (Signed)  
 ..... (Name of firm)

**N.B.** There is an obligation on a party to intimate to the Keeper of the Rolls any alteration to the estimate in Part I of this form (see R.C.S. 1994, r.6.3(7)).

FORM 7.1 Form of application to Extractor for extract of a decree

*Status: This is the original version (as it was originally made).*

Rule 7.1(3)

**FORM 7.1**

**Rule 7.1(3)**

**Form of application to Extractor for extract of a decree**

**IN THE COURT OF SESSION**

**NOTE TO EXTRACTOR**

*in causa*

[A.B.] (*designation and address*)

Pursuer

against

[C.D.] (*designation and address*)

Defender

(*Date*)

Lord

Act:

Alt:

[*Set out interlocutor to be extracted, typed in double spacing*]

An extract of the foregoing interlocutor is requested as a final [*or an interim*] extract.

(*Signed*)

(*Name of firm*)

[*Solicitor for pursuer or as the case may be*]

(*Address*)

[This form to be folded shortwise with typed backing.]



FORM 7.6 Form of statement of accumulated sum to be lodged with application for extract of decree of adjudication

*Status: This is the original version (as it was originally made).*

Rule 7.6

**FORM 7.6**

**Rule 7.6**

**Form of statement of accumulated sum to be lodged with application for extract of  
decree of adjudication**

**IN THE COURT OF SESSION**

**STATEMENT OF ACCUMULATED SUM**

*in causa*

[A.B.] (*designation and address*)

Pursuer

against

[C.D.] (*designation and address*)

Defender

Amount of principal sum contained in decree dated	£
Interest thereon from                      to                      (                      days)	£
Penalty	£
Expenses of process (of action of constitution)	£
Dues of extract	£
Total accumulated sum	£

(Signed)

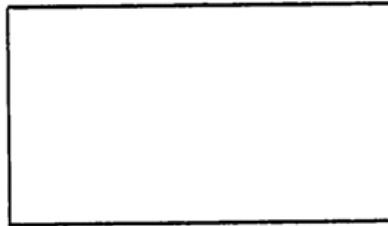
(Name of firm)

[Solicitor for pursuer or as the case may be]  
(Address)

FORM 13.2–A Form of summons and backing

*Status: This is the original version (as it was originally made).*

Rule 13.2(1)

**FORM 13.2-A****Rule 13.2(1)****Form of summons and backing***(First page)*

*(This space will contain  
the cause reference  
number assigned to the  
summons on being  
presented for signeting  
and registration)*

**IN THE COURT OF SESSION**

[A.B.] *(designation and address)*, Pursuer

against

[C.D.] *(designation and address)*, Defender

Elizabeth II, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, to [C.D.].

By this summons, the pursuer craves the Lords of our Council and Session to pronounce a decree against you in terms of the conclusions appended to this summons. If you have any good reason why such decree should not be pronounced, you must enter appearance at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ, within three days after the date of the calling of the summons in court. The summons shall not call in court earlier than [21] days after the date of service on you of this summons. Be warned that, if appearance is not entered on your behalf, the pursuer may obtain decree against you in your absence.

This summons is warrant for [arrestment to found jurisdiction] [arrestment *in rem* of *(details of ship or cargo)*] [arrestment on the dependence of the action] [inhibition on the dependence of the action] [dismantling *(details of ship)*] [intimation to *(name and address and reason for intimation as set out in the rule of the Rules of the Court of Session 1994 requiring intimation)*].

Given under our Signet at Edinburgh on *(date)*

*(Signed)*

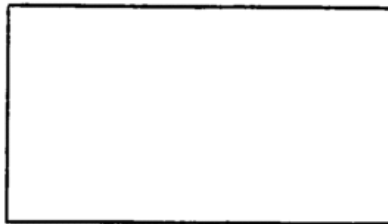
*(Name and address of or agent for pursuer)*

**Status:** This is the original version (as it was originally made).

*(Next page – back of first page and following pages)*

*(State the conclusions, followed by the condescendence and pleas-in-law.)*

*(Backing of summons)*



*(This space will contain  
the cause reference  
number assigned to the  
summons on being  
presented for signeting  
and registration)*

**IN THE COURT OF SESSION**

**Summons**

[A.B.], Pursuer

against

[C.D.], Defender

Action of *(nature of action as in the appropriate heading, if any, of the forms of conclusion shown in Form 13.2-B).*

*(Name of firm of agent for pursuer)*

**Status:** *This is the original version (as it was originally made).*

FORM 13.2–B Form of summons and backing

## FORM 13.2-B

## Rule 13.2(2)

## Principal forms of conclusion

- (1) *Action for payment.* For payment to the pursuer by the defender [jointly and severally, or severally, or otherwise as may be appropriate] of the sum of (*amount in words and figures*) with interest at the rate of \_\_\_\_\_ per cent a year from (*date*) until payment.
  - (2) *Action of damages.* For payment to the pursuer by the defender of the sum of (*amount in words and figures*) with interest at the rate of \_\_\_\_\_ per cent a year from (*date*) until payment.
  - (3) *Action of reduction.* For production and reduction of (*specify deed to be set aside*).
  - (4) *Action of declarator.* For declarator (*state declarator sought*).
  - (5) *Action of count, reckoning and payment.* For count and reckoning with the pursuer for the defender's intromissions with (*describe fund or estate*) and for payment to the pursuer by the defender of the balance found due to him, or otherwise of the sum of (*amount in words and figures*).
  - (6) *Action of proving the tenor.* For declarator that (*describe the lost deed*) was of the tenor following (*set out the terms of the lost deed*), and that the decree to be pronounced herein shall be equivalent to the original deed.
  - (7) *Action of multiplepoinding and exoneration.* For distribution of (*describe the fund in medio*) among the claimants found entitled to it, and exoneration of (*name of the holder of the fund*).
  - (8) *Action of furthcoming.* For payment to the pursuer by the arrestee of:—
    - (a) the sum of (*amount in words and figures*); or
    - (b) whichever is the lesser of:—
      - (i) such sum as may be owing by the arrestee to (*name of debtor*) and has been arrested in his hands by the pursuer; and
      - (ii) such sum as shall satisfy the pursuer in (*specify principal sum due and interest, in terms of the decree constituting the debt or otherwise, and expenses of the action in which that decree was obtained*).
- or
- For delivery to the pursuer or to such person as the court may appoint of the moveables belonging to or owing by the arrestee to (*name of the common debtor*) and arrested in his hands by the pursuer; and for warrant for the sale of such moveables under such conditions as may be directed; and for furthcoming and payment to the pursuer of the proceeds thereof, or at least of so much thereof as shall satisfy the pursuer in (i) the payment of the expenses of and incidental to the sale, and (ii) (*specify principal sum due and interest, in terms of the decree constituting the debt or otherwise, and expenses of the action in which that decree was obtained*).
- (9) *Admiralty action in rem.* For declarator that the pursuer has a lien over the (*name of ship*) for the sum of \_\_\_\_\_ in respect of (*state the basis of the lien, as e.g. the collision – giving date*); and for declarator that the lien of the pursuer to the extent of the sum (*amount in words and figures*) of \_\_\_\_\_ with interest at \_\_\_\_\_ per cent a year from (*date*) to (*date*) is preferable to the right of all others having or pretending to have rights in the said ship and for warrant to sell the (*name of ship*) on the lien being declared, and to apply the proceeds in satisfaction of the lien in or towards payment of the said sum of \_\_\_\_\_ and interest.
  - (10) *Action of declarator of marriage.* For declarator that the pursuer and defender were lawfully married to one another by (*specify mode in which marriage was contracted, e.g., (a) interchange of consent de praesenti (time and place), (b) cohabitation by habit and repute (time and place) or (c) promise (time) subsequeute copula at (time and place)*).
  - (11) *Action of declarator of nullity of marriage.* <sup>356</sup> For declarator that a pretended marriage between the pursuer and defender at (*place*) on (*date*) is null by reason of (*specify ground of nullity, e.g., (a) the pursuer's or defender's impotency, (b) the parties being within the forbidden degrees, (c) the defender being married to someone else, (d) nonage of one of the parties, or (e) insanity of one of the parties at the date of the marriage*).
  - (12) *Action of declarator of (non-) parentage.* For declarator that (*name and address*) is [or was] [not]

*Status: This is the original version (as it was originally made).*

(13) *Action of separation.* For separation of the defender from the pursuer on the ground of [the adultery of the defender] [the behaviour of the defender] [the desertion of the defender and non-cohabitation during a period of two years or more] [non-cohabitation for a period of two years or more and the defender's consent to the granting of decree of separation] [non-cohabitation for a period of five years or more].

(14) *Action of divorce.* For divorce of the defender from the pursuer in respect that the marriage has broken down irretrievably by reason of [the adultery of the defender] [the behaviour of the defender] [the desertion of the defender and non-cohabitation during a period of two years or more] [non-cohabitation for two years or more and the defender's consent to decree of divorce] [non-cohabitation for five years or more].

(15) *Conclusion for capital sum and periodical allowance.* For payment by the defender to the pursuer of (1) a capital sum of (*amount in words and figures*) with interest at the rate of                      per cent a year from the date of decree to follow hereon until payment; and (2) a periodical allowance of (*amount in words and figures*) per week [or month] payable until the date three years after the date of decree to follow hereon [or until the remarriage or death of the pursuer, if sooner, or as the case may be].

(16) *Action of putting to silence.* For decree ordaining the defender to desist from asserting that he [or she] is the husband [or wife or child or other relative] of the pursuer, and putting him [or her] to silence.

(17) *Conclusion for custody of children.* For custody of (*name of child or children*), the child[ren] of the marriage under the age of sixteen years; and for payment by the defender to the pursuer of (*amount of aliment in words and figures*) as aliment for each [or the] child while in the custody of the pursuer and under the age or eighteen years.

(18) *Action for salvage.* For payment to the pursuer by the defender of the sum of (*amount in words and figures*) for salvage services performed by the pursuer to the vessel (*name of ship*) on (*date*) or for such an amount of salvage as to the court may seem just [(or in the case of a summons for apportionment), for payment to the pursuer of an equitable proportion of the sum of (*amount in words and figures*)]. (*Refer to any agreement under which the total amount of the salvage award was fixed.*)

(19) *Action of implement.* For decree ordaining the defender (*specify the order craved and such alternative conclusions as may be appropriate*).

(20) *Adjudication for debt.* For adjudication of the heritable property of the defender, that is to say, All and Whole (*insert conveyancing description of subjects*) from the defender to the pursuer; and that for payment to the pursuer of the principal sum, interest and expenses of process and of extract [or as the case may be] contained in a decree (*detail particulars of decree in pursuer's favour*); According as the same shall extend when accumulated at the date of decree to follow hereon and of the interest of the accumulated sum at the rate of                      per cent a year during the non-redemption of the said heritable property, and the expenses of the infeftment to follow on the decree of adjudication with interest                      at the rate of                      per cent a year from the date of disbursing the same during the non-redemption.

[Or in the case of heritable securities. For adjudication of a [standard security] [bond and disposition in security] (*describe the security*) and of the subjects contained in the [standard security] [bond], that is to say, All the Whole (*insert conveyancing description of subjects*) from the defender to the pursuer for payment of (*describe debts*), during the non-redemption of the said lands and others].

(21) *Adjudication in implement.* For adjudication from the defender of All and Whole (*insert conveyancing description of subjects*) and all rights of the defender therein and the rents thereof from and after (*date of entry under missives*) in implement of missives of sale dated                      between the defender and the pursuer and for declarator that the said lands and others belong to the pursuer and his heirs and assignees; and for decree ordaining the defender to free and relieve the said lands and others of all burdens and incumbrances affecting them, of all feuduties, and public and other burdens affecting the said lands at and preceding the pursuer's term of entry, or otherwise for payment of the sum of (*amount in words and figures*) or such sum as may be required for that purpose.

(22) *Declarator and division or sale.* For declarator that the pursuer is entitled to insist in an action of division or sale of All and Whole (*insert conveyancing description of subjects*); and for division of those subjects between the pursuer and the defender, or if division of those subjects is found to be impracticable or inexpedient for declarator that those subjects should be sold and the proceeds divided between the pursuer and the defender, and for warrant to sell accordingly; and for allocation of the expenses of the sale and of this process between the pursuer and the defender.



(23) *Maills and duties under Heritable Securities Act 1894.* For declarator that the pursuer has right to the rents, maills and duties of the subjects and others specified in the bond and disposition in security for \_\_\_\_\_, granted by \_\_\_\_\_ in favour of \_\_\_\_\_ dated \_\_\_\_\_ and recorded in the \_\_\_\_\_ register or at least so much of those rents, maills and duties as will satisfy and pay the pursuer the principal sum of (*amount in words and figures*), with interest at the rate of \_\_\_\_\_ per cent a year from the \_\_\_\_\_ day of \_\_\_\_\_ until payment together with £ \_\_\_\_\_ liquidate penalty and termly failures, all as specified and contained in the said bond and disposition in security dated and recorded as aforesaid.

(24) *Poining of the ground.* (a) *Against debtor in possession.* For warrant to poind and distrain all moveable goods and effects poindable or distrainable belonging to the defender which are or shall happen to be on the ground of the lands and others described and contained in the [standard security] [bond and disposition in security] [*or where the action proceeds on a real burden*, the disposition or other writ by which it is constituted] aftermentioned, that is to say, All and Whole (*insert conveyancing description of subjects*): And for payment thereof to the pursuer of the amount of the principal sum of (*amount in words and figures*) together with £ \_\_\_\_\_ liquidate penalty and termly failures, with interest on said principal sum from (*date*) until payment and in all time coming during the non-redemption conform to [standard security] [bond and disposition in security] dated \_\_\_\_\_ and [recorded in the Division of the General Register of Sasines applicable to the county of \_\_\_\_\_] [registered in the Land Register] both days of \_\_\_\_\_ granted by the defender in favour of the pursuer [*or where the pursuer is not the original security holder*, in favour of \_\_\_\_\_ and to which the pursuer has now right in virtue of (*describe title*)].

(b) *Against debtor and tenants.* For warrant to poind and distrain all moveable goods and effects poindable or distrainable of the defender [C.D.] principal debtor, [and of the defender[s] [E.F.] [and G.H.] his tenant[s] or possessor[s] of the lands and others aftermentioned which are or shall happen to be on the grounds of those lands and others described and contained in the [standard security] [bond and disposition in security] aftermentioned, that is to say, All and Whole (*insert description of subjects sufficient to identify them*) but in so far as relates to the said tenants and possessors to the amount only of the respective rents due or that may become due by them and for payment thereof to the pursuer to the amount of the principal sum of (*amount in words and figures*) with £ \_\_\_\_\_ liquidate penalty and termly failures specified and contained in the bond and disposition in security dated \_\_\_\_\_ and [recorded in the Division of the General Register of Sasines applicable to the county of \_\_\_\_\_] [registered in the Land Register] the \_\_\_\_\_ [both days] of \_\_\_\_\_ granted by the defender [C.D.] in favour of the pursuer, with interest from the term of \_\_\_\_\_ and in all time coming during the not redemption.

**Status:** *This is the original version (as it was originally made).*

FORM 13.7 Form of citation of defender

Rule 13.7(1)

**FORM 13.7**

**Rule 13.7(1)**

**Form of citation of defender**

**CITATION**

**Date:** *(date of posting or other method of service)*

**To:** *(name and address of defender)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name of agent)*, solicitor [or person having a right to conduct the litigation], for *(name of pursuer)* [or *(name of messenger-at-arms)*, messenger-at-arms], serve the attached summons on you.

The summons contains a claim made by *(name of pursuer)* against you in the Court of Session, Edinburgh.

If you intend to deny the claim you must: (1) enter appearance at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within 3 days after the date on which the summons calls in court; and (2) subsequently lodge defences within 7 days after the date on which the summons calls in court as required by the Rules of the Court of Session 1994. The summons will not call in court earlier than [21] days after the date of service on you of the summons. The date of service is the date stated at the top of this citation unless service has been by post in which case the date of service is the day after that date.

**If you do not enter appearance and lodge defences the court may make an order against you.**

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS CITATION, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

*(Signed)*

Messenger-at-arms  
[or Solicitor [or Agent] for pursuer]  
*(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 13.12 Form of notice of intimation to person holding a heritable security in an action relating

Rule 13.12(1)

**FORM 13.12**

**Rule 13.12(1)**

**Form of notice of intimation to person holding a heritable security in an action relating to heritable property**

**Date:** *(date of posting or other method of intimation)*

**To:** *(name and address of security holder)*

**TAKE NOTICE**

*(Name and address of pursuer)* has brought an action against *(name and address of defender)*. The action relates to heritable property over which you are believed to hold a heritable security. A copy of the summons in the action is attached.

You may apply to the court by minute for leave to lodge defences in the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons *[or if the warrant for intimation is executed before calling of the summons, within [7] days after the summons calls in court]*. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

*(Signed)*

Messenger-at-arms  
*[or Solicitor [or Agent] for pursuer]*  
*(Address)*

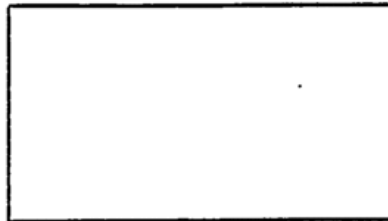
**Status:** *This is the original version (as it was originally made).*

FORM 14.4Form of petition

Rule 14.4(1)

**FORM 14.4**  
**Form of petition**

**Rule 14.4(1)**



*(This space will contain  
the cause reference  
number assigned to the  
petition on being lodged)*

**UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION**

The Petition of [A.B.] *(name, designation and address of petitioner)*

**HUMBLY SHEWETH:-**

1. That *(here set out in this and following numbered paragraphs the facts and circumstances which form the grounds of petition)*.

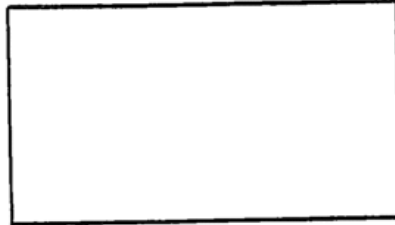
**MAY IT THEREFORE** please your Lordships to  
(insert prayer)

According to Justice, etc.

*(Signed)*

**Status:** This is the original version (as it was originally made).

*(Backing of petition)*



*(This space will contain  
the cause reference  
number assigned to the  
petition on being lodged)*

**The Petition**

**of**

**[A.B.]**

**for**

*(here described shortly the nature or object of the petition).*

*(Name of firm of agent for petitioner)*



FORM 14.7 Form of citation in petition

*Status: This is the original version (as it was originally made).*

Rule 14.7(2)

**FORM 14.7**

**Rule 14.7(2)**

**Form of citation in petition**

**CITATION**

Date: *(date of posting or other method of service)*

To: *(name and address of person on whom petition served)*

IN HER MAJESTY'S NAME AND AUTHORITY, and in the name and authority of Lord *(name)*, I, *(name of agent)*, solicitor *[or person having a right to conduct the litigation]*, for *(name of pursuer)* *[or (name of messenger-at-arms)]*, messenger-at-arms, serve the attached petition and interlocutor of the court on you.

The interlocutor requires you, if so advised, to lodge answers to the petition.

If you intend to lodge answers to the petition you must lodge them at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of service on you of the petition. The date of service is the date stated at the top of this citation unless service has been by post in which case the date of service is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS CITATION**, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

*(Signed)*

Messenger-at-arms  
*[or Solicitor [or Agent] for petitioner]*  
*(Address)*

FORM 15.1Form of notice of minute

*Status: This is the original version (as it was originally made).*

Rule 15.1(4)

**FORM 15.1**

**Rule 15.1(4)**

**Form of notice of minute**

**Date:** *(date of posting or other method or service of intimation)*

**To:** *(name and address)*

**TAKE NOTICE**

*(Name of minuter)* has lodged the attached Minute in the process of an action in the Court of Session in which *(name)* is the pursuer and *(name)* is the defender. By virtue of an order of [Lord *(name)* in] the Court of Session dated *(date)* you may lodge answers at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of service on [or intimation to] you of the Minute. The date of service or intimation is the date stated at the top of this notice unless service or intimation has been by post in which case the date of service or intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

*(Signed)*

Messenger-at-arms  
[or Solicitor [or Agent] for minuter]  
*(Address)*

FORM 15.2Form of notice of Note

*Status: This is the original version (as it was originally made).*

Rule 15.2(3)

**FORM 15.2**

**Rule 15.2(3)**

**Form of notice of Note**

**Date:** *(date of posting or other method of service or intimation)*

**To:** *(name and address)*

**TAKE NOTICE**

*(Name of noter)* has lodged the attached Note in the process of a petition in the Court of Session in which *(name)* is the petitioner [and *(name)* is the respondent]. By virtue of an order of [Lord *(name)* in] the Court of Session dated *(date)* you may lodge answers to the Note at the Office of Court, Court of Session, Edinburgh EH1 1RQ within [21] days after the date of service on [or intimation to] you of the Note. The date of service or intimation is the date stated at the top of this notice unless service or intimation has been by post in which case the date of service or intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

*(Signed)*

Messenger-at-arms  
[or Solicitor [or Agent] for noter]  
*(Address)*

FORM 16.2 Form of certificate of personal service or intimation on a warrant on person furth of  
United Kingdom

*Status: This is the original version (as it was originally made).*

Rule 16.2(5)(b)

**FORM 16.2**

**Rule 16.2(5)(b)**

**Form of certificate of personal service or intimation on a warrant on person furth of  
United Kingdom**

**CERTIFICATE OF PERSONAL SERVICE [OR INTIMATION]  
FURTH OF UNITED KINGDOM**

I, *(name)* pursuer [*or* authorised agent of the pursuer], certify that I served [*or* intimated] this summons [*or* other document (*specify*) on [*or* to] (*name of defender or other person on whom served or to whom intimated*) by (*state method of service*) at (*place and country*), being a method of service [*or* intimation] permitted in that country, on (*date*).

I did this in the presence of (*name, occupation and address of witness*).

(*Signed*)

Pursuer [*or* Authorised agent of pursuer]  
(*Address*)

(*Signed*)

Witness



FORM 16.3 Form of certificate of service or intimation on a warrant by messenger-at-arms

*Status: This is the original version (as it was originally made).*

Rule 16.3(1)(b)

**FORM 16.3**

**Rule 16.3(1)(b)**

**Form of certificate of service or intimation on a warrant by messenger-at-arms**

**CERTIFICATE OF SERVICE [OR INTIMATION]**

I, (name) Messenger-at-Arms, certify that I served [or intimated] this summons [or other document (specify)] [and a citation] [or and a notice of intimation] on [or to] (name of defender or other person on whom served or to whom intimated)–

- \* by leaving it and a citation [or notice] with (name of defender or other person) at (place) at (time) on (date).
- \* by leaving it and a citation [or notice] with (name and occupation of person with whom left) at (place) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given resides at the place but is not available.)
- \* by depositing it and a citation [or notice] in (place) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given resides at the place but is not available.)
- \* by leaving it and a citation [or notice] with (name and occupation of person with whom left) at (place of business) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given carries on business at the place.)
- \* by depositing it and a citation [or notice] at (place of business) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given carries on business at the place.)
- \* by leaving it and a citation [or notice] at (registered office or place of business) on (date), in the hands of (name of person).
- \* by leaving [or depositing] it and a citation [or notice] at (registered office, official address or place of business) on (date) in such a way that it was likely to come to the attention of (name of defender or other person on whom served or to whom intimated). (Specify how left.)

I did this in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms  
(Address)

(Signed)

Witness

\* Delete where not applicable.

FORM 16.4 Form of certificate of service, or intimation on a warrant, by post

*Status: This is the original version (as it was originally made).*

Rule 16.4(4)(b)

**FORM 16:4**

**Rule 16.4(4)(b)**

**Form of certificate of service, or intimation on a warrant, by post**

**CERTIFICATE OF SERVICE [OR INTIMATION] BY POST**

I, *(name and designation)*, certify that I served [or intimated] this summons *(or other document (specify))* on [or to] *(name of defender on other person on whom served)* by posting a copy of it with a citation [or notice] attached, to that person between *(time)* and *(time)* on *(date)* at *(name of post office)* post office in a registered envelope [or recorded delivery envelope] addressed as follows:– *(address)*. The post office receipt [or certificate of posting] is attached to this certificate.

*(Signed)*

Solicitor [or Agent] for pursuer [or other  
party]  
[or Messenger-at-Arms]

*(Address)*

FORM 16.5 Form of citation by advertisement

*Status: This is the original version (as it was originally made).*

Rule 16.5(3)(a)

**FORM 16.5**

**Rule 16.5(3)(a)**

**Form of citation by advertisement**

**IN THE COURT OF SESSION**

in the cause

[A.B.] (*designation and address*)

Pursuer

against

[C.D.]

Defender

An action has been brought in the Court of Session, Edinburgh, [Scotland,] by [A.B.], pursuer, [A.B.] calls as a defender [C.D.] whose last known address was (*address*). If [C.D.] wishes to challenge the jurisdiction of the court or to defend the action, he [*or she* [*or it*] [*or they*]] should contact the Deputy Principal Clerk of Session, Court of Session, Parliament Square, Edinburgh EH1 1RQ (Telephone 031-225 2595) immediately and in any event by (*date on which period of notice expires*).

(*Signed*)

Solicitor [*or Agent*] for pursuer  
(*Address*)

FORM 16.7 Form of certificate of intimation of a document

**Status:** This is the original version (as it was originally made).

Rule 16.7(2)(a)

**FORM 16.7**

**Rule 16.7(2)(a)**

**Form of certificate of intimation of a document**

I, *(name and designation)*, certify that I intimated *(specify document)* on *(name of person to whom intimation made)* [with a copy of the interlocutor of Lord *(name)* dated *(date)* a copy of which is attached] on *(date)*.

*(Signed)*

Solicitor [*or Agent*] for pursuer  
[*or as the case may be*]  
*(Address)*



FORM 16.15--A Form of schedule of arrestment to found jurisdiction

*Status: This is the original version (as it was originally made).*

Rule 16.15(1)(a)

**FORM 16.15-A**

**Rule 16.15(1)(a)**

**Form of schedule of arrestment to found jurisdiction**

**SCHEDULE OF ARRESTMENT TO FOUND JURISDICTION**

Date: *(date of execution)*

Time: *(time arrestment executed)*

To: *(name and address of arrestee)*

IN HER MAJESTY'S NAME AND AUTHORITY, I, *(name)*, Messenger-at-Arms, by virtue of a summons containing a warrant for arrestment to found jurisdiction, at the instance of *(name and address of pursuer)* against *(name and address of defender)* and signeted on *(date)*, arrest to found jurisdiction against *(name of defender)* in your hands: (i) the sum of *(amount)*, more or less, due by you to *(name of defender)* or to any other person on his *[or her]* *[or its]* *[or their]* behalf; and (ii) all moveable subjects in your hands and belonging or pertaining to *(name of defender)* *[or the ship [or vessel] (name) presently lying in (describe location)] [or cargo (describe location)]* in your hands and belonging to the defender.

This I do in the presence of *(name, occupation and address of witness)*.

*(Signed)*

Messenger-at-Arms  
*(Address)*

**NOTE**

*(Do not use this note where arrestment to found jurisdiction is combined with arrestment on the dependence in one schedule.)*

This schedule arrests in your hands debts due by you to the defender mentioned in the schedule and goods and other moveables *[or the ship] [or cargo]* held by you on his behalf. It does so solely for the purpose of establishing the jurisdiction of the Court of Session over the defender.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

FORM 16.15–B Form of schedule of arrestment on the dependence

Status: This is the original version (as it was originally made).

Rule 16.15(1)(b) and (e)

**FORM 16.15-B**

**Rule 16.15(1)(b)  
and (e)**

**Form of schedule of arrestment on the dependence**

**SCHEDULE OF ARRESTMENT ON THE DEPENDENCE**

Date: (date of execution)

Time: (time arrestment executed)

To: (name and address of arrestee)

IN HER MAJESTY'S NAME AND AUTHORITY, I, (name), Messenger-at-Arms, by virtue of—

- \* a summons containing a warrant for arrestment on the dependence of the action at the instance of (name and address of pursuer) against (name and address of defender) signeted on (date).
- \* a counterclaim containing a warrant which has been granted for arrestment on the dependence of the claim by (name and address of creditor) against (name and address of debtor) and dated (date of warrant),
- \* an order of [Lord (name) in] the Court of Session dated (date of order) granting warrant [for arrestment on the dependence of the action raised at the instance of (name and address of pursuer) against (name and address of defender)] [or for arrestment on the dependence of the claim in the counterclaim [or third party notice] by (name and address of creditor) against (name and address of debtor)] [or to arrest in the petition of (name and address of petitioner) against (name and address of respondent)],

arrest in your hands (i) the sum of (amount), more or less, due by you to (defender's name) [or name and address of common debtor if common debtor is not the defender] or to any other person on his [or her] [or its] [or their] behalf; and (ii) all moveable things in your hands belonging or pertaining to the said (name of common debtor), to remain in your hands under arrestment until they are made forthcoming to (name or pursuer) [or name and address of creditor if he is not the pursuer] or until further order of the court.

This I do in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms  
(Address)

**NOTE**

This schedule arrests in your hands (i) debts due by you to (name of common debtor); and (ii) goods and other moveables held by you for him. You should not pay any debts to him or hand over any goods or other moveables to him without taking legal advice.

This schedule may be used to arrest a ship or its cargo. If it is, you should consult your legal adviser about the effect of it.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT**, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

FORM 16.15—C Form of schedule of arrestment *in rem* of ship or cargo to enforce maritime hypothec or lien

*Status: This is the original version (as it was originally made).*

Rule 16.15(1)(c)

**FORM 16.15-C**

**Rule 16.15(1)(c)**

**Form of schedule of arrestment *in rem* of ship or cargo to enforce maritime hypothec or lien**

**SCHEDULE OF ARRESTMENT *IN REM* IN ADMIRALTY ACTION *IN REM***

Date: (date of execution)

Time: (time arrestment executed)

To: (name and address of arrestee)

IN HER MAJESTY'S NAME AND AUTHORITY, I, (name), Messenger-at-Arms, by virtue of a summons containing a warrant for arrestment *in rem* of the ship (name of ship) [or cargo (describe)] [or other maritime res (describe)] in an Admiralty action *in rem* at the instance of (name and address of pursuer) against (name and address of defender) and signeted on (date), arrest the ship [or vessel] (name) presently lying in (describe current location e.g. the port of X) with her float, boats, furniture and apparelling [or cargo [or other maritime res] (describe location)], to remain in that (specify more precisely if required) under arrestment *in rem* until they are sold or until this arrestment is recalled or other order of the court.

This I do in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms  
(Address)

**NOTE**

(Do not use this note where arrestment *in rem* is combined with arrestment on the dependence in one schedule.)

This schedule arrests the ship [or cargo [or other maritime res]] described in it. It prevents the ship [or cargo [or other maritime res]] from being moved from its current location without a further order from the court.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT**, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

FORM 16.15—D Form of schedule of arrestment *in rem* of ship to enforce non-pecuniary claim

*Status: This is the original version (as it was originally made).*

Rule 16.15(1)(d)

**FORM 16.15-D**

Rule 16.15(1)(d)

**Form of schedule of arrestment *in rem* of ship to enforce non-pecuniary claim****SCHEDULE OF ARRESTMENT *IN REM* OF SHIP UNDER THE ADMINISTRATION OF JUSTICE ACT 1956, SECTION 47(3)(b)**

Date: (date of execution)

Time: (time arrestment executed)

To: (name and address of arrestee)

IN HER MAJESTY'S NAME AND AUTHORITY, I, (name), Messenger-at-Arms, by virtue of—

\* an order of Lord (name) in the Court of Session dated (date of order) granting warrant for arrestment *in rem* under section 47(3)(b) of the Administration of Justice Act 1956 of the ship (name of ship) in an action,

\* a summons containing a warrant for arrestment *in rem* under section 47(3)(b) of the Administration of Justice Act 1956 of the ship (name of ship),

at the instance of (name and address of pursuer) against (name and address of defender) and signeted on (date), arrest the [ship] [or vessel] (name) presently lying in (describe current location e.g. the port of X) with her float, boats, furniture and apparelling to remain in that place (specify more precisely if required) under arrestment *in rem* until this arrestment is recalled or other order of the court.

This I do in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms  
(Address)

**NOTE**

(Do not use this note where arrestment *in rem* is combined with arrestment on the dependence in one schedule.)

This schedule arrests the ship [or vessel] described in it. It prevents the ship [or vessel] from being moved from its current location without a further order from the court.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT**, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

\* Delete where not applicable.



FORM 16.15—EForm of schedule of arrestment in execution

*Status: This is the original version (as it was originally made).*

Rule 16.156(1)(f)

**FORM 16.15-E**

**Rule 16.15(1)(f)**

**Form of schedule of arrestment in execution**

**SCHEDULE OF ARRESTMENT IN EXECUTION**

Date: (date of execution)

To: (name and address of arrestee)

IN HER MAJESTY'S NAME AND AUTHORITY, I, (name), Messenger-at-Arms, by virtue of an extract decree of the Court of Session dated (date) [or an extract of a document (describe deed) registered for execution on (date) in the Books of Council and Session] and extracted on (date) obtained at the instance of (name of party arresting) arrest in your hands (i) the sum of (amount), more or less, due by you to (common debtor's name and designation) or to any other person on his [or her] [or its] [or their] behalf; and (ii) all moveable things in your hands and belonging or pertaining to the (common debtor's name), to remain in your hands under arrestment until the (name of party arresting) has been paid (amount) in terms of the extract decree [or extract of the document registered in the Books of Council and Session].

This I do in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms  
(Address)

(Signed)

Witness

**NOTE**

This schedule arrests in your hands (i) debts due by you to (common debtor's name); and (ii) goods and other moveables held by you for him. You should not pay any debts to him or hand over any goods or other moveables to him without taking legal advice.

This schedule may be used to arrest a ship or its cargo. If it is, you should consult your legal adviser about the effect of it.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT**, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

FORM 16.15--Form of schedule of inhibition

*Status: This is the original version (as it was originally made).*

Rule 16.156(1)(h)

**FORM 16.15-F**

**Rule 16.15(1)(h)**

**Form of schedule of inhibition**

**SCHEDULE OF INHIBITION**

Date: (date of execution)

To: (name and address of person on whom served)

IN HER MAJESTY'S NAME AND AUTHORITY, I (name), Messenger-at-Arms, by virtue of—

- \* a warrant contained in a Court of Session summons.
  - \* a warrant contained in letters of inhibition signeted at Edinburgh on (date).
  - \* an order of Lord (name) in the Court of Session granted on (date),
- a copy of which is attached, inhibit you from selling, disposing of, burdening or otherwise affecting your land and other heritable property to the prejudice of (name and address of person entitled to inhibit).

This I do in the presence of (name, occupation and address of witness.)

(Signed)

Messenger-at-Arms  
(Address)

**NOTE**

This document forbids you from disposing of or dealing with any land or buildings in Scotland in which you have an interest without a further order from the court.

If you are in the course of or are contemplating a transaction which affects any land or building in Scotland in which you have an interest you should tell your solicitor immediately about this document.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT**, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

\* Delete where not applicable.

FORM 16.15–G Form of charge for payment of money

*Status: This is the original version (as it was originally made).*

Rule 16.15(1)(i)

**FORM 16.15-G**

**Rule 16.15(1)(i)**

**Form of charge for payment of money**

**CHARGE FOR PAYMENT OF MONEY**

[A.B.] (*designation and address*)

Pursuer

against

[C.D.] (*designation and address*)

Defender

Date: (*date of execution*)

To: (*name and address of debtor*)

On (*date*) a decree against you was granted in the Court of Session for payment of a sum of money in the above action [*or give details of other document upon which charge proceeds such as a document registered for execution in the Books of Council and Session*].

The decree [*or warrant for execution of the document mentioned above*] was extracted on (*date*).

IN HER MAJESTY'S NAME AND AUTHORITY, I, (*name*), Messenger-at-Arms, by virtue of the extract decree, charge you to pay the total sum due as set out below [*together with any further interest*] within 14 [*or 28*] days after the date of this charge to (*name and address of person to whom payment to be made*).

If you do not pay this sum within 14 [*or 28*] days you are liable to have further action taken against you including arrestment of your earnings and the poinding and sale of articles belonging to you without further notice. You are also liable to be sequestrated (declared bankrupt).

This charge is executed on you today by me by (*state method of execution*) in the presence of (*name, occupation and address of witness*).

(*Signed*)

Messenger-at-Arms  
(*Address*)

(*Signed*)

Witness

The sum now due by you is:-

Principal sum	£
Interest to date*	£
Expenses	£
<b>TOTAL OF ABOVE</b>	£
Less paid to account	£
<b>SUB TOTAL</b>	£
Agent's fee	£
Expenses of messenger-at-arms:-	
Charge fee	£
Travelling	£
Witness fee	£
Other outlays in connection with service of charge ( <i>specify</i> )	£
<b>TOTAL SUM DUE</b>	£

\* Note. Interest on the principal sum will continue to run until the date of payment.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS DOCUMENT, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

FORM 16.15–H Form of certificate of execution of arrestment or inhibition

Status: This is the original version (as it was originally made).

Rule 16.15(1)

**FORM 16.15-H**

**Rule 16.15(1)**

**Form of certificate of execution of arrestment or inhibition**

**CERTIFICATE OF EXECUTION**

I, (name), Messenger-at-Arms, certify that I executed (specify the kind of arrestment or inhibition, whether on the dependence of an action, counterclaim or third party notice, whether on the authority of an interlocutor (specify), on letters of arrestment or inhibition or in execution of a decree (specify)), [obtained] at the instance of (name and address of party arresting or inhibiting) against (name and address of common debtor or person inhibited) on (name of person on whom executed)–

- \* by leaving the schedule of [arrestment] [inhibition] with (name of defender or other person) at (place) on (date).
- \* by leaving the schedule of [arrestment] [inhibition] with (name and occupation of person with whom left) at (place) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made resides at the place but is not available.)
- \* by depositing the schedule of [arrestment] [inhibition] in (place) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made resides at the place but is not available.)
- \* by leaving the schedule of [arrestment] [inhibition] with (name and occupation of person with whom left) at (place of business) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made carries on business at the place.)
- \* by depositing the schedule of [arrestment] [inhibition] at (place of business) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made carries on business at the place.)
- \* by leaving the schedule of [arrestment] [inhibition] at (registered office or place of business) on (date), in the hands of (name of person).
- \* by leaving [or depositing] the schedule of [arrestment] [inhibition] at (registered office, official address or place of business) on (date) in such a way that it was likely to come to the attention of (name of defender or other person on whom served). (Specify how left.)
- \* edictally by leaving the schedule of [arrestment] [inhibition] with (name and occupation of person with whom left) at the office of the Extractor of the Court of Session, Parliament Square, Edinburgh on (date) and sending a copy of the schedule by registered post [or first class recorded delivery service] to (name and address of residence, registered office, official address or place of business or such last known place) on (date).

I did this in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms  
(Address)

(Signed)

Witness

\* Delete where not applicable.



FORM 16.15—Form of certificate of execution of arrestment of ship or cargo *in rem*

*Status: This is the original version (as it was originally made).*

Rule 16.15(1)(c) and (d)

**FORM 16.15-I**

**Rule 16.15(1)(c)  
and (d)**

**Form of certificate of execution of arrestment of ship or cargo *in rem***

**CERTIFICATE OF EXECUTION OF ARRESTMENT OF SHIP [OR CARGO] *IN REM***

I, (name), Messenger-at-Arms, certify that I executed an arrestment *in rem* of the ship [or vessel] (name) [or cargo (describe)] by virtue of a summons [or interlocutor of Lord (name) dated (date)] at the instance of (name and address of pursuer) against (name and address of defender) by affixing the schedule of arrestment to the mainmast [or as the case may be] of the ship [or vessel] [or in the case of cargo landed or transhipped on (name) as custodian for the time being of the cargo [or as harbourmaster of the harbour where the cargo lies]] [and delivering a copy of the schedule of arrestment and of this certificate to (name) the master of the ship [or as the case may be] at (place) on (date)].

I did this in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms  
(Address)

(Signed)

Witness

FORM 16.15—JForm of certificate of execution of arrestment of ship or cargo on the dependence

*Status: This is the original version (as it was originally made).*

Rule 16.15(1)(e)

**FORM 16.15-J**

**Rule 16.15(1)(e)**

**Form of certificate of execution of arrestment of ship or cargo on the dependence**

**CERTIFICATE OF EXECUTION OF ARRESTMENT OF SHIP [OR CARGO]  
ON THE DEPENDENCE**

I, *(name)*, Messenger-at-Arms, certify that I executed an arrestment on the dependence of the ship [or vessel] *(name)* [or cargo *(describe)*] by virtue of a summons [or counterclaim] [or interlocutor of Lord *(name)* dated *(date)*] at the instance of *(name and address of pursuer)* against *(name and address of defender)* by affixing the schedule of arrestment to the mainmast [or as the case may be] of the ship [or vessel] *(name)* and marked the initials E.R. above the same [or by *(state method of service)*] at *(place)* on *(date)*.

I did this in the presence of *(name, occupation and address of witness)*.

*(Signed)*

Messenger-at-Arms  
*(Address)*

*(Signed)*

Witness

FORM 16.15–KForm of certificate of execution of charge for payment

*Status: This is the original version (as it was originally made).*

Rule 16.15(1)(i)

**FORM 16.15-K**

**Rule 16.15(1)(i)**

**Form of certificate of execution of charge for payment**

**CERTIFICATE OF EXECUTION OF CHARGE FOR PAYMENT**

Date: (date of service)

I, (name), Messenger-at-Arms, certify that, by virtue of the attached extract of a decree of the Court of Session at the instance of [A.B.] against [C.D.] [or of a document registered for execution in the Books of Council and Session], I charged [C.D.] to pay the sum[s] of money, principal, interest and expenses stated in the extract [or to implement and perform the obligation[s] stated in the extract] [or both to pay the sum[s] of money, principal, interest and expenses] [add where there are other debtors in the extract, so far as incumbent upon him] to [A.B.] within [ ] days after the date of the charge.

I did this—

- \* by leaving the charge and a copy of the extract decree [or document registered for execution in the Books of Council and Session] with (name of person charged) at (place) on (date).
- \* by leaving the charge and a copy of the extract decree [or document registered for execution in the Books of Council and Session] with (name and occupation of person with whom left) at (place) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person charged resides at the place but is not available.)
- \* by depositing the charge and a copy of the extract decree [or document registered for execution in the Books of Council and Session] in (place) and (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person charged resides at the place but is not available.)
- \* by leaving the charge and a copy of the extract decree [or document registered for execution in the Books of Council and Session] with (name and designation of person with whom left) at (place of business) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person charged carries on business at the place.)
- \* by depositing the charge and a copy of the extract decree [or document registered for execution in the Books of Council and Session] at (place of business) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person charged carries on business at the place.)
- \* by leaving the charge and a copy of the extract decree [or document registered for execution in the Books of Council and Session] at (registered office or place of business) on (date) in the hands of (name of person).
- \* by leaving [or depositing] the charge and a copy of the extract decree [or document registered for execution in the Books of Council and Session] at (registered office, official address or place of business) on (date) in such a way that it was likely to come to the attention of (name of person charged). (Specify how left).

I did this in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms  
(Address)

(Signed)

Witness

\* Delete where not applicable.

FORM 23.2Form of motion

Rule 23.2(2)

**FORM 23.2**  
**Form of motion**

**Rule 23.2(2)**

**PART I**

Sheet 1 of ..... sheets

(To be completed where motion enrolled  
by post or fax only)

Name of pursuer/petitioner\* .....

Name of first defender/respondent\* .....

Name and nature of petition (e.g. John Smith's curatory) .....  
.....

Court case number ..... Date of last interlocutor .....

Is case due in court during the next seven days? Yes/No\*

(If Yes, state reason)

**PART II**

Name of firm enrolling motion .....

Agent for ..... Ref No. ....

Rutland Exchange No. .... Town .....

Tel. No. .... FAX No. ....

Date of enrolment of motion.....

Has motion been intimated? Yes/No\* If yes, give date .....

THE MOTION IS (state terms of motion; if necessary, use a separate sheet):-

REASON FOR MOTION (state reason if reason required by Practice Note of 10th December 1986;  
if necessary, use a separate sheet):-

\* Delete as appropriate.

---

**PART III**

MOTION SLIP – General Department only

Name of case† ..... v. ....

Name of firm.....



FORM 23.4 Form of opposition to motion

*Status: This is the original version (as it was originally made).*

Rule 23.4(1)

**FORM 23.4**

**Rule 23.4(1)**

**Form of opposition to motion**

**PART I**

Sheet 1 of ..... sheets

(To be completed where motion opposed by post or fax only)

Name of pursuer/petitioner\* .....

Name of first defender/respondent\* .....

Name of firm notifying opposition .....

**PART II**

Agent for ..... Ref No. ....

Rutland Exchange No. .... Town .....

Tel. No. .... FAX No. ....

Date of notice of opposition .....

Date opposition intimated .....

Nature and effective date of enrolment of motion to be opposed .....

\* Delete as appropriate.

**PART II**

**OPPOSITION SLIP – General Department only**

Name of case† ..... v. ....

Name of firm.....

† e.g. John Smith v. John Brown.

FORM 23.5 Form of consent to motion

*Status: This is the original version (as it was originally made).*

Rule 23.5

**FORM 23.5**

**Rule 23.5**

**Form of consent to motion**

Sheet 1 of ..... sheets

Name of pursuer/petitioner\* .....

Name of first defender/respondent\* .....

Name of firm notifying consent .....

Agent for ..... Ref No. ....

Rutland Exchange No. .... Town .....

Tel. No. .... FAX No. ....

Date of notice of consent .....

Date consent intimated .....

Nature and effective date of enrolment of motion consented to.....

.....

\* Delete as appropriate.

FORM 24.3 Form of notice to additional or substitute party

*Status: This is the original version (as it was originally made).*

Rule 24.3(2)

**FORM 24.3**

**Rule 24.3(2)**

**Form of notice to additional or substitute party**

**Date:** *(date of posting or other method of service)*

**To:** *(name and address of party)*

**TAKE NOTICE**

*(Name and address of pursuer)* has raised an action against *(name and address of defender)* in the Court of Session, Edinburgh. By order of the court, dated *(date)*, your name has been added *[or substituted]* as a party to the action. A copy of the summons *[or other principal writ or record]* in the action, as amended, is attached. If you intend to deny the claim made in the summons *[or as the case may be]* you must lodge defences *[or answers]* at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ, within [21] days after the date of service on you of the summons. The date of service is the date stated at the top of this notice unless service has been by post in which case the date of service is the date after that date.

**If you do not lodge defences *[or answers]*, the court may make an order against you.**

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

*(Signed)*

Messenger-at-Arms  
*[or Solicitor *[or Agent]* for pursuer]*  
*((Address))*

FORM 26.1—A Form of third party notice

Status: This is the original version (as it was originally made).

Rule 26.1(1)

**FORM 26.1-A**

**Rule 26.1(1)**

**Form of third party notice**

**THIRD PARTY NOTICE**

in the cause

[A.B.] (*designation and address*), Pursuer

and

[C.D.] (*designation and address*), Defender

and

[E.F.] (*designation and address*), Third Party

Date: (*date of posting or other method of service*)

To: (*name and address of [E.F.]*)

**TAKE NOTICE**

(*Name and address of pursuer*), pursuer, has raised an action against (*name and address of defender*), defender, in the Court of Session, Edinburgh. In the action the pursuer claims from the defender (*amount*) as damages for (*short explanation of basis of claim*) [*or as the case may be*]. A copy of the summons and defences [*or record*] in the action is attached.

The defender admits [*or denies*] liability to the pursuer. The defender claims that [*if he is liable to the pursuer*] you are obliged to relieve him [*partially*] of his liability. He claims this because (*short explanation of basis of right of contribution, relief or indemnity*). This is explained more fully in the attached defences [*or record*].

*or*

The defender denies liability for the claim made by the pursuer. He states that you along [*or you along with names and addresses*] are liable to the pursuer for that claim. This is explained more fully in the attached defences [*or record*].

*or*

The defender denies liability for the claim made by the pursuer [*or admits liability in part for the claim made by the pursuer, but disputes the amount of that claim*]. He maintains, however, that if he is liable to the pursuers [*for any amount*], you are jointly liable [*or jointly and severally liable*] with him to the pursuer. This is explained more fully in the attached defences [*or record*].

(*or otherwise as the case may be*)

Accordingly, on (*date*) [Lord (*name*) in] the Court of Session ordered this notice to be served on you. If you dispute the claim by the pursuer against the defender, or the defender's claim against you, you must lodge answers at the Office of Court, 2 Parliament Square, Edinburgh EH1 1RQ. You must do so within [21] days after the date of service on you of this notice. The date of service is the date stated at the top of this notice unless service has been by post in which case the date of service is the day after that date.

If you do not lodge answers, the court may make an order against you.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

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(Signed)

Messenger-at-Arms  
[*or Solicitor [or Agent] for defender*]  
(*Address*)



FORM 26.1—BForm of third party notice by pursuer

*Status: This is the original version (as it was originally made).*

Rule 26.1(2)

**FORM 26.1-B**

**Rule 26.1(2)**

**Form of third party notice by pursuer**

**THIRD PARTY NOTICE BY PURSUER**

in the cause

[A.B.] (*designation and address*), Pursuer

and

[C.D.] (*designation and address*), Defender

and

[E.F.] (*designation and address*), Third Party

Date: (*date of posting or other method of service*)

To: (*name and address of [E.F.]*)

**TAKE NOTICE**

(*Name and address of pursuer*), pursuer, has raised an action against (*name and address of defender*), defender, in the Court of Session, Edinburgh. In the action the pursuer claims from the defender (*amount*) as damages for (*short explanation of basis of claim*) [*or as the case may be*]. The defender has made a counterclaim against the pursuer for (*amount*) as damages for (*short explanation of basis of counterclaim*) [*or as the case may be*]. A copy of the answers, defences and counterclaim [*or record*] in the action is attached.

The pursuer admits [*or denies*] liability to the defender for the counterclaim. However, the pursuer claims that [*if he is liable to the defender*] you are obliged to relieve him [*partially*] of his liability. He claims this because (*short explanation of basis of right of contribution, relief or indemnity*). This is explained more fully in the attached defences [*or record*].

[*or otherwise as the case may be*]

Accordingly, on (*date*) [Lord (*name*) in] the Court of Session ordered this notice to be served on you. If you dispute the defender's claim against the pursuer, or the pursuer's claim against you, you must lodge answers at the Office of Court, 2 Parliament Square, Edinburgh EH1 1RQ. You must do so within [21] days after the date of service on you of this notice. The date of service is the date stated at the top of this notice unless service has been by post in which case the date of service is the day after that date.

**If you do not lodge answers, the court may make an order against you.**

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

(Signed)

Messenger-at-Arms  
[*or Solicitor [or Agent] for pursuer*]  
(Address)

FORM 26.1—CForm of third party notice by third party

*Status: This is the original version (as it was originally made).*

Rule 26.1(2)

**FORM 26.1-C**

**Rule 26.1(2)**

**Form of third party notice by third party**

**THIRD PARTY NOTICE BY THIRD PARTY**

in the cause

[A.B.] (*designation and address*), Pursuer

and

[C.D.] (*designation and address*), Defender

and

[E.F.] (*designation and address*), Third Party

Date: (*date of posting or other method of service*)

To: (*name and address of [E.F.]*)

**TAKE NOTICE**

(*Name and address of pursuer*), pursuer, has raised an action against (*name and address of defender*), defender, in the Court of Session, Edinburgh. In the action the pursuer claims from the defender (*amount*) as damages for (*short explanation of basis of claim*) [*or as the case may be*]. The defender has made a counterclaim against the pursuer for (*amount*) as damages for (*short explanation of basis of counterclaim*) [*or as the case may be*].

The defender [*or pursuer*] claims that [E.F.] is obliged to relieve him [partially] of his liability (if any) to the pursuer [*or the defender*] [*or as the case may be*]. [E.F.] admits [*or denies*] liability to do so. [E.F.], however, claims that [if he is liable to the defender [*or the pursuer*] you are obliged to relieve him [partially] of his liability. He claims this because (*short explanation of basis of right of contribution, relief or indemnity*) [*or as the case may be*].

This is explained more fully in the attached answers, defences [*and counterclaim*] and answers [*or record*].

Accordingly, on (*date*) [Lord (*name*) in] the Court of Session ordered this notice to be served on you. If you dispute the claim of the pursuer against the defender [*or the counterclaim of the defender against the pursuer*] [*or [E.F.'s] liability to relieve [or as the case may be] the defender [or the pursuer]*] [*or [E.F.'s] claim against you*], you must lodge answers at the Office of Court, 2 Parliament Square, Edinburgh EH1 1RQ. You must do so within [21] days after the date of service on you of this notice. The date of service is the date stated at the top of this notice unless service has been by post in which case the date of service is the day after that date.

**If you do not lodge answers, the court may make an order against you.**

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(Signed)

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Messenger-at-Arms  
[*or Solicitor [or Agent] for third party*]  
(Address)

FORM 30.2 Form of intimation to party whose agent has withdrawn

*Status: This is the original version (as it was originally made).*

Rule 30.2(2)

**FORM 30.2**

**Rule 30.2(2)**

**Form of intimation to party whose agent has withdrawn**

Cause Reference No. (insert reference)

**IN THE COURT OF SESSION**

*in causa*

[A.B.] (*designation and address*)

Pursuer [*or* Petitioner]

against

[C.D.] (*designation and address*)

Defender [*or* Respondent]

Date: (*date of posting or other method of service*)

To: (*name and address of party whose agent has withdrawn*)

**TAKE NOTICE**

The court has been informed that your solicitor [*or* agent] has withdrawn from acting on your behalf in this cause.

In accordance with the enclosed interlocutor pronounced by [Lord (*name*) in] the Court of Session on (*date*) you must inform the Deputy Principal Clerk of Session within 14 days after the service of this notice and the enclosed interlocutor whether you intend to insist in your action [*or* defences *or* as the case may be]. The date of service is the date stated at the top of this notice unless service has been by post in which case the date of service is the day after that date.

You should contact the Deputy Principal Clerk immediately to inform him what you intend to do. You must write to him at the Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ quoting the name of the cause and the cause reference number at the top of this notice. You should use the form attached to this notice.

If you do not write to the Deputy Principal Clerk and inform him what you intend to do the court may make an order or a finding or both against you as mentioned in the interlocutor attached.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.

(Signed)

Solicitor [*or* Agent]  
(Address)

*(Form to be sent with Form 30.2)*

Cause Reference No.

IN THE COURT OF SESSION

*in causa*

[A.B.] (*désignation and address*)

Pursuer [*or* Petitioner]

against

[C.D.] (*désignation and address*)

Defender [*or* Respondent]

To The Deputy Principal Clerk of Session

\* I am insisting \* in the above cause/\* in my defences to the above cause/\* in my answers to the above cause. My new solicitor's name and address is:-

\* I am NOT insisting in the above cause/\* in my defences to the above cause/\* in my answers to the above cause.

(Signed)

Pursuer\*/Petitioner\*/Defender\*/Respondent\*

\* Delete whatever is not applicable.

This form is to be returned to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh EH1 1RQ.

**Status:** This is the original version (as it was originally made).

FORM 33.12 Form of book to be kept by the Accountant of Court under section 4 of the Court of Session Consignations (Scotland) Act 1895



*Status:* This is the original version (as it was originally made).

Rule 32.12(4)

**FORM 33.12**

**Rule 32.12(4)**

**Form of book to be kept by the Accountant of Court under section 4 of the Court of Session  
Consignations (Scotland) Act 1895**

No.	Date of Consignation.	By whom and Cause in which Consignation made.	Office mark.	Bank.	Date of Lodging in Bank.	Sum consigned.	Deposits withdrawn from Bank.				Signature of Persons receiving Payment.	Date of Warrant.
							Principal.	Interest.	Total.	Date of Payment.		

**Status:** *This is the original version (as it was originally made).*

FORM 35.3 Form of order of court and certificate in optional procedure for recovery of documents

Rule 35.3(1)

**FORM 35.3**

**Rule 35.3(1)**

**Form of order of court and certificate in optional procedure for recovery of documents**

**ORDER BY THE COURT OF SESSION**

In the Cause (Cause Reference No.        )

in which

[A.B.] (*designation and address*)

Pursuer [*or* Petitioner]

against

[C.D.] (*designation and address*)

Defender [*or* Respondent]

Date: (*date of posting or other method of service*)

To: (*name and address of party or parties or named third party haver, from whom the documents are sought to be recovered*)

You are hereby required to produce to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh EH1 1RQ within 7 days of the service upon you and this Order—

- (a) this Order which must be produced intact;
- (b) the certificate below duly dated and signed by you; and
- (c) all documents in your possession falling within the enclosed specification and a list or inventory of such documents signed by you relating to this Order and your certificate.

You may produce these documents either by lodging them at the Office of Court of the Court of Session or by sending them by registered or recorded delivery letter or registered postal packet addressed to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh, EH1 1RQ.

*(Signature and business address of the agent for the party in whose favour commission and diligence has been granted.)*

**NOTE**

If you claim that any of the documents produced by you are confidential, you must still produce such documents but may place them in a separate sealed packet by themselves, marked “confidential”.

**Certificate**

(*Date*)

I hereby certify with reference to the above order of the Court of Session in the cause (*cause reference number*) and the enclosed specification of documents, served on me and marked respectively X and Y:—

- 423
- (1) That the documents which are produced and which are listed in the enclosed inventory signed by me and marked Z, are all the documents in my possession falling within the specification.

*or*

That I have no documents in my possession falling within the specification.

- (2) That, to the best of my knowledge and belief, there are in existence other documents falling

**Status:** This is the original version (as it was originally made).

*them by reference to the descriptions of documents in the specification). They were last seen by me on or about (date), at (place), in the hands of (name and address of the person).*

*or*

That I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification.

*(Signed)*

*(Name and address)*

FORM 35.4–A Form of citation of haver to commission for recovery of documents

Status: This is the original version (as it was originally made).

Rule 35.4(3)

**FORM 35.4-A**

**Rule 35.4(3)**

**Form of citation of haver to commission for recovery of documents**

**CITATION OF HAVER**

Date: (date of posting or other method of service)

To: (name and address of haver)

(Name and address of pursuer) has raised an action against (name and address of defender) [or has presented a petition] in the Court of Session, Edinburgh. In the cause. (name of party seeking to execute commission and diligence) applied for a commission and diligence for the recovery of documents described in the attached specification. [A copy of the pleadings in the action is also attached.] On (date of order) [Lord (name) in] the Court of Session granted the application. The commission has been fixed before (name of commissioner) for (date) at (time). It will take place at (place).

By virtue of the order mentioned above, I hereby require you to attend the commission and to produce all documents which are in your possession and which fall within the specification and, if you are aware of any other documents within the specification, to declare where they may be.

**IF YOU DO NOT ATTEND, A WARRANT MAY BE GRANTED FOR YOUR ARREST.**

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for (name of  
party seeking to execute commission and  
diligence)]  
(Address)

FORM 35.4–B Form of certificate of citation of haver to appear at commission

*Status: This is the original version (as it was originally made).*

Rule 35.4(4)

**FORM 35.4-B**

**Rule 35.4(4)**

**Form of certificate of citation of haver to appear at commission**

**CERTIFICATE OF CITATION OF HAVER**

I, *(name and designation)*, certify that I cited *(name of haver)* to appear at a commission for the recovery of documents by posting a citation in Form 35.4-A to him *[or her]* between *(time)* and *(time)* on *(date)* at *(name of post office)* post office in a registered envelope *[or recorded delivery envelope]* addressed as follows:- *(address)*. The post office receipt *[or certificate of posting]* is attached to this certificate.

*(Signed)*

Messenger-at-Arms  
*[or Solicitor [or Agent] for pursuer  
[or other party]]*  
*(Address)*



FORM 35.4—CForm of certificate of citation of haver personally to appear at commission

*Status: This is the original version (as it was originally made).*

Rule 35.4(4)(b)

**FORM 35.4-C**

**Rule 35.4(4)(b)**

**Form of certificate of citation of haver personally to appear at commission**

**CERTIFICATE OF CITATION PERSONALLY**

I, *(name)*, Messenger-at-Arms, certify that, on the authority of the interlocutor of the Court of Session *(date)*, I cited *(name of haver)* to appear at the commission for the recovery of documents personally by leaving the citation in Form 35.4-A with him [*or her*] at *(place)* on *(date)*.

I did this in the presence of *(name, occupation and address of witness)*.

*(Signed)*

Messenger-at-Arms  
*(Address)*

*(Signed)*

Witness

FORM 35.4–D Form of oath for haver or witness at commission

Rule 35.4(8)(b) and 35.11(8)(b)

**FORM 35.4–D**

**Rule 35.4(8)(b) and  
35.11(8)(b)**

**Form of oath for haver or witness at commission**

I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.

FORM 35.4–E Form of affirmation for haver or witness at commission

Rule 35.4(8)(b) 35.11(8)(b)

**FORM 35.4–E**

**Rule 35.4(8)(b)  
35.11(8)(b)**

**Form of affirmation for haver or witness at commission**

I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth.

FORM 35.11–A Form of citation of witness to commission to take his evidence

*Status: This is the original version (as it was originally made).*

Rule 35.11(5)

**FORM 35.11-A**

**Rule 35.11(5)**

**Form of citation of witness to commission to take his evidence**

**CITATION OF WITNESS**

Date: *(date of posting or other method of service)*

To: *(Name and address of witness)*

*(Name and address of pursuer or as the case may be)* has raised an action against *(name and address of defender)* [or has presented a petition] in the Court of Session, Edinburgh. In the cause, *(name of party seeking to execute commission to take the evidence of the witness)* applied for a commission to take your evidence. On *(date of order)* [Lord *(name)* in] the Court of session granted the application. The commission has been fixed before *(name of commissioner)* for *(date)* at *(time)*. It will take place at *(place)*.

By virtue of the order mentioned above, I hereby require you to attend the commission to give evidence.

**IF YOU DO NOT ATTEND, A WARRANT MAY BE GRANTED FOR YOUR ARREST.**

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for *(name of party seeking to execute commission)*]  
*(Address)*

FORM 35.11–B Form of certificate of citation of witness to appear at commission

*Status: This is the original version (as it was originally made).*

Rule 35.11(6)(a)

**FORM 35.11-B**

**Rule 35.11(6)(a)**

**Form of certificate of citation of witness to appear at commission**

**CERTIFICATE OF CITATION OF WITNESS**

I, *(name and designation)*, certify that I cited *(name of witness)* to appear to give evidence of a commission by posting a citation in Form 35.11-A to him *[or her]* between *(time)* and *(time)* on *(date)* at *(name of post office)* post office in a registered envelope *[or recorded delivery envelope]* addressed as follows:—*(address)*. The post office receipt *[or certificate of posting]* is attached to this certificate.

*(Signed)*

Messenger-at-Arms  
*[or Solicitor [or Agent] for pursuer  
[or other party]]*  
*(Address)*

FORM 35.11—CForm of certificate of citation of witness personally at commission to give evidence

*Status: This is the original version (as it was originally made).*

Rule 35.11(6)(b)

**FORM 35.11-C**

**Rule 35.11(6)(b)**

**Form of certificate of citation of witness personally at commission to give evidence**

**CERTIFICATE OF CITATION PERSONALLY**

I, *(name)*, Messenger-at-Arms, certify that, on the authority of the interlocutor of the Court of Session *(date)*, I cited *(name of witness)* to appear to give evidence at a commission personally by leaving the citation in Form 35.11-A with him *[or her]* at *(place)* on *(date)*.

I did this in the presence of *(name, occupation and address of witness)*.

*(Signed)*

Messenger-at-Arms  
*(Address)*

*(Signed)*  
Witness



FORM 35.15–A Form of minute for letter of request

*Status: This is the original version (as it was originally made).*

Rule 35.15(3)

**FORM 35.15-A**

**Rule 35.15(3)**

**Form of minute for letter of request**

**IN THE COURT OF SESSION**

**MINUTE**

**for**

**[A.B.] (*designation and address*)**

***in causa [or in the petition of]***

**[A.B.] (*designation and address*), Pursuer [*or* Petitioner]**

**against**

**[C.D.] (*designation and address*), Defender [*or* Respondent]**

*(Name of counsel or other person having a right of audience)* for the Minuter states to the court that the evidence specified in the proposed letter of request lodged with this Minute is required for the purpose of this cause and prays the court to issue a letter of request in terms of the proposed letter of request to *(specify the court or tribunal having power to obtain evidence)* to obtain the evidence so specified.

*(Signed by counsel or other person  
having a right of audience)*

FORM 35.15–B Form of letter of request

*Status: This is the original version (as it was originally made).*

Rule 35.15(3)

**FORM 35.15-B****Rule 35.15(3)****Form of letter of request***(Items to be included in all letters of request)*

1. Sender *(identity & address)* .....  
.....  
.....
2. Central authority of the *(identity & address)* .....  
.....
3. Person to whom the executed request is to be returned *(identity & address)* .....  
.....  
.....
4. The undersigned applicant has the honour to submit the following request:
5. a. Requesting judicial authority *(identity & address)* .....  
.....  
.....  
b. To the competent authority *(the requested State)* .....  
.....
6. Names and addresses of the parties and their representatives
  - a. Pursuer .....
  - b. Defender .....
  - c. Other parties .....
7. Nature and purpose of the proceedings and summary of the facts .....
8. Evidence to be obtained or other judicial act to be performed .....

*(Items to be completed where applicable)*

9. Identity and address of any person to be examined .....
10. Questions to be put to the persons to be examined or statement of the subject matter about which they are to be examined *[or see attached list]* .....  
.....  
.....
11. Documents or other property to be inspected *(specify whether it is to be produced, copied, valued, etc.)* .....  
.....  
.....

12. Any requirement that the evidence be given on oath or affirmation and any special form be used *(in the event that the evidence cannot be taken in the manner requested, specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence) .....*  
.....  
.....
13. Special methods or procedure to be followed .....  
.....  
.....
14. Request for notification of the time and place for the execution of the request and identity and address of any person to be notified .....  
.....  
.....
15. Request for attendance or participation of judicial personnel of the requesting authority at the execution of the letter of request .....  
.....  
.....
16. Specification of privilege or duty to refuse to give evidence under the law of the State of origin .....  
.....  
.....
17. The fees and expenses incurred will be borne by *(identity & address) .....*  
.....  
.....
- (Items to be included in all letters of request)*
18. Date of request, signature and seal of the requesting authority .....  
.....  
.....

**Status:** *This is the original version (as it was originally made).*

FORM 36.2–A Form of citation of witness to proof or jury trial

**FORM 36.2-A**

**Rule 36.2(1)**

**Form of citation of witness to proof or jury trial**

*(Name and address of pursuer or as the case may be)* has raised an action against *(name and address of defender)* [or has presented a petition] in the Court of Session, Edinburgh.

A proof [or jury trial] has been fixed. It will commence on *(date)* at *(time)* at the Court of Session, Parliament Square, Edinburgh. By virtue of an order made by [Lord *(name)* in] the Court of Session on *(date)*, I, *(name)*, Solicitor [or Agent] *(name of party citing witness)* [or Messenger-at-Arms] hereby require you to attend the proof [or jury trial] as a witness.

You must appear at the proof [or jury trial] on the date and at the time mentioned above and be prepared to give evidence at any time during the continuation of the proof [or jury trial].

**IF YOU DO NOT APPEAR, A WARRANT MAY BE GRANTED FOR YOUR ARREST.**

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for *(name of party citing witness)*]

*(Address)*

**Please read the notes attached and bring this citation with you when you come to the court.**

**NOTES**

**1. What must I do?**

The attached document requires you to appear as a witness in the case mentioned in it.

It obliges you to attend at the Court of Session at the time and on the date mentioned. The hearing will start on that date and may continue on the following days. Because it is difficult to estimate how long it will take to hear the evidence of other witnesses, you cannot be given a precise time when you will be called to give evidence. The solicitor for the party who has called you as a witness may, however, be able to arrange to give you some indication of when you are likely to be required.

You should not bring a child under the age of 14 years with you to court unless he or she is to give evidence. You should make arrangements to have the child looked after while you are at the court.

**2. Where is the court?**

The Court of Session is behind St. Giles Cathedral, High Street, Edinburgh. Parking in central Edinburgh can be very difficult. If you are coming by car you should allow plenty of time to find a parking space.

**3. What do I do when I get to court?**

When you arrive at the Court of Session, you should enter by the main door, Door 11. You should inform the receptionist of the name of the case. You will be told where you should go. There are signs throughout the building indicating the routes to various courts and other facilities.

You should wait there until you are contacted by the solicitor for the party who cited you.

**4. How long will I have to wait?**

It is not possible to say how long you will require to wait before being asked to give evidence. The representative of the party who cited you will keep you advised of the situation; but you should note that you may have to stay all day. You may wish to bring a newspaper or magazine to read while you

*Status: This is the original version (as it was originally made).*

The court usually sits between 10 am and 4 pm, rising for lunch normally between 1 pm and 2 pm. There are occasions, however, when the court may sit after 4 pm or may rise later for lunch, in order, for example, to complete an important part of the evidence. You will be advised when you may go for lunch and when you must return.

**5. What facilities are available?**

The court's restaurant is open between 9.00 am and 3.00 pm, and provides light refreshments as well as lunches. You should speak to the solicitor who cited you about the arrangements for going to the restaurant. You should not go to the restaurant without telling the representative of the party who cited you. Newspapers are also available for purchase there.

There are toilets in witness rooms and other locations throughout the building. If there is not a toilet in your immediate vicinity, a security guard will direct you to the nearest one.

**6. What will happen when I am called to give evidence?**

A court officer (the macer) will call you into court when you are to give evidence. You will give evidence from a witness box near the front of the courtroom. The judge will ask you to repeat the oath. If you wish to affirm instead of taking the oath, it is a good idea to tell the macer or the solicitor for the party who has called you in advance.

You will be asked questions by the advocate representing the part who has called you as a witness. Then the advocate or advocates for the other party or parties may ask you questions. Finally, the first advocate will have an opportunity to ask you further questions.

You must answer all the questions truthfully and honestly to the best of your ability.

A witness normally gives evidence standing in the witness box. If you find it difficult to stand for a long period, you should ask if you may sit down.

**7. Who will be in court?**

The judge will be seated on the bench. The shorthand writer or stenographer will be seated between the judge and you. The clerk of court sits at a table below the judge. The advocates will be sitting facing the judge, and solicitors, parties and their representatives will be sitting behind the advocates. The Press and members of the public may also be in court. If the case is tried by a jury, there will be twelve jurors sitting in a jury box opposite you.

**8. Will I be compensated?**

You do not get paid for giving evidence. You are entitled to some payment for out-of-pocket travelling and subsistence expenses. You should keep any receipts for these expenses and give them to the representative of the party who has called you. If you lose earnings, or need to pay someone else to do your job, you can be paid some compensation, subject to certain limits. These payments are the responsibility of the party who has called you as a witness and his representative. It is *not* the responsibility of the court.

**9. If I wish to complain, how do I do so?**

There are leaflets available at the reception desk at the entrance which contain the complaints procedures in relation to the services provided by (1) court staff, (2) solicitors and (3) the legal profession generally. If you have a complaint, please bring it to the attention of the appropriate person referred to in the leaflet.



FORM 36.2—B Form of certificate of citation of witness to appear at proof or jury trial

*Status: This is the original version (as it was originally made).*

Rule 36.2(3)(a)

**FORM 36.2-B**

**Rule 36.2(3)(a)**

**Form of certificate of citation of witness to appear at proof or jury trial**

**CERTIFICATE OF CITATION OF WITNESS**

I, *(name and designation)*, certify that I cited *(name of witness)* to appear at the proof [*or jury trial*] on *(date)* by posting a citation in Form 36.2-A to him [*or her*] between *(time)* and *(time)* on *(date)* at *(name of post office)* post office in a registered envelope [*or recorded delivery envelope*] addressed as follows:– *(address)*. The post office receipt [*or certificate of posting*] is attached to this certificate.

*(Signed)*

Messenger-at-Arms  
[*or Solicitor [or Agent] for pursuer*  
[*or other party*]]  
*(address)*

FORM 36.2—CForm of certificate of citation of witness personally at proof or jury trial

*Status: This is the original version (as it was originally made).*

Rule 36.2(3)(b)

**FORM 36.2-C**

**Rule 36.2(3)(b)**

**Form of certificate of citation of witness personally at proof or jury trial**

**CERTIFICATE OF CITATION PERSONALLY**

I, *(name)*, Messenger-at-Arms, certify that, on the authority of the interlocutor of the Court of Session *(date)*, I cited *(name of witness)* to appear at the proof [*or* jury trial] on *(date)* personally by leaving the citation in Form 36.2-A with him [*or* her] at *(place)* on *(date)*.

I did this in the presence of *(name, occupation and address of witness)*.

*(Signed)*

Messenger-at-Arms  
*(Address)*

*(Signed)*

Witness

FORM 36.10—A Form of oath for witness

Rule 36.10

**FORM 36.10—A**

**Rule 36.10**

**Form of oath for witness**

I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.

FORM 36.10—B Form of affirmation for witness

Rule 36.10

**FORM 36.10—B**

**Rule 36.10**

**Form of affirmation for witness**

I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth.

FORM 37.2—A Form of jury precept

*Status: This is the original version (as it was originally made).*

Rule 37.2(3)

**FORM 37.2-A**

**Rule 37.2(3)**

**Form of jury precept**

**JURY PRECEPT**

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**THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION**

To the Sheriff Principal and Sheriffs of Lothian and Borders, and to the sheriff clerk, Edinburgh or his deposes:

YOU are hereby authorised and required in terms of the statutes relating to the summoning of jurors to attach hereto a list of thirty six names and designations of equal numbers of men and women, qualified to serve as jurors, living within the sheriff court districts of Edinburgh, Linlithgow and Haddington,

and YOU the said sheriff clerk or your depute shall cite the jurors to compear within the Parliament House at Edinburgh on the day of \_\_\_\_\_ at ten o'clock forenoon, with continuation of days, to try the matters at issue in the cause

then to be tried in the Court of Session;

And YOU the said sheriff clerk or your depute shall return the List, with a certificate under your hand of the citation of the jurors, to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh EH1 1RQ, on or before the \_\_\_\_\_ day of \_\_\_\_\_.

Assistant Clerk of Session  
(Date)

TO The SHERIFF PRINCIPAL and  
Sheriffs of Lothian and Borders

and

The SHERIFF CLERK, Edinburgh

FORM 37.2—BForm of citation of juror

*Status: This is the original version (as it was originally made).*

Rule 37.2(5)

**FORM 37.2-B****Rule 37.2(5)****Form of citation of juror**

Date: (date of posting)

To: (name and address of juror)

(name and address of pursuer) has raised an action against (name and address of defender) in the Court of Session, Edinburgh. In the action a jury trial has been fixed.

The trial will commence on (date) at (time) at the Court of Session, Parliament House, Edinburgh.

By virtue of a precept issued from the Court of Session dated (date), I hereby summon you to serve as a juror at the trial.

(Signed)

Sheriff clerk

**NOTE**

This notice summons you to serve as a juror at a civil trial in the Court of Session, Edinburgh. You must attend at the Court of Session at the time mentioned above unless you are not qualified, ineligible or disqualified for, or excused from, service. If you believe that you are not qualified, ineligible or disqualified for, or should be excused from, service you may apply in writing to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh EH1 1RQ.

**Expenses.** After attendance for service as a juror (whether you are empanelled or not) you may apply to the Cashier, Administration Unit, Court of Session, 2 Parliament Square, Edinburgh for payment of travelling and/or subsistence expenses necessarily incurred, and for compensation for loss of earnings or benefit. A certificate of loss of earnings or National Insurance Benefit and a form of claim appear below; the certificate should be completed by your employer or the local office where your benefit is paid and brought to the court when you attend for jury service (see leaflet enclosed which sets out the current scales of allowances).

Please read the important notice attached to this citation and bring this citation with you to the court.

**CERTIFICATE OF LOSS OF EARNINGS OR NATIONAL INSURANCE BENEFIT**

I certify that, for each day M.....  
is required by the court for jury service, a deduction of £..... per day (..... hours @ .....  
per hour) will be made from his/her (earnings or benefit).

Name and address of employer .....  
or of Local Office from which benefit is received .....  
.....

Date ..... Signature .....



### By public transport

### By public transport

(a) say whether rail, bus, etc. ....

(b) Daily return fare £.....

In own car, etc.

(a) Car, m/cycle, etc. .... Engine capacity .....

..... CC

(b) Daily mileage (round trip) .....

(c) Could you have travelled by public transport?

\*YES/NO

If YES indicate how much time was saved by using your own vehicle.

On the days on which the court has not provided meals for you, have you necessarily incurred expense on subsistence?

\*YES/NO

If YES, give number of hours, including travelling time you were away from your home or place of business .....  
(if you attended court on more than one day, show the number of hours for each day) .....

Will you suffer any loss of earnings as a result of your attendance for jury service? \*

**\*YES/NO**

If YES, please state

(a) your occupation .....

(b) daily or hourly rate (or equivalent) £.....

(c) number of days and half-days lost .....

Have you paid any person to act as a substitute for your  
during your attendance for jury service (e.g. at your place of  
employment, or to look after your children, etc.)? \*YES/NO

\*YES/NO

If YES, please state

(a) capacity in which paid substitute employed .....

(b) his/her daily or hourly rate £.....

(c) number of days and half-days paid substitute

employed .....

I DECLARE that to the best of my knowledge and belief the particulars in the foregoing claim are correct.

[illegible]

(Signature of Claimant)

(Signature) .....

(Date) .....

\* Delete as appropriate.

## **IMPORTANT NOTICE**

### **ATTENDANCE AS A JUROR**

You should not attend as a juror if you fall within any of the following three categories. If you come within any of these categories, please inform the Deputy Principal Clerk of Session as soon as possible.

#### **1. PERSONS NOT QUALIFIED FOR JURY SERVICE**

Persons who are not registered as parliamentary or local government electors.

Persons who are less than 18 or more than 65 years of age.

Persons who have not resided in the United Kingdom, the Channel Islands or the Isle of Man for any period of at least 5 years since attaining the age of 13 years.

#### **2. PERSONS INELIGIBLE**

(a) Lords of Appeal; Senators of the College of Justice; Sheriffs; Justices of the Peace; Stipendiary Magistrates; the Chairman or President, Vice Chairman or Vice President and the Registrar or Assistant Registrar of any tribunal; and

persons who, at any time within the 10 years immediately preceding the date at which their eligibility for jury service is being considered, have come within any description listed in this Group.

(b) Advocates and solicitors, whether or not in actual practice as such; advocates' clerks;

apprentices of, and legal trainees employed by, solicitors; officers and staff of any court if their work is wholly or mainly concerned with the day-to-day administration of the court;

persons employed as shorthand writers in any court;

Clerks of the Peace and their deputies;

Inspectors of Constabulary appointed by Her Majesty;

assistant inspectors of constabulary appointed by the Secretary of State;

constables of any police force (including constables engaged on central service within the meaning of section 38 of the Police (Scotland) Act 1967);

constables of any constabulary maintained under statute;

persons employed in any capacity by virtue of which they have the powers and privileges of police constables;

special constables;

police cadets;

persons employed under section 9 of the Police (Scotland) Act 1967 for the assistance of the constables of a police force;

officers of, and members of visiting committees for, prisons, remand centres, detention centres, borstal institutions and young offenders institutions;

procurators fiscal within the meaning of section 462(1) of the Criminal Procedure (Scotland) Act 1975, and persons employed as clerks and assistants to such procurators fiscal;

messengers at arms and sheriff officers;

members of children's panels;

reporters appointed under section 36 of the Social Work (Scotland) Act 1968 and staffs;

directors of social work appointed under section 3 of the Social Work (Scotland) Act 1968 and persons employed to assist such directors in the performance of such of their functions as relate to probation schemes within the meaning of section 27 of that Act;

members of the Parole Board for Scotland; and

persons who, at any time within the immediately preceding 5 years, have come within any description listed above in this Group.

(c) Persons who are receiving medical treatment for mental disorder and are, for the purposes of that treatment, resident in a hospital; or attend on more than one day of each week to receive that treatment;

persons incapable by reason of mental disorder of adequately managing in administering their property and affairs and for whom a curator *bonis* has accordingly been appointed;

persons for the time being in guardianship under section 25 of the Mental Health (Scotland) Act 1960.

### **3. PERSONS DISQUALIFIED**

- (a) Persons who have at any time been sentenced in the United Kingdom, the Channel Islands or the Isle of Man—
  - (i) to imprisonment for life or for a term of 5 years or more; or
  - (ii) to be detained during the pleasure of Her Majesty, the Secretary of State or the Governor of Northern Ireland.
- (b) Persons who have at any time in the United Kingdom, the Channel Islands or the Isle of Man—
  - (i) served any part of a sentence of imprisonment, detention or youth custody being a sentence for a term of 3 months or more; or
  - (ii) been detained in a borstal institution;and who are not rehabilitated persons for the purposes of the Rehabilitation of Offenders Act 1974.

### **4. PERSONS EXCUSABLE AS OF RIGHT**

If you come within this category, you are entitled to be excused from jury service as of right *on request*. If you wish to be excused from jury service on this occasion, please apply in writing as soon as possible to the Deputy Principal Clerk of Session.

Members and officers of the House of Lords or House of Commons;  
representatives to the Assembly of the European Communities;  
full-time serving members of any of Her Majesty's naval, military or air forces, Queen Alexandra's Royal Naval Nursing Service or any Voluntary Aid Detachment serving with the Royal Navy;  
professionally registered, enrolled, practising or certified medical practitioners, dentists, nurses, midwives, pharmaceutical chemists, veterinary surgeons and practitioners;  
persons in holy orders, regular ministers of any denomination, and vowed members of any religious order living in a monastery, convent or religious community;  
persons who have attended for jury service within the last five years and persons who have been excused by direction of the court from jury service for a period which has not yet expired.

### **5. PERSONS EXCUSABLE FOR OTHER GOOD REASON**

Aside from the above, there may be other reasons why you feel you should be excused. For instance, you may suffer from a medical condition or ailment which would make it difficult for you to perform service as a juror adequately (e.g. if you are hard of hearing or have poor eye sight). Alternatively, you may have important personal or business commitments, or holiday arrangements which it would cause abnormal inconvenience, difficulty or expense to cancel. In any of these situations, you should inform the Deputy Principal Clerk of Session of your circumstances at the earliest opportunity, and the court will consider your request to be excused. There may be circumstances, however, where it is not possible for the court to excuse you and you will have to attend. If you are not excused and fail to attend court, you are liable to be fined.

*Status: This is the original version (as it was originally made).*

FORM 37.6–A Form of oath for jurors

Rule 37.6(1)

**FORM 37.6–A**

**Rule 37.6(1)**

**Form of oath for jurors**

The jurors shall raise their right hands and the clerk of court shall ask them:–

“Do you swear by Almighty God that you will well and truly try the issue and give a true verdict according to the evidence?”

The jurors shall reply:

“I do”.

FORM 37.6–B Form of affirmation for jurors

Rule 37.6(2)

**FORM 37.6–B**

**Rule 37.6(2)**

**Form of affirmation for jurors**

The juror shall repeat after the clerk of court:–

“I solemnly, sincerely and truly declare and affirm that I will well and truly try the issue and give a true verdict according to the evidence”.

FORM 38.6 Form of reclaiming motion to be written on Form 23.2

Rule 38.6(1)

**FORM 38.6**

**Rule 38.6(1)**

**Form of reclaiming motion to be written on Form 23.2**

On behalf of the pursuer [*or as the case may be*], for review by the Inner House of the interlocutor of (*date*) of the Lord Ordinary.

**Status:** This is the original version (as it was originally made).

FORM 40.2 Form of application for leave to appeal

**FORM 40.2**  
**Form of application for leave to appeal**

Rule 40.2(2) and 41.2(3)  
**Rule 40.2(2) and 41.2(3)**

**IN THE COURT OF SESSION**  
**APPLICATION**

**for**

**LEAVE TO APPEAL**

*under (specify provision of enactment under which  
application is made)*

**by**

*[A.B.] (designation and address)*

**Applicant**

**against**

**Decision of [or Refusal of leave to appeal]**

*(name of court or tribunal)*

1. That on *(date)* the *(name of court or tribunal)* refused the application of the applicant for leave to appeal to the Court of Session against its decision of *(date)* refusing *[or decided]* *(briefly describe decision)*. A copy of the decision of the *(name of court or tribunal)* *[and of the decision refusing leave to appeal]* is *[or are]* produced with this application.
2. That the reasons given by the *(name of court or tribunal)* for refusing leave to appeal are *(specify)* *[or are set out in the copy of its decision produced with this application]*.
3. That the reasons given by the *(name of court or tribunal)* for its decision *(date)* against which leave to appeal is sought are *(specify)* *[or are set out in the copy of the decision produced with this application]*.
4. That the grounds on which the applicant seeks leave to appeal *[against the refusal of leave to appeal]* to the Court of Session are as follows:— *(set out the grounds in numbered sub-paragraphs)*.
5. That the grounds on which the applicant seeks to appeal against the decision of the *(name of court or tribunal)* of *(date)* are as follows:— *(set out the grounds in numbered sub-paragraphs)*.
6. That this application is made under *(specify provision of enactment)* and rule 40.2(2) *[or 41.2(3)]* of the Rules of the Court of Session 1994.

**IN RESPECT WHEREOF**

*(Signed by counsel or other person  
having a right of audience)*

**Status:** This is the original version (as it was originally made).

FORM 40.4 Form of marking appeal from inferior court



Rule 40.4(2)(a)

**FORM 40.4**

**Rule 40.4(2)(a)**

**Form of marking appeal from inferior court**

The pursuer [or defender *or as the case may be*] appeals to the Court of Session.

(Signed)

Pursuer [*or as the case may be*]  
[or Solicitor [or Agent] for pursuer  
[*or as the case may be*]], Appellant

**Status:** *This is the original version (as it was originally made).*

FORM 40.9 Form of certification by Deputy Principal Clerk on retransmitting abandoned appeal

Rule 40.9(5)(a)

**FORM 40.9**

**Rule 40.9(5)(a)**

**Form of certification by Deputy Principal Clerk on retransmitting abandoned appeal**

(Date). Retransmitted in respect of the abandonment of the appeal.

(Signed)

Deputy Principal Clerk of Session

**Status:** *This is the original version (as it was originally made).*

FORM 41.9 Form of case in appeal under statute to the Court of Session

Rule 41.9(1)

**FORM 41.9**

**Rule 41.9(1)**

**Form of case in appeal under statute to the Court of Session**

**CASE**

for

**OPINION OF THE COURT OF SESSION**

under

*(State provision in enactment under which appeal is made)*

appeal by

[A.B.] *(designation and address)*

Appellant

against

[C.D.] *(designation and address)*

Respondent

I [or We] found the following facts admitted or proved:—

*(Set out in numbered paragraphs the facts admitted or proved)*

**NOTE**

*(Set out the basis on which the tribunal found the facts admitted or proved and the reasoning of the decision appealed against)*

The question(s) of law for the opinion of the court is [or are]:—

*(Set out the questions in numbered paragraphs)*

This case stated by [me]

*(Signed)*

*(Name)*

**APPENDIX**

*(Here append any documents referred to in the case necessary for the understanding of the case.)*

**Status:** *This is the original version (as it was originally made).*

FORM 41.14 Form of certification by Deputy Principal Clerk on retransmitting abandoned appeal

Rule 41.14(2)

**FORM 41.14**

**Rule 41.14(2)**

**Form of certification by Deputy Principal Clerk on retransmitting abandoned appeal**

(Date). Retransmitted in respect of the abandonment of the appeal.

(Signed)

Deputy Principal Clerk of Session

**Status:** *This is the original version (as it was originally made).*

FORM 41.19 Form of appeal in appeal under statute to the Court of Session



Rule 41.19(1)

**FORM 41.19**

**Rule 41.19(1)**

**Form of appeal in appeal under statute to the Court of Session**

**APPEAL**

to

**THE COURT OF SESSION**

under

*(State provision in enactment under which appeal is made)*

by

[A.B.] *(designation and address)*

Appellant

against

A decision [*or as the case may be*] of *(name of tribunal)*  
dated *(date)* communicated to the appellant on *(date)*

The decision [*or as the case may be*] of *(name of tribunal)* dated *(date)* is in the following terms [*or where a lengthy or reasoned decision is appeal against, is appended to this appeal*].

The appellant appeals against the foregoing decision [*or as the case may be*] on the following grounds.

;

**GROUND(S) OF APPEAL**

*(State the grounds of appeal in numbered paragraphs)*

*(Signed)*

Appellant  
[*or Solicitor* [*or Agent*] for appellant]

**APPENDIX**

*(Here set out lengthy or reasoned decision appealed against)*

**Status:** This is the original version (as it was originally made).

FORM 42.7 Form of notice to client intimating diet of taxation of solicitors' account

Rule 42.7(5)(c)

**FORM 42.7**

**Rule 42.7(5)(c)**

**Form of notice to client intimating diet of taxation of solicitors' account**

To: (name and address)

Date: (date of posting)

(Name of solicitors), Applicant v. [C.D.], respondent

Cause reference number:

1. We enclose a copy of the solicitors' account in respect of which we seek payment.
2. The court has, in terms of the enclosed interlocutor, remitted the account to the Auditor of the Court of Session for taxation (assessment).
3. The taxation hearing will take place at the office of the Auditor of the Court of Session, Parliament House, 2 Parliament Square, Edinburgh on (date and time).
4. If you wish to object to any part of the account you must appear or to be represented at the taxation hearing.
5. You will lose any right to object to the account if you do not appear or are not represented at the taxation hearing.

(Signed)

Solicitor  
(Address)

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other local advice agency or adviser immediately.**

**Status:** *This is the original version (as it was originally made).*

FORM 43.3 Form of notice of intimation to connected person in an action for damages

Rule 43.3(2)

**FORM 43.3**

**Rule 43.3(2)**

**Form of notice of intimation to connected person in an action for damages**

Date: (date of posting or other method of intimation)

To: (name and address of connected person)

**TAKE NOTICE**

(Names and addresses of all pursuers) have raised an action against (names and addresses of all defenders) in the Court of Session, Edinburgh. The action relates to the death of (name and last address of deceased) [or the personal injuries from which (name and last address of deceased) died]. You are believed to have a right to sue arising from his [or her] death. If this is the case, you are entitled to be added as an additional pursuer in the action. A copy of the summons in the action is attached.

You may apply to the court to be added as a pursuer after the date of intimation to you of the summons [or if the warrant for intimation is executed at the same time as citation of the defender, within 7 days after the date on which the summons calls in court. The summons may not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

If you make such an application you must give notice of your application to all the parties to the action.

If you do not apply to be added as an additional pursuer and subsequently bring a separate action, under rule 43.7 of the Rules of the Court of Session 1994 you may not be awarded the expenses of that action in the event of your being successful.

[It is proposed to apply to the court for authority to dispense with intimation to the person(s) mentioned in article (number of article) of the condescendence attached to the summons. The whereabouts of such person(s) are not known. If you know of that person [or any of those persons], you should inform the Deputy Principal Clerk of Session, Court of Session, Parliament Square, Edinburgh EH1 1RQ (Telephone: 031-225 2595)].

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer(s)]  
(Address)

*Status: This is the original version (as it was originally made).*

FORM 43.12 Form of conclusion for application for provisional damages

Rule 43.12(a)

**FORM 43.12**

**Rule 43.12(a)**

**Form of conclusion for application for provisional damages**

For payment to the pursuer by the defender of the sum of (*amount in words and figures*) as provisional damages.

FORM 43.13–A Form of conclusion for application for an award of further damages

Rule 43.13(1)(a)

**FORM 43.13–A**

**Rule 43.13(1)(a)**

**Form of conclusion for application for an award of further damages**

For payment to the pursuer by the defender of the sum of (*amount in words and figures*) as further damages.

FORM 43.13–B Form of notice of application for further damages

Rule 43.13(3)

**FORM 43.13-B**

**Rule 43.13(3)**

**Form of notice of application for further damages**

Date: *(date of posting or other method of service)*

To: *(name and address of person on whom served)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, raised an action against *(defender's name and address)*, defender, in the Court of Session.

In the action, [Lord *(name)* in] the Court of Session on *(date)* made an award of provisional damages in favour of the pursuer against you [*or (party's name)*]. [The court specified that the pursuer may apply for an award of further damages at any time before *(date)*]. The pursuer has applied by minute for an award of further damages against you [*or (party's name)*]. A copy of the minute is [and the summons in the action are] attached. You may lodge answers to the minute within [21] days after the date of service on you of the minute at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

*(Signed)*

Messenger-at-Arms  
[*or Solicitor [or Agent] for pursuer*]  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 43.18 Form of action in an action for reparation (optional procedure)



Rule 43.18(2)

**FORM 43.18**

**Rule 43.18(2)**

**Form of action in an action for reparation (optional procedure)**

**IN THE COURT OF SESSION**

**SUMMONS**

(Action for Reparation (Optional Procedure))

[A.B.] (*designation of address*), Pursuer

against

[C.D.] (*designation and address*), Defender

[*Address, Charge and warrants as in Form 13.2-A*]

[*Back of first page*]

**CONCLUSIONS**

FIRST. For payment by the defender to the pursuer of the sum of (£ ) STERLING, or such other greater or smaller sum as to the court shall seem proper, with interest, at the rate of interest in rule 7.7 of the Rules of the Court of Session 1994 applicable at the date of decree [*or as the case may be*], from the date of decree to follow hereon until payment.

SECOND. For the expenses of the action.

[*Next page*]

**CONDESCENDENCE**

I. The pursuer is (*state date of birth; in an action for personal injuries, state occupation and relation to defender; or, in an action arising out of the death of a relative, state relation to the deceased*). The defender is (*state occupation*).

II. (*State, in accordance with R.C.S. 1994, r. 13.2(4), the ground of jurisdiction and, where relevant, the domicile of the defender, whether there is an agreement prorogating the jurisdiction of the court and whether there are proceedings involving the same cause of action in subsistence between the parties*).

III. In the case of an action arising out of the death of a relative. The deceased was (*state dates of birth, marriage and death, occupation and relation to defender*).

IV. (*In numbered articles, each new part of the averments in a separate article, state briefly the facts relied on as causing the accident or death*).

V. In the case of fault at common law. The accident [*or death of the deceased*] was caused by the fault and negligence of the defender at common law. The defender was in breach of his duty to take reasonable care for the safety of the pursuer [*or the deceased or as may be (no other specification of particular duties or breaches is normally required)*].

VI. In the case of breach of statutory duty. Further and in any event the [*or The*] accident [*or death of the deceased*] was caused by the breach by the defender of a statutory duty. The defender was in breach of the duty imposed on him by (*state provision of enactment; no other specification of the duty or breach is normally required*).

VII. As a result of the accident [*or the death of the deceased*] the pursuer suffered loss, injury and damage. (*State briefly, in an action for personal injuries, the injuries sustained and consequent damage suffered, loss of past and/or future earnings, any other relevant loss and whether credit is to be given for any National Insurance benefits received; or, in an action for death of a relative, the loss of society, loss of support and earnings of the deceased; and specify every medical practitioner from whom, and hospital and other institution, in which, the pursuer or the deceased received treatment in respect of the injuries or disease to which the action relates*).

*Status: This is the original version (as it was originally made).*

[VIII]. The defender has been called upon to make reparation to the pursuer but delays or refuses to do so.

**PLEAS-IN-LAW**

1. The pursuer having suffered loss, injury and damage through the fault and negligence [and] [*or* breach of statutory duty] of the defender is entitled to reparation therefor from him.
2. The sum sued for being a resonable estimate of the loss, injury and damage sustained by the pursuer, decree therefor should be pronounced in that sum.

IN RESPECT WHEREOF

(*Signed*)

Solicitor [*or* Agent] for pursuer  
(*Address*)

FORM 44.2—A Form of notice to debtor under the Debtors (Scotland) Act 1987 about time to pay directions

Status: This is the original version (as it was originally made).

Rule 44.2(1)

**FORM 44.2-A**

**Rule 44.2(1)**

**Form of notice to debtor under the Debtors (Scotland) Act 1987 about time to pay directions**

*(Cause reference number)*

**IN THE COURT OF SESSION**

*in causa*

*[A.B.] (designation and address)*

Pursuer

against

*[C.D.] (designation and address)*

Defender

To: *(name of defender to whom notice is directed)*

**YOUR RIGHTS UNDER THE DEBTORS (SCOTLAND) ACT 1987**

The purpose of this notice is to advise you of your rights under the Debtors (Scotland) Act 1987.

The Act gives you a right to apply to the court for a "time to pay direction" directing that any sum of money you are ordered to pay to the pursuer (which may include interest and court expenses) shall be by instalments or deferred lump sum (that is by one total payment by a specified date).

In addition, when making a time to pay direction the court may recall or restrict an arrestment made in connection with the action or debt (e.g. your bank account may have been arrested freezing the money in it).

If you admit that the sum claimed by the pursuer is due but you wish to apply for a time to pay direction you should read on. If you do not admit the sum claimed by the pursuer is due, DO NOT complete the attached application but consult a solicitor IMMEDIATELY about defending the action.

**HOW TO APPLY FOR A TIME TO PAY DIRECTION WHEN CLAIM ADMITTED AND YOU DO NOT WANT TO DEFEND THE ACTION**

1. Attached to this notice is an application for a time to pay direction and for recall or restriction of an arrestment, if appropriate. If you want to make an application you should complete and lodge the completed application with the court on or before the date given below. No court fee is payable when lodging the application.
2. Before completing the application please read carefully the notes attached to this notice. In the event of difficulty you may contact the General Department in the Office of Court of the Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ (Telephone 031-225 2595).
3. The date by which you must return the application form is *(insert date)*.

**HOW TO COMPLETE THE APPLICATION FOR A TIME TO PAY DIRECTION**

PLEASE WRITE IN INK USING BLOCK CAPITALS

PART A of the application will have been completed<sup>480</sup> in advance by the pursuer and gives details of the pursuer and you as the defender.

PART B. If you wish to offer instalments enter the amount and tick the appropriate box at B3(1).

If you wish to offer to pay the full sum due in one deferred payment enter the date at which you offer to pay at B3(2).

**PART C.** You should give full details of your financial position in the appropriate boxes.

**PART D.** If you wish the court, when making the time to pay direction, to recall or restrict an arrestment made in connection with the action then enter the appropriate details about what has been arrested and the place and date of the arrestment at D5, and attach the Schedule of Arrestment (i.e. the formal document which told you of the arrestment of your assets) or a copy of it. You should then complete D6 by deleting the words which do not apply.

Sign the application where indicated and send to the court. Retain the copy summons and this notice as you may need them at a later stage. You should ensure that your application arrives at the court before the date specified in paragraph 3 of the application for a time to pay direction.

#### **WHAT WILL HAPPEN NEXT**

If the pursuer does not accept your offer a hearing will be fixed and the pursuer will advise you in writing of the date and time.

If the pursuer accepts your offer, then a copy of the court order for payment (called an extract decree) will be served on you by the pursuer advising when payment of instalments should commence or by what date payment is to be made and to whom payments should be sent.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

**Status:** *This is the original version (as it was originally made).*

FORM 44.2–B Form of application for a time to pay direction

Rules 44.2(1), 44.3(1) and 44.4(1)

**FORM 44.2-B**

**Rules 44.2(1), 44.3(1)  
and 44.4(1)**

**Form of application for a time to pay direction**

(Cause reference number)

IN THE COURT OF SESSION

**APPLICATION FOR A TIME TO PAY DIRECTION**

Under the Debtors (Scotland) Act 1987

by

**PART A\***

.....  
.....  
.....  
..... Defender

\* This section must be  
completed by pursuer  
before service

In an action raised by  
.....  
.....  
.....  
..... Pursuer(s)

This application must be sent to the court on or before

**PART B**

1. I am the defender in the action brought by the above named pursuer[s].  
2. I admit the claim and apply to the court for a time to pay direction.  
3. I offer (1) To pay by instalment of £.....

\* Tick one box only.  
Delete whichever is

EACH ..... WEEK ☐ \*FORTNIGHT ☐ \*MONTH ☐

or (2) To pay the sum ordered in one payment by

(Insert date) ..... 19.....

**PART C**

\*Tick one box only

4. My financial position is as follows:-

My outgoings are:

WEEKLY\* FORTNIGHTLY\* MONTHLY\*

☐☐☐

Rent/House purchase loan

£

Heating

£

Food

£

HP, etc

£

Other

£

Total

£

My income is:

WEEKLY\* FORTNIGHTLY\* MONTHLY\*

☐☐☐

Wages/Pensions

£

Social Security

£

Other (specify)

£

Total

£

*Status: This is the original version (as it was originally made).*

Here list all capital, if any (e.g. value of house, amount in bank/building society accounts, share or other investments):

Here list any outstanding debts:

.

**PART D**

\* Delete if not applicable

5. \*I seek to have recalled or restricted an arrestment of which the details are as follows (Please state, and attach the Schedule of Arrestment or a copy):-

\* Delete if not applicable.

State the restriction wanted

6. This application is made under the Debtors (Scotland) Act 1987.  
Therefore I ask the court:  
(a) to make a time to pay direction; and  
\*(b) to recall the above arrestment; or  
\*(c) to restrict the above arrestment:-  
(state the restriction sought)

Signed.....

Defender

Date ..... 19.....

This application should be sent to the Deputy Principal Clerk of Session, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ.



FORM 44.3 Form of notice of application for decree and objection to application for time to pay  
direction made by defender

*Status: This is the original version (as it was originally made).*

Rule 44.3(4)

**FORM 44.3****Rule 44.3(4)**

**Form of notice of application for decree and objection to application for time to pay  
direction made by defender**

*(Cause reference number)*

IN THE COURT OF SESSION

SUMMONS

[A.B.] *(designation and address)*

Pursuer

against

[C.D.] *(designation and address)*

Defender

To: *(name of defender to whom notice is directed)*

THIS NOTICE tells you that the pursuer—

- (a) intends to apply for decree against you; and
- (b) objects to all or part of your application for a time to pay direction.

I, \_\_\_\_\_, the solicitor for the pursuer give you notice:—

(1) That on *(date of proposed enrolment of motion)* I shall enrol the following motion in the above action against you and that this will come before the court on *(date and time)*:—

*(insert terms of motion)*

(2) That the pursuer objects to the application which you have made for—  
a time to pay direction,\*

recall or restriction of an arrestment made against you,\*  
and will ask the court not to grant your application for the following reasons—

*(set out reasons in numbered paragraphs)*

You have the right to attend the hearing on *(date motion will come before the court)* and make any further points in answer to the pursuer's objections.

If you do not wish to attend court, you may reply to the pursuer's objections to your application in a letter addressed to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh EH1 1RQ. This letter must reach him by *(insert date before the day on which the motion will come before the court)*. The court will consider this letter at the hearing of the pursuer's motion and objection.

If you do not attend court and you wish to know the outcome of the hearing before you receive formal notice of the decree you should contact the General Department of the Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ (Telephone: 031-225 2595).

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

486 (Signed)

Solicitor for pursuer

Date

19

\* Delete whichever is not applicable.

FORM 46.6Form of preliminary act in ship collision action

*Status: This is the original version (as it was originally made).*

Rule 46.6(5) and (6)

**FORM 46.6**

**Rule 46.6(5) and (6)**

**Form of preliminary act in ship collision action**

In the action in which

is Pursuer

and

is Defender

Preliminary Act

for

Pursuer [or Defender]

(1) *(State the names of the vessels which came into collision, their ports of registry, and the names of their masters.)*

(2) *(State the date and time of the collision.)*

(3) *(State the place of the collision.)*

(4) *(State the direction and force of the wind.)*

(5) *(State the state of the weather.)*

(6) *(State the state, direction and force of the tidal or other current.)*

(7) *(State the magnetic course steered and speed through the water of the vessel when the other vessel was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier.)*

(8) *(State the lights (if any) carried by the vessel.)*

(9) *(State the distance and bearing of the other vessel if and when her echo was first observed by radar.)*

(10) *(State the distance, bearing and approximate heading of the other vessel when first seen.)*

(11) *(State what light or combination of lights (if any) of the other vessel when first seen.)*

(12) *(State what other lights or combinations of lights (if any) of the other vessel were subsequently seen, before the collision, and when.)*

(13) *(State what alterations (if any) were made to the course and speed of the vessel after the earlier of the two times referred to in paragraph (7) up to the time of the collision, and when, and what measures (if any), other than alterations of course and speed, were taken to avoid the collision and when.)*

(14) *(State the parts of each vessel which first came into contact and the approximate angle between the two vessels at the moment of contact.)*

(15) *(State what sound signals (if any) were given, and when.)*

(16) *(State what sound signals (if any) were heard from the other vessel and when.)*

FORM 46.9 Intimation to the International Oil Pollution Compensation Fund

*Status: This is the original version (as it was originally made).*

Rule 46.9(4)

**FORM 46.9**

**Rule 46.9(4)**

**Intimation to the International Oil Pollution Compensation Fund**

Date: (date of posting or other method of intimation)  
To: The International Oil Pollution Compensation Fund  
(address)

**TAKE NOTICE**

(Pursuer's name and address), pursuer, has brought an action against (defender's name and address), defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. In the action the court may make an order which is binding on you.

You may apply to the court by minute for leave to lodge defences to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within 21 days after the date of intimation to you of the summons [or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after the date.

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
(Address)

FORM 49.8—A Form of notice of intimation to children and next of kin in family action where address of defender is not known

*Status: This is the original version (as it was originally made).*

Rule 49.8(3)(a)

**FORM 49.8-A**

**Rule 49.8(3)(a)**

**Form of notice of intimation to children and next of kin in family action where address of defender  
is not known**

Date: (date of posting or other method of intimation)

To: (name and address as in warrant for intimation)

**TAKE NOTICE**

(Pursuer's name and address), pursuer, has brought an action against (name of defender), defender, your father [or mother, or brother or other relative as the case may be] in the Court of Session, Edinburgh. A copy of the summons in the action is attached. The address of (name of defender) is not known. If you know of his [or her] present address you should immediately inform the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh EH1 1RQ (Telephone: 031-225 2595).

In any event you may apply to the court by minute for leave to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons [or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
(Address)



FORM 49.8—B Form of notice of intimation to person with whom defender is alleged to have committed adultery

*Status: This is the original version (as it was originally made).*

Rule 49.8(3)(b)

**FORM 49.8-B**

**Rule 49.8(3)(b)**

**Form of notice of intimation to person with whom defender is alleged to have committed adultery**

Date: *(date of posting or other method of intimation)*

To: *(name and address as in warrant for intimation)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. It contains an allegation that the defender has committed adultery with you.

You may apply to the court by minute for leave to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons *[or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court]*. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
*(Address)*

FORM 49.8—Form of notice of intimation to relatives and curator bonis in family action where defender suffers from mental disorder

*Status: This is the original version (as it was originally made).*

Rule 49.8(3)(c)

**FORM 49.8-C**

**Rule 49.8(3)(c)**

**Form of notice of intimation to relatives and curator *bonis* in family action where defender suffers from mental disorder**

Date: (date of posting or other method of intimation)

To: (name and address as in warrant)

**TAKE NOTICE**

(Pursuer's name and address), pursuer, has brought an action against (defender's name and address), defender, your father [or mother, or brother or other relative as the case may be or ward] in the Court of Session, Edinburgh. A copy of the summons in the action is attached.

You may apply to the court by minute for leave to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons [or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
(Address)

FORM 49.8—D Form of notice of intimation to additional spouse of either party in proceedings relating to polygamous marriage

*Status: This is the original version (as it was originally made).*

Rule 49.8(3)(d)

**FORM 49.8-D**

**Rule 49.8(3)(d)**

**Form of notice of intimation to additional spouse of either party in proceedings relating to polygamous marriage**

Date: *(date of posting or other method of intimation)*

To: *(name and address as in warrant for intimation)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. *(Party's name)* is believed to be your spouse.

You may apply to the court by minute for leave to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons *[or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court]*. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
*(Address)*

FORM 49.8—EForm of notice to local authority or other person who may be liable to maintain a child

*Status: This is the original version (as it was originally made).*

Rule 49.8(3)(e)

**FORM 49.8-E**

**Rule 49.8(3)(e)**

**Form of notice to local authority or other person who may be liable to maintain a child**

**Date:** *(date of posting or other method of intimation)*

**To:** *(name and address as in warrant for intimation)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. The pursuer seeks an order for parental rights in respect of *(child's name and address)*, a child in your care *[or liable to be maintained by you]*. A copy of the summons in the action is attached.

You may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons *[or if the warrant for intimation is executed before calling of the summons]*, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

*(Signed)*

Messenger-at-Arms  
*[or Solicitor [or Agent] for pursuer]*  
*(Address)*



FORM 49.8--Form of notice of intimation to person having *de facto* care of a child

*Status: This is the original version (as it was originally made).*

Rule 49.8(3)(f)

**FORM 49.8-F**

**Rule 49.8(3)(f)**

**Form of notice of intimation to person having *de facto* care of a child**

Date: (date of posting or other method of intimation)

To: (name and address as in warrant for intimation)

**TAKE NOTICE**

(Pursuer's name and address), pursuer, has brought an action against (defender's name and address), defender, in the Court of Session, Edinburgh. The pursuer seeks and order for parental rights in respect of (child's name and address), a child at present in your care. A copy of the summons in the action is attached.

You may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons [or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
(Address)

FORM 49.8–G Form of notice of intimation to parent or guardian in family action for custody of a child

Rules 49.8(3)(g) and 49.20(1)(a)(i)

**FORM 49.8-G****Rules 49.8(3)(g) and  
49.20(1)(a)(i)****Form of notice of intimation to parent or guardian in family action for custody of a child**

Date: (date of posting or other method of intimation)

To: (name and address as in warrant for intimation)

**TAKE NOTICE**

(Pursuer's name and address), pursuer, has brought an action against (defender's name and address), defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached.

1. The pursuer is seeking custody of the child (name and address of child).

\*2. The pursuer, being a relative [or step-parent] of the child, has the consent of [or seeks the consent of] (insert name of parent or guardian) who is a parent [or guardian] of the child, and has had care and possession of the child for three months preceding the lodging of the summons for signeting on (insert date).

OR

\*The pursuer has the consent of [or seeks the consent of] (insert name of parent or guardian), who is a parent [or guardian] of the child and has care and possession of the child, for a period or periods before lodging of the summons for signeting which amount to at least twelve months including the three months preceding the lodging of the summons for signeting on (insert date).

OR

\*The pursuer has had care and possession of the child for a period before the presenting of the summons for signeting which amount to at least three years, including the three years preceding the lodging of the summons on (insert date).

OR

\*The pursuer intends to establish the following as showing cause why the pursuer should be granted custody of the child (State briefly the ground on which custody is sought or refer to the relevant article of condescendence in the summons).

\* Delete where not applicable.

†3. If you wish to consent to the pursuer being granted custody to the child in the event of the court deciding that that was appropriate, you should complete Form 49.20.

OR

†(Insert name of parent or guardian) has consented to the pursuer being granted custody of the child in the event of the court deciding that that was appropriate.

† Both alternative paragraphs should be struck out if the pursuer is a parent or guardian.

[Insert if appropriate

The summons states that the child has been in the care and possession of the pursuer for a period or periods which amount to three years and accordingly, if that is correct, it is an offence to remove the child from the custody of the pursuer against the will of the pursuer except with the authority of the court or under the authority of any enactment<sup>504</sup> on the lawful arrest of the child.]

If you wish to oppose this action, and oppose the granting of custody of the child to the pursuer, you may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons [or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier

*Status: This is the original version (as it was originally made).*

stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 49.8—Form of notice of intimation to local authority in family action by non-parent for custody of a child

Rules 49.8(3)(h), 49.8(4) and 49.11(2)

**FORM 49.8-H**

**Rules 49.8(3)(h),  
49.8(4) and 49.11(2)**

**Form of notice of intimation to local authority in family action by non-parent for custody of a child**

**Date:** *(date of posting or other method of intimation)*

**To:** *(name and address as in warrant for intimation)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. The pursuer is seeking custody of the child *(name and address of child)*.

You are required under section 49(2) of the Children Act 1975 to submit to the court a report on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child without delay. On completion of the report you must send it, with a copy for each party, to the Deputy Principal Clerk of Session, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ.

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
*(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 49.8—Form of notice of intimation to a child of family action which may affect him



Rule 49.8(3)(i)

**FORM 49.8-I**

**Rule 49.8(3)(i)**

**Form of notice of intimation to a child of family action which may affect him**

**Date:** *(date of posting or other method of intimation)*

**To:** *(name and address as in warrant for intimation)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons *[or as the case may be]* in the action is attached. The action affects you.

**IF YOU DO NOT UNDERSTAND THIS NOTICE OR WHAT YOU ARE REQUIRED TO DO, YOU MAY CONSULT THE SCOTTISH CHILD LAW CENTRE ON ITS FREE ADVICE TELEPHONE LINE, NUMBER 0800 317500.**

You may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons *[or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court]*. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you may also consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

*(Signed)*

Messenger-at-Arms  
*[or Solicitor [or Agent] for pursuer]*  
*(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 49.8-JForm of notice of intimation to person whose consent is necessary or has an interest as heritable creditor in the transfer of property

Rule 49.8(3)(j)

**FORM 49.8-J**

**Rule 49.8(3)(j)**

**Form of notice of intimation to person whose consent is necessary or has an interest as heritable creditor in the transfer of property**

**Date:** *(date of posting or other method of intimation)*

**To:** *(name and address as in warrant for intimation)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. The pursuer has applied for an order under section 8 of the Family Law (Scotland) Act 1985 to have the ownership of the property at *(address of property)* transferred to his *[or her]* name. *[Your consent is necessary for the proposed transfer].*

You may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within 21 days after the date of intimation to you of the summons *[or if the warrant for intimation is executed before calling of the summons]*, within 7 days after the summons calls in court. The summons will not call in court earlier than 21 days after the date of intimation to you of the summons. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

*(Signed)*

Messenger-at-Arms  
*[or Solicitor [or Agent] for pursuer]*  
*(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 49.8–K Form of notice of intimation to third party transferee or other person having an interest in the transfer of property

Rule 49.8(3)(k)

**FORM 49.8-K**

**Rule 49.8(3)(k)**

**Form of notice of intimation to third party transferee or other person having an interest in the transfer of property**

**Date:** *(date of posting or other method of intimation)*

**To:** *(name and address as in warrant for intimation)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. The pursuer has applied for an order under section 18 of the Family Law (Scotland) Act 1985 affecting your property at *(address)*.

You may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons *[or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court]*. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

*(Signed)*

Messenger-at-Arms  
*[or Solicitor [or Agent] for pursuer]*  
*(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 49.8—Form of notice of intimation to third party or other person having an interest in an application under the Matrimonial Homes (Family Protection) (Scotland) Act 1981

Rule 49.8(3)(1)

**FORM 49.8-L**

**Rule 49.8(3)(1)**

**Form of notice of intimation to third party or other person having an interest in an application  
under the Matrimonial Homes (Family Protection) (Scotland) Act 1981**

Date: *(date of posting or other method of intimation)*

To: *(name and address as in warrant for intimation)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. In the action, the court may make an order affecting occupancy rights in property at *(address of property)* in which you have an interest.

You may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons [*or if the warrant for intimation is executed before calling of the summons*, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

*(Signed)*

Messenger-at-Arms  
[*or Solicitor [or Agent] for pursuer*]  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 49.9 Form of notice of intimation to person with whom a relevant association is alleged to have occurred



Rule 49.9(3)

**FORM 49.9**

**Rule 49.9(3)**

**Form of notice of intimation to person with whom a relevant association is alleged to have occurred**

Date: (date of posting or other method of intimation)

To: (name and address as in warrant for intimation)

**TAKE NOTICE**

(Pursuer's name and address), pursuer, has brought an action against (defender's name and address), defender, in the Court of Session, Edinburgh. A copy of the summons in the action is attached. (Defender's name) is alleged to have had a relevant association with you as mentioned in the summons.

You may apply to the court by minute to become a party to the action in order to dispute the truth of the allegations made about you. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ with [21] days after the date of intimation to you of the summons [or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
(Address)

**Status:** *This is the original version (as it was originally made).*

FORM 49.13—A Form of request for medical officer of hospital or similar institution

Rule 49.13(1)(b)

**FORM 49.13-A**

**Rule 49.13(1)(b)**

**Form of request for medical officer of hospital or similar institution**

**Date:** *(date of posting or other method of intimation)*

**To:** *(name and address)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against *(defender's name and address)*, defender, in the Court of Session, Edinburgh. A copy of the summons in the action and citation [and a notice [and form of consent] under rule 49.14(1) of the Rules of the Court of Session 1994] are attached.

Please deliver it personally to *(name of defender)* and explain the content or meaning of it to him [or her] unless you are satisfied that an explanation would be dangerous to his [or her] health. If you are so satisfied you must certify that this is the case and give your reasons on the attached certificate. Thereafter please complete the attached certificate and return it to me in the enclosed stamped addressed envelope.

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
*(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 49.13—B Form of certificate by medical officer or hospital or similar institution

Rule 49.13(1)(b)(iii) and (2)

**FORM 49.13-B**

**Rule 49.13(1)(b)(iii) and (2)**

**Form of certificate by medical officer or hospital or similar institution**

**IN THE COURT OF SESSION**

†(Cause reference number)

*in causa*

†[A.B.] (*designed and address*)

Pursuer

against

†[C.D.] (*designed and address*)

Defender

I, (*name of medical officer*), hereby certify as follows:—

1. I have received a copy summons in the action of (*pursuer's name*) against (*defender's name*). The defender is under my care at (*address*).

\*2. On (*date*) I personally delivered the copy summons to the defender and explained to him [*or her*] its contents.

\*3. I have not delivered the copy summons to the defender nor have I explained its contents. My reasons are:—

Signature .....

Name .....

Address .....

.....

.....

.....

Date .....

† To be completed by or on behalf of the pursuer.

\* Medical officer to delete as appropriate.

**Status:** *This is the original version (as it was originally made).*

FORM 49.14—A Form of notice to defender where it is stated that he consents to decree of divorce

Rule 49.14(1)(a)(i)

**FORM 49.14-A**

**Rule 49.14(1)(a)(i)**

**Form of notice to defender where it is stated that he consents to decree of divorce**

**Date:** (date of posting or other method of service)

**To:** (name and address of defender in summons)

**TAKE NOTICE**

(Pursuer's name and address), pursuer, has brought an action against you in the Court of Session, Edinburgh. The pursuer seeks divorce from you. A copy of the summons in the action is attached.

1. The summons states that you consent to a decree of divorce. If you do consent your husband [or wife] will obtain a decree of divorce if he shows that you have not cohabited with him [or her] at any time during a continuous period of two years after marriage and immediately before this action.
2. If your husband [or wife] obtains a decree of divorce, the consequences may be as follows:-
  - (a) you may lose your rights of inheritance in your wife's [or husband's] property;
  - (b) you may lose the right to any pensions which depends on the marriage continuing or on your being left as a widow (the State widow's pension will not be payable to you when your husband dies);
  - (c) apart from these consequences there may be others depending on your particular circumstances.
3. If you consent to the grant of decree of divorce, you are still entitled to apply to the court:-
  - (a) to make financial or other provision for you by making an order under the Family Law (Scotland) Act 1985;
  - (b) to make an order providing for parental rights (including custody and access) under the Law Reform (Parent and Child) (Scotland) Act 1986, maintenance, and education in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age.

In order to make such an application you must lodge defences to the action seeking any such order. If you wish to do this you should consult a solicitor.

4. If after considering the above you wish to consent to decree of divorce, you should complete and sign the attached notice of consent form, and send it to:-

The Deputy Principal Clerk of Session  
2 Parliament Square  
Edinburgh EH1 1RQ

You may do so within [21] days after the date of service on you of the summons [or if service is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

5. If after consent you wish to withdraw your consent, you must immediately inform the Deputy Principal Clerk of Session at the above address in writing. Please state the name of the court action in your letter.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

(Signed)

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Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
(Address)

**Status:** *This is the original version (as it was originally made).*

FORM 49.14—B Form of notice of consent in action of divorce under section 1(2)(d) of the Divorce (Scotland) Act 1976



Rules 49.14(1)(a)(i) and 49.19(1)

**FORM 49.14-B**

**Rules 49.14(1)(a)(i) and  
49.19(1)**

**Form of notice of consent in action of divorce under section 1(2)(d) of the Divorce  
(Scotland) Act 1976**

**NOTICE OF CONSENT TO DIVORCE**

I have received a copy of the summons in the court action raised against me by (*pursuer's name and address*).

I understand that it states that I consent to the granting of decree of divorce in this action.

I have considered the consequences of my consent.

I consent to the granting of decree of divorce in this action.

Signature .....

Name (in Block Capitals) .....

Address .....

.....

.....

.....

Date .....

Signature of Witness .....

Name (in Block Capitals) .....

Address .....

.....

.....

.....

Occupation .....

**Status:** *This is the original version (as it was originally made).*

FORM 49.14—C Form of notice to defender where it is stated that he consents to decree of separation

Rule 49.14(1)(a)(ii)

**FORM 49.14-C**

**Rule 49.14(1)(a)(ii)**

**Form of notice to defender where it is stated that he consents to decree of separation**

**Date:** *(date of posting or other method of service)*

**To:** *(name and address of defender in summons)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action against you, defender, in the Court of Session, Edinburgh. The pursuer seeks separation from you. A copy of the summons in the action is attached.

1. The summons states that you consent to the grant of a decree of separation. If you consent your husband *[or wife]* will obtain a decree of separation if he shows that you have not cohabited with him *[or her]* at any time during a continuous period of two years after marriage and immediately before this action.
2. If your husband obtains a decree of separation, the consequences may be as follows:–
  - (a) you will be obliged to live apart from your husband *[or wife]* but the marriage will continue to exist;
  - [(b) your husband will continue to have a legal obligation to support you and his children;]*
  - [(b) or (c)]* apart from the above there may be other consequences applicable to you depending on your particular circumstances.
3. If you consent to the grant of a decree of separation, you are still entitled to apply to the court:–
  - (a) for an order providing for parental rights (including custody and access) under the Law Reform (Parent and Child) (Scotland) Act 1986, maintenance, and education of any child of the marriage, or any child accepted as such, who is under 16 years of age;
  - (b) for payment of aliment by your husband *[or wife]* to you.

In order to make such an application you must lodge defences to the action seeking any such order. If you wish to do this you should consult a solicitor.

4. If after considering the above you wish to consent to decree, please complete the attached notice of consent form, and send it to:–

The Deputy Principal Clerk of Session  
2 Parliament Square  
Edinburgh EH1 1RQ

You may do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of service on you of the summons *[or if service is executed before calling of the summons, within 7 days after the summons calls in court]*. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

5. If after consent you wish to withdraw your consent, you must immediately inform the Deputy Principal Clerk of Session at the above address in writing. Please state the name of the court action in your letter.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

*(Signed)*

Messenger-at-Arms  
*[or Solicitor [or Agent] for pursuer]*  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 49.14—D Form of notice of consent in action of separation under section 1(2)(d) of the Divorce (Scotland) Act 1976

Rules 49.14(1)(a)(ii) and 49.19(1)

**FORM 49.14-D**

**Rules 49.14(1)(a)(ii) and  
49.19(1)**

**Form of notice of consent in action of separation under section 1(2)(d) of the Divorce  
(Scotland) Act 1976**

**NOTICE OF CONSENT TO SEPARATION**

I have received a copy of the summons in the court action raised against me by (*pursuer's name and address*).

I understand that it states that I consent to the granting of decree of separation in this action.

I have considered the consequences of my consent.

I consent to the granting of decree of separation in this action.

Signature .....

Name (in Block Capitals) .....

Address .....

.....  
.....  
.....

Date .....

Signature of Witness .....

Name (in Block Capitals) .....

Address .....

.....  
.....  
.....

Occupation .....

**Status:** *This is the original version (as it was originally made).*

FORM 49.14—EForm of notice to defender in an action of divorce where it is stated there has been five years non-cohabitation

Rule 49.14(1)(b)(i)

**FORM 49.14-E**

**Rule 49.14(1)(b)(i)**

**Form of notice to defender in an action of divorce where it is stated there has been  
five years non-cohabitation**

**Date:** (date of posting or other method of service)

**To:** (name and address of defender in summons)

**TAKE NOTICE**

(Pursuer's name and address), pursuer, has brought an action against you, defender, in the Court of Session, Edinburgh. The pursuer seeks divorce from you. A copy of the summons in the action is attached.

1. The summons states that you have not cohabited with the pursuer at any time during a continuous period of five years after marriage and immediately before this action. If the pursuer establishes this as a fact the pursuer will obtain a decree of divorce unless in the opinion of the court the grant of decree would result in grave financial hardship to you.
2. If the pursuer obtains a decree of divorce, the consequences may be as follows:-
  - (a) you may lose your rights of inheritance in your wife's [or husband's] property;
  - (b) you may lose the right to any pensions which depends on the marriage continuing or on your being left as a widow (the State widow's pension will not be payable to you when your husband dies);
  - (c) apart from these consequences there may be others depending upon your particular circumstances.
3. If you consent to the grant of decree of divorce, you are nevertheless entitled to apply to the court:-
  - (a) to make financial or other provision for you by making an order under the Family Law (Scotland) Act 1985;
  - (b) to make an order providing for parental rights (including custody and access) under the Law Reform (Parent and Child) (Scotland) Act 1986, maintenance, and education in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age.

In order to make such an application you must lodge defences to the action seeking any such order. If you wish to do this you should consult a solicitor.

If you lodge defences, you may do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of service on you of the summons [or if service is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
(Address)

**Status:** *This is the original version (as it was originally made).*

FORM 49.14—Form of notice to defender in an action of separation where it is stated there has been five years non-cohabitation



Rule 49.14(1)(b)(i)

**FORM 49.14-F**

**Rule 49.14(1)(b)(ii)**

**Form of notice to defender in an action of separation where it is stated there has been  
five years non-cohabitation**

**Date:** (date of posting or other method of service)

**To:** (name and address of defender in summons)

**TAKE NOTICE**

(Pursuer's name and address), pursuer, has raised an action against you defender, in the Court of Session, Edinburgh. The pursuer seeks separation from you. A copy of the summons in the action is attached.

1. The summons states that you have not cohabited with the pursuer at any time during a continuous period of five years after marriage and immediately before this action. If the pursuer establishes this as a fact and the court is satisfied that there are justified grounds for the decree, the pursuer will obtain a decree of separation unless in the opinion of the court the grant of decree would result in financial hardship to you.
2. If the pursuer obtains a decree of separation, the consequences may be as follows:–
  - (a) you may be obliged to live apart from your husband [or wife] but the marriage will continue to exist;
  - [(b) your husband will continue to have a legal obligation to support you and his children;]
  - [(b) or (c)] apart from the above there may be other consequences applicable to you depending on your particular circumstances.
3. If you consent to the granting of a decree of separation, you are still entitled to apply to the court:–
  - [(a)] for an order providing for the custody, maintenance, and education of any child of the marriage, or any child accepted as such, who is under 16 years of age;
  - [(b) for payment of aliment by your husband [or wife] to you].
4. In order to make such an application you must lodge defences to the action. If you wish to do this you should consult a solicitor.

If you lodge defences, you must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of service on you of the summons [or if service is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of service on you of the summons]. The date of service is the date stated at the top of this notice unless service has been made by post in which case the date of service is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
(Address)

**Status:** This is the original version (as it was originally made).

FORM 49.20 Form of consent of parent or guardian in family action for custody of child under section 47 of the Children Act 1975

**Rules 49.20(1)(a)(ii) and  
49.20(2)(a)**

**Status:** *This is the original version (as it was originally made).*

FORM 49.29—A Form of minute for decree in undefended family action

Rule 49.29(1)

**FORM 49.29-A**

**Rule 49.29(1)**

**Form of minute for decree in undefended family action**

*(Name of counsel)* for the pursuer having considered the evidence contained in the affidavits and the other documents as specified in the summons [*or in such restricted terms as may be appropriate*] may properly be made, moves the court accordingly.

IN RESPECT WHEREOF

*(Signature of counsel or other person having  
a right of audience)*

**SCHEDULE**

*(list of numbered documents)*

**Status:** This is the original version (as it was originally made).

FORM 49.29–B Form of official card to be completed when decree sought in undefended family action

Rule 49.29(2)(b)

**FORM 49.29-B**

Rule 49.29(2)(b)

**Form of official card to be completed when decree sought in undefended family action**

<b>C</b>	<b>UNDEFENDED FAMILY ACTION DECREE SLIP</b> (Use Block Capitals Only)	<b>FOR COURT USE ONLY</b> <b>DISPOSAL</b>
	PURSUER .....	LORD ..... DATE .....
	(Christian names or forenames and surname only)	
	v	DATE .....
	DEFENDER.....	DATE .....
	(Christian names or forenames and surname only)	
	COUNSEL .....	DATE .....
	(or other person having a right of audience)	
	SOLICITOR .....	DATE .....

**Status:** This is the original version (as it was originally made).

FORM 49.37 Form of notice of intimation to third party or local authority to whom care or supervision of a child may be given



Rule 49.37(1)(c)

**FORM 49.37**

**Rule 49.37(1)(c)**

**Form of notice of intimation to third party or local authority to whom care or supervision of a child may be given**

**Date:** *(date of posting or other method of intimation)*

**To:** *(name and address as in warrant for intimation)*

**TAKE NOTICE**

In this action by *(name and address)*, pursuer, against *(name and address)*, defender, the court is considering giving you the care of the child *(name and address)* under section 10(1) *[or placing the child (name and address) under your supervision under section 12(1)]* of the Matrimonial Proceedings (Children) Act 1958. A copy of the pleadings in the action is attached.

You may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons *[or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]*. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

*(Signed)*

Messenger-at-Arms  
*[or Solicitor [or Agent] for pursuer]*  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 49.38 Form of notice to local authority of care or supervision order under the Matrimonial Proceedings (Children) Act 1958

Rule 49.38

**FORM 49.38**

**Rule 49.38**

**Form of notice to local authority of care or supervision order under the Matrimonial Proceedings  
(Children) Act 1958**

IN THE COURT OF SESSION

*(Cause reference number)*

*in causa*

[A.B.] *(designation and address)*

Pursuer

against

[C.D.] *(designation and address)*

Defender

Date: *(insert date)*

To: The Chief Executive of *(name and address of local authority)*

**TAKE NOTICE**

That on *(date)* Lord *(name)* pronounced an interlocutor making an order under section 10(1) of the Matrimonial Proceedings (Children) Act 1958 placing the child *(name and address)* in the care of *(name of local authority)* [or section 12(1) of the Matrimonial Proceedings (Children) Act 1958 placing the child *(name and address)* under the supervision of *(name of local authority)*].

A certified copy of the interlocutor of Lord *(name)* is attached.

*(Signed)*

Deputy Principal Clerk of Session

**Status:** This is the original version (as it was originally made).

FORM 49.62—A Form of notice of intimation to third party or local authority to whom care of a child may be given

Rule 49.62(1)(c)

**FORM 49.62-A**

**Rule 49.62(1)(c)**

**Form of notice of intimation to third party or local authority to whom care of a child may be given**

**Date:** *(date of posting or other method of intimation)*

**To:** *(name and address as in warrant for intimation)*

**TAKE NOTICE**

In the action by *(name and address)*, pursuer, against *(name and address)*, defender, the court is considering giving you the care of the child *(name and address)* [or placing the child *(name and address)* under your supervision] under section 11(1) of the Guardianship Act 1973. A copy of the pleadings in this action is attached.

You may apply to the court by minute to become a party to the action. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons [or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons]. The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE**, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 49.62–B Form of notice to local authority of care or supervision order under the Guardianship Act 1973

Rule 49.62(3)

**FORM 49.62-B**

**Rule 49.62(3)**

**Form of notice to local authority of care or supervision order under the Guardianship Act 1973**

IN THE COURT OF SESSION

*(Cause reference number)*

*in causa*

[A.B.] *(designation and address)*

Pursuer

against

[C.D.] *(designation and address)*

Defender

Date: *(insert date)*

To: The Chief Executive of *(name and address of local authority)*

TAKE NOTICE

That on *(date)* Lord *(name)* pronounced an interlocutor making an order under section 11(1) of the Guardianship Act 1973 placing the child *(name and address)* in the care *[or under the supervision]* of *(name of local authority)*.

A certified copy of the interlocutor of Lord *(name)* is attached.

*(Signed)*

Deputy Principal Clerk of Session

*Status: This is the original version (as it was originally made).*

FORM 49.70 Form of certificate of delivery of documents to chief constable

Rule 49.70(1) and (2)

**FORM 49.70**

**Rule 49.70(1) and (2)**

**Form of certificate of delivery of documents to chief constable**

*(Place and date)*, I, *(name of agent)*, hereby certify that on the day of *(name of constabulary)* I duly  
delivered to *(name and address)* chief constable of *(insert details of the documents delivered)*. This I did by *(state method of delivery)*.

*(Signed)*

*[or Solicitor [or Agent] for pursuer  
[or as the case may be]]  
(Address)*

FORM 49.73-A Under the Divorce (Scotland) Act 1976, Section 1(2)(d) Simplified Procedure



Rule 49.73(2)

**Form 49.73-A**

**Rule 49.73(1)**

**Under the Divorce (Scotland) Act 1976, Section 1(2)(d)  
Simplified Procedure**

Court of Session  
Divorce Section (SP)  
Parliament House  
Edinburgh EH1 1RQ  
Tel: 031-225 2595

**APPLICATION FOR DIVORCE (WITH CONSENT OF OTHER PARTY TO THE  
MARRIAGE)  
HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 2 YEARS**

Before completing this form, you should have read the leaflet entitled "Do it yourself Divorce", which explains the circumstances in which a divorce may be sought by that method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for divorce.

Below you will find directions designed to assist you with your application. Please follow them carefully. In the event of difficulty, you may contact the Court's Divorce Section at the above address, or any Sheriff Clerk's Office or Citizens Advice Bureau.

**Directions for making Application**

**WRITE IN INK, USING BLOCK CAPITALS**

- |                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Application<br>(Part 1)                                   | 1. Complete and sign Part 1 of the form (pages 3-7), paying particular attention to the notes opposite each section.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Consent of<br>Husband/Wife<br>(Part 2)                    | 2. When you have filled in Part 1 of the form, attach the (blue) Instruction Sheet SP3 to it and send both documents to your husband/wife for completion of the consent at Part 2 (page 9).<br><br><b>NOTE: If your husband/wife does NOT complete and sign the form of consent, your application cannot proceed further under the simplified procedure. In that event, if you still wish to obtain a divorce, you should consult a solicitor.</b>                                                                                                                                                                                                                                       |
| Affidavit<br>(Part 3)                                     | 3. When the application has been returned to you with the Consent (Part 2) duly completed and signed, you should then take the form to a Justice of the Peace, Notary Public, Commissioner for Oaths or other duly authorised person so that your affidavit in Part 3 (page 10) can be completed and sworn.                                                                                                                                                                                                                                                                                                                                                                              |
| Returning<br>completed<br>Application<br>Form to<br>court | 4. When directions 1-3 above have all been carried out, your application is now ready to be sent to the court. With it you must enclose:-<br>(i) Your marriage certificate (the document headed "Extract of an entry in a Register of Marriages"), which will be returned to you in due course, and<br>(ii) Either a cheque or postal order for the sum of £[40] in respect of the court fee, crossed and made payable to "Court of Session",<br>or a completed form SP15, claiming exemption from the court fee.<br><br>5. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the court immediately. |

*Status: This is the original version (as it was originally made).*

**THE NOTES ON THIS AND THE FOLLOWING PAGES ARE DESIGNED TO ASSIST YOU.  
PLEASE READ THEM CAREFULLY BEFORE COMPLETING EACH SECTION OF THE FORM.**

---

*Notes on Sections 1 and 2 opposite*

- (i) The names entered in Sections 1 and 2 opposite must be those shown on your marriage certificate. If you are known by another name which does not appear on that certificate, please write that name in brackets.
- (ii) The surname given for a wife must be her present married name. Her maiden name and any names from previous marriages should be entered in the space for other names.
- (iii) Home addresses should be given where these are known. The court is required by law to serve a copy of this application on your husband/wife.

---

*Note on Section 3 opposite*

“Domiciled” means that the person concerned at item (i) or (iii) opposite regards Scotland as his/her permanent home and intends to live permanently in Scotland in the foreseeable future.

---

*Notes on Section 4 opposite*

You will be able to obtain these details from your marriage certificate (extract entry in the register of marriages) which must accompany this application form, when you send it to the court.

**A photocopy of the marriage certificate will NOT be accepted.** If you cannot find the original, you should apply for an official copy to:

General Register Office (Scotland), Registration Section, New Register House, Edinburgh EH1 3YT, or the office where the marriage was registered, stating both husband's and wife's full names, and the date and place of the marriage.

(Note that the Registrar will charge a fee for this service.)

**PART 1**

SP2

**WRITE IN INK, USING BLOCK CAPITALS**

1.

**NAME AND ADDRESS OF APPLICANT**

Surname ..... Other name(s) .....  
 in full .....  
 Present .....  
 Address ..... Daytime  
 ..... Telephone  
 ..... Number  
 ..... (if any) .....

2.

**NAME AND ADDRESS OF HUSBAND/WIFE**

Surname ..... Other name(s) .....  
 in full .....  
 Present .....  
 Address ..... Daytime  
 ..... Telephone  
 ..... Number  
 ..... (if any) .....

3.

**JURISDICTION**

Please indicate with a tick (✓) in the appropriate box or boxes which of the following apply:

(i) I consider myself to be domiciled in Scotland

☐

or

(ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application

☐

or

(iii) My husband/wife considers himself/herself to be domiciled in Scotland

☐

or

(iv) My husband/wife has lived in Scotland for a period of at least 12 months immediately before the date of signing this application

☐

4.

**DETAILS OF PRESENT MARRIAGE**

Place of Marriage: ..... (Registration District)

Date of Marriage: Day ..... Month ..... Year .....

*Status: This is the original version (as it was originally made).*

---

*Notes on Section 5 opposite*

You and your husband/wife must have lived apart from each other for a continuous period of at least 2 years after the date of your marriage and immediately before the date of this application.

This minimum period of 2 years' separation is extended if you and your husband/wife have lived together again for **not more than 6 months in all** during that 2 year period. For example, if you lived together for 3 months in total during the 2 year period, then you should not complete this application until 2 years and 3 months have elapsed from the date of your original separation.

---

*Notes on Section 6 opposite*

Is there a reasonable chance that you can still settle the differences with your husband/wife and resume normal married life?

Are you satisfied that there is now no possibility of the marriage succeeding?

---

*Note on Section 7 opposite*

If your husband/wife is not prepared to sign the form of consent at Part 2 of this application, you will not obtain a divorce by this method.

---

*Note on Section 9 opposite*

"Children of the marriage" includes any adopted children and/or children accepted into the family.

---

**PART 1 (continued)**

5.

**PERIOD OF SEPARATION**

- (i) Please state the date on which you ceased to live with your husband/wife. (If more than 2½ years, just give the month and year)  
 Day ..... Month ..... Year.....
- (ii) Have you lived with your husband/wife since that date? ☐ YES ☐ NO ☐  
*(Tick box which applies)*
- (iii) If yes, for how long in total did you live together before finally separating again? ..... Months

6.

**RECONCILIATION**

- Is there any reasonable prospect of reconciliation with your husband/wife? ☐ YES ☐ NO ☐  
*(Tick box which applies)*
- Do you consider that the marriage has broken down irretrievably? ☐ YES ☐ NO ☐  
*(Tick box which applies)*

7.

**CONSENT**

- Does your husband/wife consent to a divorce being granted? ☐ YES ☐ NO ☐  
*(Tick box which applies)*

8.

**MENTAL DISABILITY**

- Is your husband/wife incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency?) ☐ YES ☐ NO ☐  
*(Tick box which applies)* (If yes, give details)

9.

**CHILDREN**

- Are there any children of the marriage under the age of 16? ☐ YES ☐ NO ☐  
*(Tick box which applies)*

10.

**OTHER COURT ACTIONS**

- Are you aware of any other court other actions currently proceeding in any country (including Scotland) which may affect your marriage? ☐ YES ☐ NO ☐  
*(Tick box which applies)* (If yes, give details)

*Status: This is the original version (as it was originally made).*

---

*Notes on Section 11 opposite*

No claim can be made in this form of divorce application for payment to you of a periodical allowance (ie regular payment of money weekly, monthly, etc., for your maintenance) or a capital sum (ie lump sum). If you wish to make such a claim, you should consult a solicitor.

**NOTE:** While it may be possible to obtain an order for periodical allowance after divorce, the right to payment of a capital sum is lost once decree of divorce is granted.

**PART 1 (continued)**

---

11.

**REQUEST FOR DIVORCE AND DISCLAIMER OF FINANCIAL PROVISION**

I confirm that the facts stated in Sections 1–10 above apply to my marriage.

I do NOT ask the court to make any financial awards in connection with this application.

I request the court to grant decree of divorce from my husband/wife.

.....  
(Date)

.....  
(Signature)

**IMPORTANT**—Part 1 MUST be completed, signed and dated before sending the application form to your husband/wife.

*Status: This is the original version (as it was originally made).*

#### NOTES ON COMPLETING PART 2 OPPOSITE (Page 9)

---

1. Read over carefully PART 1 (pages 3–7) of this application, which has already been completed by your husband/wife.
2. **Financial Provisions**

Please note that in Section 11 of Part 1, the Application states that he/she does NOT claim any financial awards by way of periodical allowance or capital sum. You also are required to state (items (c) and (d) opposite) that you make no claim upon the Applicant for payment of a periodical allowance or capital sum.

- **Note:** While it may be possible to obtain an order for **periodical allowance** after divorce, the right to payment of a **capital sum** is lost once decree of divorce is granted.
3. **Warning**

Divorce may result in the loss to you of property rights (eg the right to succeed to the Applicant's estate on his/her death) or the right, where appropriate, to a widow's pension.

(If you are in any doubt about signing this form of consent, you should consult a solicitor.)



## **PART 2**

### **CONSENT BY APPLICANT'S HUSBAND/WIFE TO DIVORCE**

---

**NOTE:** Before completing this Part of the form,  
please read Part 1 and the notes opposite (page 8).

I, .....  
(Full names, in BLOCK letters, of Applicant's husband/wife)

residing at

.....  
(Address, also in BLOCK letters)  
.....  
.....

### **HEREBY STATE THAT**

- (a) I have read Part 1 of this application;
- (b) The Applicant has lived apart from me for a continuous period of 2 years immediately preceding the date of the application (Section 11 of Part 1);
- (c) I do not ask the court to make any order for payment to me by the Applicant of a periodical allowance (i.e. a regular payment of money weekly or monthly, etc., for maintenance);
- (d) I do not ask the court to make any order for payment to me by the Applicant of a capital sum (i.e. a lump sum payment);
- (e) I understand that divorce may result in the loss to me of property rights;  
and
- (f) I CONSENT TO DECREE OF DIVORCE BEING GRANTED IN RESPECT OF THIS APPLICATION.

.....  
(Date)

.....  
(Signature)

**NOTE:** You may withdraw your consent, even after giving it, at any time before divorce is granted by the court. Should you wish to do so, you must immediately advise:-

The Court of Session  
Divorce Section (SP)  
Parliament House  
Edinburgh EH1 1RQ

Status: This is the original version (as it was originally made).

### **PART 3**

#### **APPLICANT'S AFFIDAVIT**

To be completed only after Parts 1 and 2 have been signed and dated.

I, (insert Applicant's full name) .....

residing at (insert Applicant's present home address).....

.....

Town ..... Country .....

SWEAR that to the best of my knowledge and belief:

- (1) the facts stated in Part 1 of this Application are true; and
- (2) the signature in Part 2 of this Application is that of my \*husband/wife.

Signature of Applicant .....

To be completed  
by Justice of Peace,  
Notary Public or  
Commissioner for  
Oaths

SWORN at (Place) .....

this ..... day of ..... 19.....

before me (full name) .....

(full address) .....

.....

.....

Signature .....

\*Justice of Peace/\*Notary Public/\*Commissioner for Oaths

\*Delete where not applicable.

FORM 49.73—Under the Divorce (Scotland) Act 1976, Section 1(2)(e) Simplified Procedure

*Status: This is the original version (as it was originally made).*

Rule 49.73(2)

**FORM 49.73-B****Rule 49.73(2)**

**Under the Divorce (Scotland) Act 1976, Section 1(2)(e)  
Simplified Procedure**

Court of Session  
Divorce Section (SP)  
Parliament House  
Edinburgh EH1 1RQ  
Tel: 031-225 2595

**APPLICATION FOR DIVORCE  
HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 5 YEARS**

Before completing this form, you should have read the leaflet entitled "Do it yourself Divorce", which explains the circumstances in which a divorce may be sought by that method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for divorce.

Below you will find directions designed to assist you with your application. Please follow them carefully. In the event of difficulty, you may contact the Court's Divorce Section at the above address, or any Sheriff Clerk's Office or Citizens Advice Bureau.

**Directions for making application****WRITE IN INK, USING BLOCK CAPITALS**

- |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Application<br>(Part 1)                                | 1. Complete and sign Part 1 of the form (pages 3-7), paying particular attention to the notes opposite each section.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Affidavit<br>(Part 2)                                  | 2. When you have completed Part 1, you should take the form to a Justice of the Peace, Notary Public, Commissioner for Oaths or other duly authorised person so that your affidavit in Part 2 (page 8) can be completed and sworn.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Returning<br>completed<br>Application<br>Form to court | <p>3. When directions 1 and 2 above have all been carried out, your application is now ready to be sent to the court. With it you must enclose:-</p> <p>(i) Your marriage certificate (the document headed "Extract of an entry in a Register of Marriages"), which will be returned to you in due course. If you do not know the address of your husband/wife and you were married in Scotland you also need to obtain a letter from the General Register Office stating that there is no record of your husband/wife having divorced you. If you require this letter it should be obtained not more than one month before posting off your application from:</p> <p style="margin-left: 40px;">General Register Office (Scotland)<br/>Registration Branch<br/>New Register House<br/>Edinburgh EH1 3YT and</p> <p>(ii) Either a cheque or postal order for the court fee of £[40] crossed and made payable to "Court of Session",<br/>or a completed form SP15, claiming exemption from the court fee.</p> <p>4. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the court immediately.</p> |

**THE NOTES ON THIS AND THE FOLLOWING PAGES ARE DESIGNED TO ASSIST YOU. PLEASE READ THEM CAREFULLY BEFORE COMPLETING EACH SECTION OF THE FORM.**

---

*Notes on Sections 1 and 2 opposite*

- (i) The names entered in Sections 1 and 2 opposite must be those on your marriage certificate. If you are known by another name which does not appear on that certificate, please write that name in brackets.
- (ii) The surname given for a wife must be her present married name. Her maiden name and any names from previous marriages should be entered in the space for other names.
- (iii) Home addresses should be given where these are known. The court is required by law to serve a copy of this application on your husband/wife.

---

*Note on Section 3 opposite*

If the address of your husband/wife is NOT known or cannot reasonably be ascertained, please enter "not known" in this section; you must take all reasonable steps to find out where your husband/wife is living and state on a separate sheet what steps you have taken and attach it to this form. Then proceed to Section 4.

N.B. The statement must be signed.

---

*Notes on Section 4 opposite*

In the event that the address of your husband/wife is unknown to you, the court is required by law to intimate a copy of this application to:

- (i) ONE of the next-of-kin of your husband/wife. ("Next-of-kin" does not include yourself or any children of the marriage for the purposes of this application.)
- (ii) ALL children of your marriage aged 16 years or over, whether or not they live with you.

When entering the details of the next-of-kin, if any, please state his or her relationship to your husband/wife (i.e. – "mother", "father", "brother", "sister", etc.).

If you do not know the identity or whereabouts of any of the next-of-kin of your husband/wife, or the whereabouts of any of the children of your marriage, please enter "not known" where appropriate.

**MARRIAGE CERTIFICATE** – If you do not know the address of your husband/wife and you were married in Scotland, you will require to obtain a copy of your marriage certificate issued by the Registrar not more than 1 month before the date of posting this application to the court. In order to obtain an up-to-date copy of your marriage certificate, you should apply to:

General Register Office (Scotland), Registration Branch, New Register House, Edinburgh EH1 3YT or the office where the marriage was registered, stating both husband's and wife's full names<sup>56</sup> and the date and place of your marriage. (Note that the Registrar will charge a fee for this service.)

The requirement to obtain an up-to-date marriage certificate does not apply if you were married outwith Scotland.

*Status: This is the original version (as it was originally made).*

**PART 1**

SP5

**WRITE IN INK, USING BLOCK CAPITALS**

1.

**NAME AND ADDRESS OF APPLICANT**

Surname.....	Other name(s).....
Present Address .....	in full .....
.....	Daytime Telephone Number (if any) .....

2.

**NAME OF HUSBAND/WIFE**

Surname.....	Other name(s).....
	in full .....

3.

**ADDRESS OF HUSBAND/WIFE** (if the address of your husband/wife is not known, please enter "not known" and proceed to Section 4)

Present Address .....	Daytime Telephone Number (if any) .....
.....	

4.

Only complete this section if you do not know the present address of your husband/wife

**NEXT-OF-KIN**

Name .....	Address .....
Relationship to your husband/wife .....	.....

**CHILDREN OF THE MARRIAGE**

Names and dates of birth

Addresses

.....	.....
.....	.....
.....	.....
.....	.....

If sufficient space is available here to list all the children of the marriage, please continue on a separate sheet and attach to this form.

---

*Note on Section 5 opposite*

“Domiciled” means that the person concerned at Item (i) or (iii) opposite regards Scotland as his/her permanent home and intends to live permanently in Scotland in the foreseeable future.

---

*Notes on Section 6 opposite*

You will be able to obtain these details from your marriage certificate (extract entry in a register of marriages), which must accompany this application form when you send it to the court.

**A photocopy of the marriage certificate will NOT be accepted.**

---

*Notes on Section 7 opposite*

You and your husband/wife must have lived apart from each other for a continuous period of at least 5 years and after the date of your marriage and immediately before the date of this application.

This minimum period of 5 years separation is extended if you and your husband/wife have lived together again for **not more than 6 months in all** during that 5 year period. For example, if you lived together for 3 months in total during the 5 year period, then you should not complete this application until 5 years and 3 months have elapsed from the date of your original separation.

---

*Notes on Section 8 opposite*

Is there a reasonable chance that you can still settle the differences with your husband/wife and resume normal married life?

Are you satisfied that there is now no possibility of the marriage succeeding?

Status: This is the original version (as it was originally made).

## **PART 1 (continued)**

5.

### **JURISDICTION**

Please indicate with a tick (✓) in the appropriate box or boxes which of the following apply:

- |                                                                                                                                       |                          |
|---------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| (i) I consider myself to be domiciled in Scotland                                                                                     | <input type="checkbox"/> |
| or                                                                                                                                    |                          |
| (ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application              | <input type="checkbox"/> |
| or                                                                                                                                    |                          |
| (iii) My husband/wife considers himself/herself to be domiciled in Scotland                                                           | <input type="checkbox"/> |
| or                                                                                                                                    |                          |
| (iv) My husband/wife has lived in Scotland for a period of at least 12 months immediately before the date of signing this application | <input type="checkbox"/> |

6.

### **DETAILS OF PRESENT MARRIAGE**

Place of Marriage ..... (Registration District)

Date of Marriage: Day ..... Month ..... Year .....

7.

### **PERIOD OF SEPARATION**

- (i) Please state the date on which you ceased to live with your husband/wife.  
(If more than 5½ years, just give the month and year)
- Day ..... Month ..... Year .....
- (ii) Have you lived with your husband/wife since that date?  
(Tick box which applies)
- |                          |     |    |                          |
|--------------------------|-----|----|--------------------------|
| <input type="checkbox"/> | YES | NO | <input type="checkbox"/> |
|--------------------------|-----|----|--------------------------|
- (iii) If yes, for how long in total did you live together before finally separating again?
- ..... Months

8.

### **RECONCILIATION**

- Is there any reasonable prospect of reconciliation with your husband/wife?  
(Tick box which applies)
- |                          |     |    |                          |
|--------------------------|-----|----|--------------------------|
| <input type="checkbox"/> | YES | NO | <input type="checkbox"/> |
|--------------------------|-----|----|--------------------------|
- Do you consider that the marriage has broken down irretrievably?  
(Tick box which applies)
- |                          |     |    |                          |
|--------------------------|-----|----|--------------------------|
| <input type="checkbox"/> | YES | NO | <input type="checkbox"/> |
|--------------------------|-----|----|--------------------------|



---

*Notes on Section 10 opposite*

“Children of the marriage” includes any adopted children and/or children accepted into the family.

-

---

*Notes on Section 12 opposite*

No claim can be made in this form of divorce application for payment to you of a periodical allowance (i.e. regular payment of money weekly, monthly, etc., for your maintenance) or a capital sum (i.e. lump sum). If you wish to make such a claim, you should consult a solicitor.

**NOTE:** While it may be possible to obtain an order for periodical allowance after divorce, the right to payment of a capital sum is lost once decree of divorce is granted.

*Status: This is the original version (as it was originally made).*

**PART 1 (continued)**

9.

**MENTAL DISABILITY**

As far as you are aware is your husband/wife incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency)?

☐

YES

NO

☐

(If yes, give details below)

10.

**CHILDREN**

Are there any children of the marriage under the age of 16? *(Tick box which applies)*

☐

YES

NO

☐

11.

**OTHER COURT ACTIONS**

Are you aware of any other court actions currently proceeding in any country (including Scotland) which may affect your marriage? *(Tick box which applies)*

☐

YES

NO

☐

(If yes, give details below)

12.

**DECLARATION AND REQUEST FOR DIVORCE**

I confirm that the facts stated in Sections 1–11 above apply to my marriage.

I do not ask the court to make any financial award in connection with this application.

I believe that no grave financial hardship will be caused to my husband/wife as a result of the granting of this application.

I request the court to grant decree of divorce from my husband/wife.

.....  
(Date)

.....  
(Signature of Applicant)

## **PART 2**

### **APPLICANT'S AFFIDAVIT**

**To be completed only after Part 1 has been signed and dated.**

I, (insert Applicant's full name) .....

residing at (insert Applicant's present home address) .....

.....

Town ..... Country .....

Swear that to the best of my knowledge and belief the facts stated in Part 1 of this Application are true.

Signature of Applicant .....

To be completed  
by Justice of Peace,  
Notary Public or  
Commissioner for  
Oaths

SWORN at (Place) .....

this ..... day of ..... 19.....

before me (full name) .....

(full address) .....

.....

.....

Signature .....

\*Justice of Peace/\*Notary Public/\*Commissioner for Oaths

\*Delete where not applicable.

**Status:** This is the original version (as it was originally made).

FORM 49.76—A Form of citation in simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976

Rule 49.76(3)

**FORM 49.76-A**

**Rule 49.76(3)**

**Form of citation in simplified divorce application under section 1(2)(d) of the Divorce  
(Scotland) Act 1976**

**CITATION**

**Date:** *(Date of posting or other method of service)*

**To:** .....  
.....  
.....

**APPLICATION FOR DIVORCE (WITH CONSENT OF OTHER PARTY TO THE MAR-  
RIAGE), HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 2 YEARS**

You are hereby served with an application by your husband [*or wife*] which asks the court to grant a decree of divorce.

If you wish to oppose the granting of such a decree, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the court by (*insert date on which period of notice expires*).

*(Signed)*

Deputy Principal Clerk of Session  
[*or authorised clerk of session*]  
[*or Messenger-at-Arms*  
(*Address*)]

**IMPORTANT NOTE.** If you wish to exercise your right to claim a financial award you should immediately advise the court that you oppose the application for that reason, and thereafter consult a solicitor.

Court of Session  
Divorce Section (SP)  
Parliament House  
Edinburgh EH1 1RQ  
Tel: 031-225 2595

**Status:** This is the original version (as it was originally made).

FORM 49.76—B Form of citation in simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976

Rule 49.76(3)

**FORM 49.76-B**

**Rule 49.76(3)**

**Form of citation in simplified divorce application under section 1(2)(e) of the Divorce  
(Scotland) Act 1976**

**CITATION**

**Date:** *(Date of posting or other method of service)*

**To:** .....  
.....  
.....

**APPLICATION FOR DIVORCE, HUSBAND AND WIFE HAVING LIVED APART FOR  
AT LEAST 5 YEARS**

Your husband [*or wife*] has applied to the court for divorce on the ground that the marriage has broken down irretrievably because you and (s)he have lived apart for a period of at least 5 years.

A copy of the application is hereby served on you.

1. Please note:--
  - (a) that the court may not make a financial award under this procedure and that your husband [*or wife*] is making no claim against you for payment of a periodical allowance (i.e. regular payment of money weekly, monthly, etc., for his [*or her*] maintenance) or a capital sum (i.e. lump sum);
  - (b) that your husband/wife states that you will not suffer grave financial hardship in the event of decree of divorce being granted.
2. Divorce may result in the loss to you of property rights (e.g. the right to succeed to the applicant's estate on his/her death) or the right, where appropriate, to a widow's pension.
3. If you wish to oppose the granting of a divorce, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the court by (insert date on which period of time expires).
4. In the event of the divorce being granted, you will be sent a copy of the extract decree. (Should you change your address before receiving the copy extract decree, please notify the court immediately.)

*(Signed)*

Deputy Principal Clerk of Session  
[*or authorised clerk of session*]  
[*or Messenger-at-Arms*]  
(*Address*)

**IMPORTANT NOTE.** If you wish to exercise your right to claim a financial award you should immediately advise the court that you oppose the application for that reason, and thereafter consult a solicitor.

**Status:** *This is the original version (as it was originally made).*

FORM 49.76—C Form of intimation to child or next of kin in simplified divorce application under section 1(2)(e) of the Divorce (Scotland) Act 1976



Rule 49.76(4)

**FORM 49.76-C**

**Rule 49.76(4)**

**Form of intimation to child or next of kin in simplified divorce application under section  
1(2)(e) of the Divorce (Scotland) Act 1976**

**CITATION**

**Date:** *(Date of posting or other method of intimation)*

**To:** .....  
.....  
.....

**APPLICATION FOR DIVORCE, HUSBAND AND WIFE HAVING LIVED APART FOR  
AT LEAST 5 YEARS**

..... (Applicant) v ..... (Respondent)

**TAKE NOTICE**

1. In the above application, a copy of which is enclosed, the applicant has indicated that you are the *(state relationship)* of *(name of respondent)* whose present address is not known to the applicant.
2. Should you know the present address of your *(state relationship)* or how he [or she] may be contacted, you are requested to give this information at once in writing to:-  
Court of Session  
Divorce Section (SP)  
Parliament House  
Edinburgh EH1 1RQ  
Tel: 031-225 2595  
This will enable the court to inform the respondent that the application has been made.
3. If you are unable to provide the above information, and/or you wish for your own interest to oppose the application for divorce, you should write to the above address by *(insert date on which period of time expires)*.

*(Signed)*

Deputy Principal Clerk of Session  
[or authorised clerk of session]  
[or Messenger-at-Arms  
(Address)]

**Status:** *This is the original version (as it was originally made).*

FORM 49.76—D Form of certificate of service of simplified divorce application

Rule 49.76(5)

**FORM 49.76-D**

**Rule 49.76(5)**

**Form of certificate of service of simplified divorce application**

**CERTIFICATE OF SERVICE [or INTIMATION]**

I, *(name)*, Deputy Principal Clerk of Session [or clerk of session authorised by him], certify that I served [or intimated] this simplified divorce application by *(name of applicant)* on [or to] *(name of person on whom service executed or to whom intimation given)* by posting it with a citation [or notice of intimation] in Form *(number of form)* to that person between *(time)* and *(time)* or *(date)* at *(name of post office)* in a registered envelope [or recorded delivery envelope] addressed as follows:— *(address)*. The Post Office receipt [or certificate of posting] is attached to this certificate.

*(Signed)*

Deputy Principal Clerk of Session  
[or authorised clerk of session]  
[or Messenger-at-Arms  
*(Address)*]

*(Signed)*

Witness]

**Status:** *This is the original version (as it was originally made).*

FORM 49.76—EForm of certificate of service of simplified divorce application by messenger-at-arms

Rule 49.76(5)

**FORM 49.76-E**

**Rule 49.76(5)**

**Form of certificate of service of simplified divorce application by messenger-at-arms**

**CERTIFICATE OF SERVICE [OR INTIMATION]**

I, (name), Messenger-at-Arms, certify that I served [or intimated] this simplified divorce application [and a notice of intimation] on [or to] (name of person on whom served or to whom intimated—

- \* by leaving it and a citation [or notice] with (name of person) at (place) at (time) or (date).
- \* by leaving it and a citation [or notice] with (name and occupation of person with whom left) at (place) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given resides at the place but is not available.)
- \* by depositing it and a citation [or notice] in (place) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given resides at the place but is not available.)
- \* by leaving it and a citation [or notice] with (name and occupation of person with whom left) at (place of business) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given carries on business at the place.)
- \* by depositing it and a citation [or notice] at (place of business) on (date). (Specify that enquiry made and that reasonable grounds exist for believing that the person on whom service is to be made or to whom intimation is to be given carries on business at the place.)
- \* by leaving it and a citation [or notice] at (registered office or place of business) on (date), in the hands of (name of person).
- \* by leaving [or depositing] it and a citation [or notice] at (registered office, official address or place of business) on (date) in such a way that it was likely to come to the attention of (name of person on whom served or to whom intimated). (Specify how left.)

I did this in the presence of (name, occupation and address of witness).

(Signed)

Messenger-at-Arms  
(Address)

(Signed)

Witness

\* Delete where not applicable.

**Status:** This is the original version (as it was originally made).

FORM 49.83—A Form of certificate relating to the making of a maintenance assessment under the Child Support Act 1991

Rule 49.83

**FORM 49.83-A**

**Rule 49.83**

**Form of certificate relating to the making of a maintenance assessment under the Child Support Act 1991**

I, Deputy Principal Clerk of Session, certify that notification has been received from the Secretary of State under section 10 of the Child Support Act 1991 of the making of a maintenance assessment under that Act which supersedes the decree [or order] granted on (date) in relation to aliment for (name(s) of child(ren)) with effect from (date).

(Signed)

Deputy Principal Clerk of Session

Date:

**Status:** *This is the original version (as it was originally made).*

FORM 49.83–B Form of certificate relating to the cancellation or ceasing to have effect of a maintenance assessment under the Child Support Act 1991



Rule 49.83

**FORM 49.83-B**

**Rule 49.83**

**Form of certificate relating to the cancellation or ceasing to have effect of a maintenance  
assessment under the Child Support Act 1991**

I, Deputy Principal Clerk of Session, certify that notification has been received from the Secretary of State under section 10 of the Child Support Act 1991 that the maintenance assessment made on *(date)* has been cancelled [*or* ceased to have effect] on *(date)*.

*(Signed)*

Deputy Principal Clerk of Session

Date:

**Status:** This is the original version (as it was originally made).

FORM 49.84—A Form of certificate endorsed on extract order for aliment affected by maintenance assessment

Rule 49.84(1)

**FORM 49.84-A**

**Rule 49.84(1)**

**Form of certificate endorsed on extract order for aliment affected by maintenance assessment**

A maintenance assessment having been made under the Child Support Act 1991 on *(date)*, this order, in so far as it relates to the making or securing of periodical payments to or for the benefit of *(name(s) of child(ren))*, ceases to have effect from *(date two days after the date on which the maintenance assessment was made)*.

**Status:** *This is the original version (as it was originally made).*

FORM 49.84—B Form of certificate endorsed on extract order for aliment on maintenance assessment  
being cancelled or ceasing to have effect

Rule 49.84(2)

**FORM 49:84-B**

**Rule 49.84(2)**

**Form of certificate endorsed on extract order for aliment on maintenance assessment being cancelled or ceasing to have effect**

The jurisdiction of the child support officer under the Child Support Act 1991 having terminated on *(date)*, this order, in so far as it relates to *(name(s) of child(ren))*, again shall have effect as from *(date of termination of child support officer's jurisdiction)*.

**Status:** *This is the original version (as it was originally made).*

FORM 50.2—A Form of citation by advertisement on action of declarator of death under section 1(1) of the Presumption of Death (Scotland) Act 1977

Rule 50.2(3)

**FORM 50.2-A**

**Rule 50.2(3)**

**Form of citation by advertisement on action of declarator of death under section 1(1) of the  
Presumption of Death (Scotland) Act 1977**

**IN THE COURT OF SESSION**

in the cause

[A.B.] (*designation and address*)

Pursuer

against

[C.D.]

Defender

An action has been brought in the Court of Session, Edinburgh, by [A.B.], pursuer, to declare that [C.D.], defender, whose last known address was (*address*), is dead. Any person having an interest may apply to the court by minute to defend the action or to seek an order under section 2 of the Presumption of Death (Scotland) Act 1977. If you wish to apply to the court you must do so by (*date on which period of notice expires*) at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ.

(*Signed*)

Solicitor [*or Agent*] for pursuer  
(*Address*)

**Status:** *This is the original version (as it was originally made).*

FORM 50.2—B Form of notice of intimation in an action of declarator of death under section 1(1) of the Presumption of Death (Scotland) Act 1977



Rule 50.2(5)

**FORM 50.2-B**

**Rule 50.2(5)**

**Form of notice of intimation in an action of declarator of death under section 1(1) of the  
Presumption of Death (Scotland) Act 1977**

Date: *(date of posting or other method of intimation)*

To: *(name and address as in warrant for intimation)*

An action has been brought in the Court of Session, Edinburgh requesting the court to declare that *(name and last known address of missing person)* is dead. A copy of the summons is attached.

You may apply to the court by minute for leave to state defences to the action or to seek a determination or appointment under section 2 of the Presumption of Death (Scotland) Act 1977 which is not sought by the pursuer. You must do so at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of intimation to you of the summons *[or if the warrant for intimation is executed before calling of the summons, within 7 days after the summons calls in court. The summons will not call in court earlier than [21] days after the date of intimation to you of the summons].* The date of intimation is the date stated at the top of this notice unless intimation has been made by post in which case the date of intimation is the day after that date.

If you do not wish to lodge defences to this action but you have information which you consider may be of value to the court in this matter, you may write to the court with any such information by addressing your correspondence to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh EH1 1RQ.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

*(Signed)*

Messenger-at-Arms  
*[or Solicitor [or Agent]  
for pursuer]  
(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 51.5 Form of advertisement for objections and claims in action of multiple pointing

Rule 51.5(3)

**FORM 51.5**

**Rule 51.5(3)**

**Form of advertisement for objections and claims in action of multiplepinding**

**IN THE COURT OF SESSION**

in the cause

[A.B.] (*designation and address*)

Pursuer and Real [*or Nominal*] Raiser

against

[C.D.] (*designation and address*)

and Others

Defenders

An action of multiplepinding has been brought in the Court of Session, Edinburgh by [A.B.], pursuer, in respect of (*briefly describe nature of the fund in medio*). On (*date*) Lord (*name*) ordered advertisement for objections and claims. Any person who wishes to object to the condescendence of the fund must do so by lodging defences, and any person who wishes to make a claim on the fund must do so by lodging a condescendence and claim, by (*date on which period of notice expires*) at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ.

(*Signed*)

[Solicitor [*or Agent*] for pursuer]  
(*Address*)

**Status:** *This is the original version (as it was originally made).*

FORM 53.2 Form of notice of intimation to clerk of inferior court or tribunal in action of reduction

Rule 53.2(3)

**FORM 53.2**

**Rule 53.2(3)**

**Form of notice of intimation to clerk of inferior court or tribunal in action of reduction**

**Date:** *(date of posting or other method of intimation)*

**To:** *(designation of clerk of court or tribunal in warrant for intimation)*

**TAKE NOTICE**

*(Pursuer's name and address)*, pursuer, has brought an action in the Court of Session, Edinburgh against *(name and address of defender)*, defender, seeking reduction of *(specify document)* pronounced by you. A copy of the summons is attached.

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for pursuer]  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 58.6 Form of petition in application for judicial review

Rule 58.6(1)

**FORM 58.6**

**Rule 58.6(1)**

**Form of petition in application for judicial review**

**UNTO THE RIGHT HONOURABLE  
THE LORDS OF COUNCIL AND SESSION**

**PETITION**

of

[A.B.] (*designation and address*)

for

Judicial review of (*state briefly matter sought to be reviewed*) by [C.D.]

**HUMBLY SHEWETH:—**

1. That the petitioner is (*state designation, title and interest of petitioner*). The respondent is (*state designation and relation of respondent to matter to be reviewed*). [The following persons may have an interest ].
2. That on (*date*) the respondent (*specify act, decision or omission to be reviewed*).
3. That the petitioner seeks (*state remedies sought (final and interim) including damages or restitution*). The petitioner craves the court to pronounce such further order, decrees or orders (including an order for expenses) as may seem to the court to be just and reasonable in all the circumstances of the case.
4. That the petitioner challenges the decision [*or act or omission*] of the respondent on the following ground(s).
5. (*State shortly (in this and following numbered paragraphs) facts in support of the ground(s) of challenge.*)
- [6]. (*State briefly (in numbered paragraphs) the legal argument with reference to enactments or judicial authority on which it is intended to rely.*)

**PLEA(S)-IN-LAW**

(*Specify pleas-in-law relating to each ground of challenge and remedy sought*)

According to Justice etc.  
(*Signed by counsel or other person having  
a right of audience*)

**SCHEDULE FOR SERVICE**

Respondent(s) on whom service is sought in common form  
Respondent(s) on whom service is sought by advertisement.  
Interested parties on whom service is sought in common form  
Interested parties on whom service is sought by advertisement.

**SCHEDULE OF DOCUMENTS**

(*Specify documents founded on: R.C.S. 1994, r. 58.6(2)*)

**Status:** *This is the original version (as it was originally made).*

FORM 59.1—A Form of letters of arrestment



Rule 59.1(1)(a)

**FORM 59.1-A**

**Rule 59.1(1)(a)**

**Form of letters of arrestment**

**IN THE COURT OF SESSION**

**Application of (*applicant's name*) for Letters of Arrestment**

My Lords of Council and Session--

1. In a (*describe deed*) dated (*date*), (*common debtor's name, designation and address*) bound himself [*or herself or themselves or itself*] to pay to (*applicant's name, designation and address*) (1) (*amount of principal sum in words and figures*) and (2) interest on that amount at (*rate*) from (*date*) until payment [*or as the case may be*]. These amounts [*or amount in words and figures*] remain(s) unpaid.
2. The (*short reference to deed*) was registered for execution in your Lordship's Books of Council and Session on (*date*). An extract of it is produced with this application [*or as the case may be*].
3. The applicant, therefore, requests your Lordships to grant warrant to arrest the sum of (*amount*) more or less due and all moveable things in the hands of any person who is debtor to or has the moveable things of (*name, designation and address of common debtor*) in his possession.

According to Justice etc.

(*Signed*)

Solicitor [*or Agent*] for applicant  
(*Address*)

Warrant to arrest granted in accordance with the above application.

Date:

(*Signed*)

Depute [*or Assistant*] Clerk of Session  
(*Signet*)

**Status:** *This is the original version (as it was originally made).*

FORM 59.1—B Form of letters of inhibition where decree granted

Rule 59.1(1)(b)

**FORM 59.1-B**

**Rule 59.1(1)(b)**

**Form of letters of inhibition where decree granted**

**IN THE COURT OF SESSION**

**Application of (*applicant's name*) for Letters of Inhibition**

My Lords of Council and Session—

1. (*Applicant's name, designation and address*), the applicant, raised an action (*court*) against (*defender's name, designation and address*). In the action, decree was granted on (*date*) against (*defender's name*) to pay to the applicant (1) (*amount of principal sum in words and figures*). (2) interest on that amount at (*rate*) from (*date*) until payment, and (3) the expenses of the action [being (*amount in words and figures*)]. These amounts [*or amount in words and figures*] remain(s) unpaid.
2. An extract of the decree dated at (*place and date*) is produced with this application.
3. The applicant, therefore, requests your Lordships to grant warrant to inhibit (*defender's name*).

According to Justice etc.

(*Signed*)

Solicitor [*or Agent*] for applicant  
(*Address*)

Warrant to inhibit granted in accordance with the above application.

Date:

(*Signed*)

Depute [*or Assistant*] Clerk of Session  
(*Signet*)

**Status:** *This is the original version (as it was originally made).*

FORM 59.1—C Form of letters of inhibition on deed registered for execution

Rule 59.1(1)(c)

**FORM 59.1-C**

**Rule 59.1(1)(c)**

**Form of letters of inhibition on deed registered for execution**

**IN THE COURT OF SESSION**

**Application of (*applicant's name*) for Letters of Inhibition**

My Lords of Council and Session—

1. In a (*describe deed*) dated (*date*), (*debtor's name, designation and address*) bound himself [*or herself or themselves or itself*] to pay to (*applicant's name, designation and address*) (1) (*amount of principal sum in words and figures*), and (2) interest on that amount at (*rate*) from (*date*) until payment. These amounts [*or amount in words and figures*] remain(s) unpaid.
2. The (*short reference to deed*) was registered for execution in your Lordship's Books of Council and Session on (*date*). An extract of it is produced with this application.
3. The applicant, therefore, requests your Lordships to grant warrant to inhibit (*debtor's name*).

According to Justice etc.

(*Signed*)

Solicitor [*or Agent*] for applicant  
(*Address*)

Warrant to inhibit granted in accordance with the above application.

Date:

(*Signed*)

Depute [*or Assistant*] Clerk of Session  
(*Signet*)

**Status:** *This is the original version (as it was originally made).*

FORM 59.1—D Form of letters of inhibition on dependence of action in sheriff court

Rule 59.1(1)(d)

**FORM 59.1-D**

**Rule 59.1(1)(d)**

**Form of letters of inhibition on dependence of action in sheriff court**

**IN THE COURT OF SESSION**

**Application of *(applicant's name)* for Letters of Inhibition**

My Lords of Council and Session—

1. (*Applicant's name, designation and address*), the applicant, has raised an action in (*name of sheriff court*) Sheriff Court against (*defender's name, designation and address*). The initial writ in the action was warranted on (*date*) and served on (*date*). In the action, the applicant requests the court to order (*defender's name*) to pay the applicant (1) (*amount of principal sum in words and figures*), (2) interest on that amount at (*rate*) from (*date*) until payment, and (3) the expenses of the action.
2. The initial writ with the warrant and execution is produced with this application.
3. The applicant, therefore, requests your Lordships to grant warrant to inhibit (*defender's name*).

According to Justice etc.

(*Signed*)

Solicitor [*or Agent*] for applicant  
(*Address*)

Warrant to inhibit granted in accordance with the above application.

Date:

(*Signed*)

Depute [*or Assistant*] Clerk of Session  
(*Signet*)

**Status:** *This is the original version (as it was originally made).*

FORM 61.5—A Form of advertisement of petition for appointment of judicial factor



Rule 61.5(2)

**FORM 61.5-A**

**Rule 61.5(2)**

**Form of advertisement of petition for appointment of judicial factor**

*(Cause reference number)*

**PETITION FOR APPOINTMENT OF CURATOR *BONIS* [or other judicial factor]  
TO [C.D.]**

NOTICE is hereby given to all persons having an interest that application has been made to the Court of Session by [A.B.] (*designation and address*) for the appointment of [E.F.] (*designation and address*) as curator *bonis* [or other judicial factor] to [C.D.] (*last known address*).

Any person having an interest may lodge answers to the petition. Answers must be lodged at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of this notice.

*(Name)*

Judicial Factor to [C.D.]  
[or Solicitor [or Agent] for petitioner]  
*(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 61.5—B Form of advertisement of petition for discharge of judicial factor

Rule 61.5(2)

**FORM 61.5-B**

**Rule 61.5(2)**

**Form of advertisement of petition for discharge of judicial factor**

*(Cause reference number)*

**PETITION FOR DISCHARGE OF CURATOR *BONIS* [or other judicial factor]  
TO [C.D.]**

NOTICE is hereby given to all persons having an interest that application has been made to the Court of Session by [E.F.] (*designation and address*) as curator *bonis* [or other judicial factor] to [C.D.] (*last known address*) for discharge from his office [*or otherwise as the case may be*].

Any person having an interest may lodge answers to the petition. Answers must be lodged at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of this notice.

*(Name)*

Judicial Factor to [C.D.]  
[or Solicitor [or Agent] for petitioner]  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 61.18 Form of notice in the Edinburgh Gazette of application for appointment of judicial factor on estate of deceased person

Rule 61.18(a)

**FORM 61.18**

**Rule 61.18(a)**

**Form of notice in the Edinburgh Gazette of application for appointment of judicial factor on estate of deceased person**

*(Cause reference number)*

**PETITION FOR APPOINTMENT OF JUDICIAL FACTOR ON THE ESTATE OF  
[C.D.]**

To the creditors of any persons interested in the estate of the deceased (*name and last known address*).

NOTICE is hereby given that:—

1. An application under section 11A of the Judicial Factors (Scotland) Act 1889 has been presented to the Court of Session by [A.B.] (*address*), a creditor [*or creditors*] of the deceased [*or having an interest in the succession of the deceased*], the deceased having left no settlement appointing trustees or other parties having power to manage his estate [*or the trustees under the deceased's settlement having refused to act*], for the appointment of a judicial factor to the estate of the deceased (*name*).

2. Any person having an interest in the estate of the deceased may lodge answers to the petition. Answers must be lodged at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of this notice [*or otherwise in terms of the first order*].

*(Name)*

Petitioner  
[*or Solicitor [or Agent] for the petitioner*]  
*(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 61.20 Form of notice in the Edinburgh Gazette and appropriate newspaper calling for claims

Rule 61.20(1)

**FORM 61.20**

**Rule 61.20(1)**

**Form of notice in the Edinburgh Gazette and appropriate newspaper calling for claims**

*(Cause reference number)*

**JUDICIAL FACTORY ON THE ESTATE OF [C.D.]**

To the creditors and other persons interested in the estate of the deceased *(name and last known address)*.

NOTICE is hereby given that [E.F.] *(designation and address)*, having been appointed by the Court of Session on *(date of appointment)* as judicial factor on the estate of the deceased [C.D.] under section 11A of the Judicial Factors (Scotland) Act 1889, requires all the lawful creditors of the deceased [C.D.] and other persons interested in his estate, to lodge with the judicial factor, within four months after the date of this notice—

- (a) a statement of their claims as creditors of the deceased, or as otherwise interested in his estate, and
- (b) vouchers or other written evidence as they may have to found on in support of their claims, so that the claims may be considered and reported on by the judicial factor.

*(Name)*

Judicial factor  
[or Solicitor [or Agent] for the judicial  
factor]  
*(Address)*

**Status:** *This is the original version (as it was originally made).*

FORM 61.25 Form of notice in the Edinburgh Gazette on lodging statement of funds and schemes of division



Rule 61.25(1)(c)

**FORM 61.25**

**Rule 61.25(1)(c)**

**Form of notice in the Edinburgh Gazette on lodging statement of funds and schemes of division**

*(Cause reference number)*

**JUDICIAL FACTORY ON THE ESTATE OF [C.D.]**

To the creditors of and persons interested in the succession to the estate of the deceased (*name and last known address*).

NOTICE is hereby given by [E.F.] (*designation and address*), judicial factor on the estate of the deceased [C.D.], that he has prepared and lodged in the Court of Session a state of funds and [first] scheme of division of the estate, to be considered and approved by the court.

*(Name)*

Judicial factor  
[or Solicitor [or Agent] for the judicial  
factor]

*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 61.31 Form of notice where application for discharge is made to Accountant of Court

Rule 61.31(2)

**FORM 61.31**

**Rule 61.31(2)**

**Form of notice where application for discharge is made to Accountant of Court**

**Date:** *(insert date of posting or other method of intimation)*

**To:** *(name and address of cautioner or person with interest)*

TAKE NOTICE that A.B. *(address)* curator *bonis* [*or other judicial factor*] to [*or on the estate of*] C.D. *(address)* has applied to the Accountant of Court for a certificate of discharge.

The audited accounts of the judicial factory are available for inspection at the office of the Accountant of Court, 2 Parliament Square, Edinburgh EH1 1RQ.

Representations relating to the application must be made in writing and lodged with the Accountant of Court within [21] days after the date of intimation to you of this notice. The date of intimation is the date stated at the top of this notice unless intimation was given by post in which case the date of intimation is the day after that date.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

*(Signed)*

Curator *bonis* to [C.D.]  
[*or Solicitor* [*or Agent*] for [E.F.]  
Curator *bonis* to [C.D.]]

**Status:** This is the original version (as it was originally made).

FORM 61.33 Form of notice in the Edinburgh Gazette of application for appointment of judicial factor on estate of deceased person

Rule 61.33(2)(a)

**FORM 61.33**

**Rule 61.33(2)(a)**

**Form of notice in the Edinburgh Gazette of application for appointment of judicial factor  
on estate of deceased person**

*(Cause reference number)*

**PETITION FOR DISCHARGE OF JUDICIAL FACTOR ON THE ESTATE OF [C.D.]**

To the creditors of and other persons interested in the succession to the estate of the deceased (*name and last known address*).

NOTICE is hereby given that [E.F.] (*address*), judicial factor on the estate of the deceased [C.D.], has presented a petition to the Court of Session for discharge from the office of judicial factor.

Any person having an interest may lodge answers to the petition. Answers must be lodged at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [21] days after the date of this notice [*or otherwise in terms of the first order in the petition for discharge*].

*(Name)*

Judicial factor  
[*or Solicitor [or Agent] for petitioner*]  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 62.2Form of certificate of currency conversion

Rule 62.(2)(1)(b)

**FORM 62.2**

**Rule 62.2(1)(b)**

**Form of certificate of currency conversion**

**IN THE COURT OF SESSION**

*in the*

Application of

*(name, designation and address of applicant(s))*

under the Civil Jurisdiction and Judgments Act 1982 for registration of a judgment  
[or other document] of the *(name of court)* of *(date of judgment)* in the cause *(name of pursuer)* against  
*(name of defender)*.

In terms of a certificate dated at *(place)* on *(date)* the sterling equivalent of (a) the principal sum is (£.p);  
(b) the interest thereon is (£.p); and (c) the expenses is (£.p) at the rate of exchange prevailing at that  
date.

Date:

*(Signed)*

Depute [or Assistant] Clerk of Session

**Status:** This is the original version (as it was originally made).

FORM 62.9 Form of notice to judgment debtor of registration of judgment under the Administration of Justice Act 1920 or the Foreign Judgments (Reciprocal Enforcement) Act 1933



Rule 62.9

**FORM 62.9**

**Rule 62.9**

**Form of notice to judgment debtor of registration of judgment under the Administration of Justice Act 1920 or the Foreign Judgments (Reciprocal Enforcement) Act 1933**

IN THE COURT OF SESSION

in the PETITION of

[A.B.] (*designation and address*)

Petitioner

for

Registration of a judgment of (*name of court*)  
dated (*date*)

under

section 9 of the Administration of Justice Act 1920  
[or section 2 of the Foreign Judgments (Reciprocal Enforcement) Act 1933]

Date: (*date of posting or other method of service*)

To: (*name of judgment debtor*)

**TAKE NOTICE**

That a judgment (*give details*) has been registered in the register of judgments of the Books of Council and Session on (*date*) on the application of the petitioner in the above petition.

If you intend to apply to the court to have the judgment set aside you must do so by note on or before (*insert date court has fixed under R.C.S. 1994, r.62.7(2)*). You must lodge the note in the process of the above petition in the Petition Department, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE** you should consult a solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.

(*Signed*)

[Messenger-at-Arms]  
[or Solicitor [or Agent] for petitioner]  
(*Address*)

**Status:** *This is the original version (as it was originally made).*

FORM 62.11 Form of certificate to be appended to copy of judgment certified under section 10 of the Administration of Justice Act 1920 or the Foreign Judgments (Reciprocal Enforcement) Act 1933

Rule 62.11(2)

**FORM 62.11**

**Rule 62.11(2)**

**Form of certificate to be appended to copy of judgment certified under section 10 of the  
Administration of Justice Act 1920 or the Foreign Judgments (Reciprocal Enforcement) Act 1933**

I, Deputy Principal Clerk of Session, certify that the foregoing extract decree is a true copy of a judgment obtained in the Court of Session. This certificate is issued in accordance with section 10 of the Administration of Justice Act 1920 [or Foreign Judgments (Reciprocal Enforcement) Act 1933] and in obedience to an interlocutor of Lord (*name*) dated (*date*).

Date:

(*Signed*)

Deputy Principal Clerk of Session  
(*Stamp*)

**Status:** This is the original version (as it was originally made).

FORM 62.16 Form of notice of registration of award under the Arbitration (International Investments Disputes) Act 1966

Rule 62.16

**FORM 62.16**

**Rule 62.16**

**Form of notice of registration of award under the Arbitration (International Investments Disputes) Act 1966**

**REGISTRATION OF AWARD UNDER THE ARBITRATION (INTERNATIONAL INVESTMENTS DISPUTES) ACT 1966**

Date: *(date of posting or other method of service)*

To: *(name and address of person on whom service executed)*

**TAKE NOTICE**

That on *(date)* [Lord *(name)* in] the Court of Session, Edinburgh granted warrant for the registration of *(identity award to be registered)* on the application of *(name and address of petitioner)*.

The above award was registered in the Books of Council and Session on *(date)* for execution (enforcement). An application will be made to the Keeper of the Registers of Scotland for an extract of the registered award with warrant for execution.

*(Signed)*

Messenger-at-Arms  
[or Solicitor [or Agent] for petitioner]  
*(Address)*

**Status:** This is the original version (as it was originally made).

FORM 62.28 Form of petition for registration of a judgment under section 4 of Civil Jurisdiction and Judgments Act 1982

Rule 62.28(1)

**FORM 62.28**

**Rule 62.28(1)**

**Form of petition for registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982**

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

PETITION

of

[A.B.] (*designation and address*)

under the Civil Jurisdiction and Judgments Act 1982

for registration of

a judgment [*or authentic instrument or court settlement*] [*of the (name of court)*]

dated the                      day of

HUMBLY SHEWETH:—

1. That this petition is presented by (*name*) to register a judgment [*or as the case may be*] [*of the (name of court) of (date of judgment)*].
2. That in the cause in which the judgment [*or as the case may be*] was pronounced. A.B. was pursuer [*or defender or as the case may be*] and [C.D.] was defender [*or pursuer or as the case may be*].
3. That the petitioner is a party having an interest to enforce the judgment [*or as the case may be*] because (*state reasons*).
4. That this petition is supported by the affidavit of (*name of deponent*) and the documents produced with it.
5. That the petitioner seeks warrant to register the judgment [*or as the case may be*] [and for decree in terms thereof] [and for decree to be pronounced in the following or such other terms as to the court may seem proper:— (*state terms in which decree is to be pronounced in accordance with Scots law*)].
6. That the petitioner seeks the authority of the court to execute the protective measure[s] of (*state measures*), for the following reasons (*state reasons*).
7. That this petition is made under section 4 of, and Article 31 [*or 50*] of the Convention in Schedule 1 [*or 3C*] to, the Civil Jurisdiction and Judgments Act 1982 and rule 62.28 of the Rules of the Court of Session 1994.

According to Justice etc.

(Signed)

Petitioner  
[*or Solicitor [or Agent] for petitioner*]  
(*Address of solicitor or agent*)

[*or counsel or other person having a right of audience*]

**Status:** *This is the original version (as it was originally made).*

FORM 62.33 Form of notice of decree and warrant for registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982



Rule 62.33

**FORM 62.33**

**Rule 62.33**

**Form of notice of decree and warrant for registration of a judgment under section 4 of the  
Civil Jurisdiction and Judgments Act 1982**

**IN THE COURT OF SESSION**

in the

**PETITION**

of

[A.B.] (*designation and address*)

under section 4 of the Civil Jurisdiction  
and Judgments Act 1982

for registration of

a judgment [*or authentic instrument or court settlement*] [*of the (name of court)*]

dated the                      day of

Date: (*date of posting or other method of service*)

To: (*name of person against whom judgment was given and decree and warrant for registration granted*).

**TAKE NOTICE**

That an interlocutor dated the                      day of                      , a certified copy of which is attached, was pronounced in the Court of Session granting decree and warrant for registration of the judgment [*or as the case may be*] [*of the (name of court)*] dated the                      day of                      , for (*state briefly the terms of the judgment*).

You have the right to appeal to a Lord Ordinary in the Outer House of the Court of Session, Parliament Square, Edinburgh EH1 1RQ against the interlocutor granting decree and warrant for registration within one month *or* two months *as the case may be* after the date of service of this notice on you. The date of service is the date stated at the top of this notice unless service has been executed by post in which case the date of service is the day after that date.

An appeal must be by motion enrolled in the process of the petition.

The registered judgment and decree of the Court of Session may not be enforced in Scotland until the expiry of the period within which you may appeal and any appeal has been disposed of.

The applicant may, however, take certain steps of diligence in execution of the registered judgment and decree of the Court of Session as a protective measure, **without actual enforcement**, until the expiry of the period within which you may appeal and any appeal has been disposed of.

[The applicant applied to the court for other protective measures until the expiry of the period of lodging an appeal and any appeal has been disposed of. The following other protective measures were granted by the court:—

**Status:** This is the original version (as it was originally made).

Diligence in execution or other protective measures shall be of no effect unless service of this notice has been made within 21 days after the date of execution of the diligence or other protective measure.

Intimation of an appeal should be made to the applicant, [A.B.], at the following address for service in Scotland:—

(Signed)

Messenger-at-Arms  
[or Petitioner [or Solicitor [or Agent] for  
petitioner]]  
(Address)

FORM 62.38 Form of petition for registration of a judgment under paragraph 5 of Schedule 7 to the Civil Jurisdiction and Judgments Act 1982

*Status: This is the original version (as it was originally made).*

Rule 62.38(1)

**FORM 62.38**

**Rule 62.38(1)**

**Form of petition for registration of a judgment under paragraph 5 of Schedule 7 to the  
Civil Jurisdiction and Judgments Act 1982**

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

PETITION

of

[A.B.] (*designation and address*)

under the Civil Jurisdiction and Judgments Act 1982

for registration of

a judgment of the (*name of court*)

dated the                      day of

HUMBLY SHEWETH:-

1. That this petition is presented by (*name*) to register a judgment [*or decision or other order*] of the (*name of court*) of (*date of judgment*).
2. That in the cause in which the judgment [*or decision or other order*] was pronounced [A.B.] was plaintiff [*or defendant or as the case may be*] and [C.D.] was defendant [*or plaintiff or as the case may be*].
3. That the petitioner is a party having an interest to enforce the judgment [*or decision or other order*] because (*state reasons*).
4. That the petitioner believes and avers that the usual [*or last known*] address of the (*state party liable in execution*) is (*state address*).
5. That the petitioner seeks warrant to register the judgment [and for decree in terms thereof] [and for decree to be pronounced in the following or such other terms as to the court may seem proper:- (*state terms in which decree is to be pronounced in accordance with Scots law*)].
6. That this petition is made under paragraph 5(1) of Schedule 7 to the Civil Jurisdiction and Judgments Act 1982 and rule 62.38 of the Rules of the Court of Session 1994.

According to Justice etc.

(Signed)

Petitioner  
[*or Solicitor [or Agent] for petitioner*]  
(*Address of solicitor or agent*)

[*or counsel or other person having a right of audience*]

FORM 62.40—A Form of certificate under section 12 of the Civil Jurisdiction and Judgments Act 1982 of a judgment given by the court or a court settlement

Status: This is the original version (as it was originally made).

Rule 62.40(1)(a)

**FORM 62.40-A**

**Rule 62.40(1)(a)**

**Form of certificate under section 12 of the Civil Jurisdiction and Judgments Act 1982 of a judgment given by the court or a court settlement**

**IN THE COURT OF SESSION**

**CERTIFICATE**

under the Civil Jurisdiction and Judgments Acts 1982

*in causa*

[or in the petition of]

[A.B.] (*designation and address*)

Pursuer [or Petitioner]

against

[C.D.] (*designation and address*)

Defender [or Respondent]

I, \_\_\_\_\_, a Deputy Principal Clerk of the Court of Session,  
do hereby certify--

1. That the summons [or petition], brought [or presented] by the pursuer [or petitioner] [A.B.] was executed by citation of the defender [C.D.] served on him [or was served on the respondent [C.D.]] on the \_\_\_\_\_ day of \_\_\_\_\_ by (*state method of service*).

2. That in the summons [or petition] the pursuer, sought [payment of the sum of £ \_\_\_\_\_ in respect of (*state briefly the nature of the claim*)] [and (*state other conclusions of the summons or orders sought in the prayer of petition*)].

3. [That the defender [C.D.] entered appearance on the \_\_\_\_\_ day of \_\_\_\_\_ ]  
[and lodged defences on the \_\_\_\_\_ day of \_\_\_\_\_ ] [or That the defender [C.D.] did not enter appearance].

4. That the pursuer [or petitioner] obtained decree [or other order] against the defender [or respondent] in the Court of Session for [payment of the sum of £ \_\_\_\_\_ ] [or *state briefly the terms of the interlocutor or opinion of the court*] [and *state briefly other conclusions of the summons or orders sought in the prayer of the petition granted*] with the expenses of the cause in the sum of £ \_\_\_\_\_ , all in terms of the certified copy interlocutor [and joint minute] attached.

5. That [no] objection to the jurisdiction of the court has been made [on the grounds that \_\_\_\_\_ ].

6. That the decree [in terms of the joint minute] includes interest at the rate of \_\_\_\_\_ per cent a year on the total of the sum of £ \_\_\_\_\_ and expenses of £ \_\_\_\_\_ from the \_\_\_\_\_ day of \_\_\_\_\_ until payment.

7. That the interlocutor containing the decree [or other order or settlement] has been served on the defender.

8. That the time for reclaiming (appealing) against the interlocutor has expired [and no reclaiming motion (appeal) has been enrolled within that time] [or and a reclaiming motion (appeal) having been enrolled within that time, has [not] been finally disposed of].

9. That enforcement of the decree has not for the time being been suspended and the time available for its enforcement has not expired.

10. That the whole pleadings of the parties are contained in the Closed Record [or summons or petition].

11. That this certificate is issued under section 12 of the Civil Jurisdiction and Judgments Acts 1982 and rule 62.40(1) of the Rules of the Court of Session 1994.

Dated the            day of

(Signed)

Deputy Principal Clerk of Session

**Status:** This is the original version (as it was originally made).

FORM 62.40—B Form of certificate by Keeper of the Registers of write registered for execution in the Books of Council and Session for registration under Article 50 of Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982



Rule 62.40(3)

**FORM 62.40-B**

**Rule 62.40(3)**

**Form of certificate by Keeper of the Registers of writ registered for execution in the Books of Council and Session for registration under Article 50 of Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982**

**REGISTERS OF SCOTLAND**

**CERTIFICATE**

under the Civil Jurisdiction and Judgments Act 1982

of

Deed [*or other writ*]

between

[A.B.] (*address*)

and

[C.D.] (*address*)

registered for execution in the Books of Council and Session

I, \_\_\_\_\_, the Keeper of the Registers of Scotland, and as such, Keeper of the Register of Deeds, Bonds, Protests, Judgments and other writs registered for execution in the Books of Council and Session, do hereby certify—

1. That [A.B.] registered in the Books of Council and Session on the \_\_\_\_\_ day of \_\_\_\_\_ for execution against [C.D.] a (*describe writ and state terms of writ for which enforcement is to be sought*).
2. That the extract of the deed [*or other writ*] attached hereto is a true copy of the deed [*or other writ*] registered for execution by [A.B.].
3. That the deed [*or other writ*] carries interest at the rate of \_\_\_\_\_ per cent a year from the day of \_\_\_\_\_ until payment].
4. That enforcement of the deed] [*or other writ*] has not for the time being been suspended and that the time available for its enforcement has not expired.
5. That this certificate is issued under Article 50 of Schedule 1 [*or 3C*] to the Civil Jurisdiction and Judgments Act 1982 and rule 62.40(3) of the Rules of the Court of Session 1994.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

(*Signed*)

Keeper of the Registers of Scotland

**Status:** *This is the original version (as it was originally made).*

FORM 62.41—A Form of certificate of money provisions in an interlocutor for registration under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982

Rule 62.41(1)

**FORM 62.41-A**

**Rule 62.41(1)**

**Form of certificate of money provisions in an interlocutor for registration under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982**

**IN THE COURT OF SESSION**

**CERTIFICATE**

under the Civil Jurisdiction and Judgments Acts 1982

*in causa*

[*or in the petition of*]

[A.B.] (*designation and address*)

Pursuer [*or* Petitioner]

against

[C.D.] (*designation and address*)

Defender [*or* Respondent]

I, \_\_\_\_\_, a Deputy Principal Clerk of the Court of Session,  
do hereby certify—

1. That the pursuer A.B. obtained decree [*or other order*] against the defender [C.D.] on the day of \_\_\_\_\_ in the Court of Session for payment of the sum of £ \_\_\_\_\_ in respect of (*state briefly the nature of the claim and terms of the interlocutor*) with the sum of £ \_\_\_\_\_ as expenses.
2. That the interlocutor granting decree [*or other order*] was obtained on the grounds (*state grounds briefly*).
3. That the decree [*or other order*] carries interest at the rate of \_\_\_\_\_ per cent a year on the total of the sum of £ \_\_\_\_\_ and expenses of £ \_\_\_\_\_ from the \_\_\_\_\_ day of \_\_\_\_\_ until payment.
4. That the time for reclaiming (appealing) against the interlocutor has expired [and no reclaiming motion (appeal) has been enrolled within that time] [and a reclaiming motion (appeal) having been enrolled within that time, has been finally disposed of].
5. That enforcement of the decree [*or other order*] has not for the time being been suspended and that the time available for its enforcement has not expired.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

(Signed)

Deputy Principal Clerk of Session

**Status:** *This is the original version (as it was originally made).*

FORM 62.41–B Form of certificate by Keeper of the Registers of money provisions in a writ registered for execution in the Books of Council and Session for registration under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982

Rule 62.41(3)

**FORM 62.41-B**

**Rule 62.41(3)**

**Form of certificate by Keeper of the Registers of money provisions in a writ registered for execution in the Books of Council and Session for registration under Schedule 6 to the Civil Jurisdiction and Judgments Act 1982**

**REGISTERS OF SCOTLAND**

**CERTIFICATE**

under the Civil Jurisdiction and Judgments Act 1982

of

Deed [*or other writ*]

between

[A.B.] (*address*)

and

[C.D.] (*address*)

registered for execution in the Books of Council and Session

I, \_\_\_\_\_, the Keeper of the Registers of Scotland, and as such, Keeper of the Register of Deeds, Bonds, Protests, Judgments and other writs registered for execution in the Books of Council and Session, do hereby certify—

1. That [A.B.] registered in the Books of Council and Session on the \_\_\_\_\_ day of \_\_\_\_\_ for execution against [C.D.] a (*describe writ and state terms of money provision in writ for which enforcement is to be sought*).

2. That the money provision in the deed [*or other writ*] carries interest at the rate of \_\_\_\_\_ per cent a year from the \_\_\_\_\_ day of \_\_\_\_\_ until payment.

3. That enforcement of the deed [*or other writ*] has not for the time being been suspended and that the time available for its enforcement has not expired.

4. That this certificate is issued under paragraph 4(1) of Schedule 6 to the Civil Jurisdiction and Judgments Act 1982 and rule 62.41(3) of the Rules of the Court of Session 1994.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

(*Signed*)

Keeper of the Registers of Scotland

**Status:** *This is the original version (as it was originally made).*

FORM 62.42—A Form of certificate of non-money provisions in an interlocutor for registration under Schedule 7 of the Civil Jurisdiction and Judgments Act 1982

Rule 62.42(1)

**FORM 62.42-A**

**Rule 62.42(1)**

**Form of certificate of non-money provisions in an interlocutor for registration under Schedule 7  
of the Civil Jurisdiction and Judgments Act 1982**

**IN THE COURT OF SESSION**

**CERTIFICATE**

under the Civil Jurisdiction and Judgments Acts 1982

*in causa*

[*or in the petition of*]

[A.B.] (*designation and address*)

Pursuer [*or* Petitioner]

against

[C.D.] (*designation and address*)

Defender [*or* Respondent]

I, \_\_\_\_\_, a Deputy Principal Clerk of the Court of  
Session, do hereby certify—

1. That the copy of the interlocutor attached hereto is a true copy of the decree [*or other order*] obtained in the Court of Session [and that the copy of the opinion of the court attached hereto is a true copy thereof] and is issued in accordance with section 18 of the Civil Jurisdiction, and Judgments Act 1982.
2. That the time for reclaiming (appealing) against the interlocutor has expired [and no reclaiming motion (appeal) has been enrolled within that time] [and a reclaiming motion (appeal) having been enrolled within that time has been finally disposed of].
3. That enforcement of the decree [*or other order*] has not for the time being been suspended and that the time available for its enforcement has not expired.
4. That this certificate is issued under paragraph 4(1)(b) of Schedule 7 of the Civil Jurisdiction and Judgments Act 1982 and rule 62.42(1) of the Rules of the Court of Session 1994.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

(Signed)

Deputy Principal Clerk of Session

**Status:** This is the original version (as it was originally made).

FORM 62.42—B Form of certificate by Keeper of the Registers of non-money provisions in a writ registered for execution in the Books of Council and Session for registration under Schedule 7 to the Civil Jurisdiction and Judgments Act 1982



Rule 62.42(4)

**FORM 62.42-B**

**Rule 62.42(4)**

**Form of certificate by Keeper of the Registers of non-money provisions in a writ registered for execution in the Books of Council and Session for registration under Schedule 7 to the Civil Jurisdiction and Judgments Act 1982**

**REGISTERS OF SCOTLAND**

**CERTIFICATE**

**under the Civil Jurisdiction and Judgments Act 1982**

of

Deed [*or other writ*]

between

[A.B.] (*address*)

and

[C.D.] (*address*)

registered for execution in the Books of Council and Session

I, \_\_\_\_\_, the Keeper of the Registers of Scotland, and as such, Keeper of the Register of Deeds, Bonds, Protests, Judgments and other writs registered for execution in the Books of Council and Session, do hereby certify—

1. That the extract of the deed [*or other writ*] attached hereto is a true copy of the deed [*or other writ*] registered for execution by [A.B.] and is issued in accordance with section 18 of the Civil Jurisdiction and Judgments Act 1982.
2. That enforcement of the deed [*or other writ*] has not for the time being been suspended and that the time available for its enforcement has not expired.
3. That this certificate is issued under paragraph 4(1)(b) of Schedule 7 to the Civil Jurisdiction and Judgments Act 1982 and rule 62.42(4) of the Rules of the Court of Session 1994.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

(*Signed*)

Keeper of the Registers of Scotland

**Status:** This is the original version (as it was originally made).

FORM 62.51 Form of notice of decree and warrant for registration of an order under the Criminal Justice (Scotland) Act 1987, the Criminal Justice Act 1988 or the Prevention of Terrorism (Temporary Provisions) Act 1989

Rule 62.51

**FORM 62.51**

**Rule 62.51**

**Form of notice of decree and warrant for registration of an order under the Criminal Justice (Scotland) Act 1987, the Criminal Justice Act 1988 or the Prevention of Terrorism (Temporary Provisions) Act 1989**

IN THE COURT OF SESSION

in the

PETITION

of

[A.B.] (*designation and address*)

under section 28 [or 30A] of the Criminal

Justice (Scotland) Act 1987

[*or* section 90 of the Criminal Justice Act 1988]

[*or* paragraph 19(2) of Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989]

for

registration of an order of

(*name of court*)

Dated the                      day of

To: (*name of person against whom the order was made and decree and warrant for registration granted*)

**TAKE NOTICE**

An interlocutor dated the                      day of                      , a certified copy of which is attached, was pronounced in the Court of Session granting decree and warrant for registration in the Court of Session [and for registration in the Register of Judgments of the Books of Council and Session] of the order of the (*name of court*) dated the                      day of                      that (*briefly describe order*).

The order was registered in the Court of Session on (*date*).

[The order was registered in the Register of Judgments of the Books of Council and Session on (*date*) and an extract of the registered order and decree with warrant for execution has been issued by the Keeper of the Registers. Diligence in execution of the order may now be taken against you to enforce the order.]

Dated this                      day of

(*Signed*)

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Messenger-at-Arms  
[*or* Petitioner] [*or* Solicitor [*or* Agent] for  
petitioner]  
(*Address*)

**Status:** *This is the original version (as it was originally made).*

FORM 65.2 Form of reference to the European Court of Justice

Rule 65.2

**FORM 65.2**

**Rule 65.2**

**Form of reference to the European Court of Justice**

**REFERENCE**

to

**THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES**

for a Preliminary Ruling

from

**HER MAJESTY'S COURT OF SESSION IN SCOTLAND**

*in the cause*

[A.B.] (*designation and address*)

Pursuer [*or Petitioner or Appellant*]

against

[C.D.] (*designation and address*)

Defender [*or Respondent*]

This reference for a preliminary ruling of the Court of Justice of the European Communities is made following an interlocutor of (*name of Division of the Inner House or Lord Ordinary*) in the Court of Session on (*date*).

[*Here set out statement of the reference for the European Court, giving brief particulars of the case and the issues between the parties, any relevant facts found by the court, any relevant rules or provisions of Scots Law and relevant provisions of European Community Law.*]

The preliminary ruling of the Court of Justice of the European Communities is sought on the following questions:—

[*Here set out the questions in numbered paragraphs*]

Dated the                      day of

(*Signed*)

**Status:** *This is the original version (as it was originally made).*

FORM 67.5—A Form of agreement of a parent or guardian to an adoption order or an order under section 49 of the Adoption (Scotland) Act 1978

Rule 67.5(1)(a) and (b)

**FORM 67.5-A**

**Rule 67.5(1)(a) and (b)**

**Form of agreement of a parent or guardian to an adoption order or an order under section 49  
of the Adoption (Scotland) Act 1978**

IN THE COURT OF SESSION

in the PETITION of

[A.B.] (*designation and address*)

[*or serial number where one has been assigned*]

for

an Adoption Order under the Adoption (Scotland) Act 1978

[*or an Order under section 49(1) of the Adoption (Scotland) Act 1978*]

in respect of

[E.F.] (*address*)

I, \_\_\_\_\_ of (*address*) being a parent [*or guardian*]  
of the child, [E.F.], hereby state—

(1) That I understand that the effect of an adoption order [*or an order under section 49 of the Adoption (Scotland) Act 1978*] will be to deprive me permanently of the parental rights and duties relating to the child and to vest them in the petitioner; and in particular I understand that, if an order is made, I shall have no right to see or get in touch with the child or to have him [*or her*] returned to me.

(2) That I understand that the court cannot make an adoption order [*or an order under section 49 of the 1978 Act*] in relation to the child, unless the child is free for adoption, without the agreement of each parent or guardian of the child unless the court dispenses with an agreement on the ground that the person concerned—

- (a) cannot be found or is incapable of giving agreement. or
- (b) is withholding his agreement unreasonably, or
- (c) has persistently failed without reasonable cause to discharge the parental duties in relation to the child; or
- (d) has abandoned or neglected the child, or
- (e) has persistently ill-treated the child, or
- (f) has seriously ill-treated the child and the rehabilitation of the child within the household of the parent or guardian is unlikely.

(3) That I also understand that when the hearing on the petition to determine the application for an adoption order [*or an order under section 49 of the 1978 Act*] in relation to the child is heard, this document may be used as evidence of my agreement to the making of the order unless I inform the court that I no longer agree.

(4) That I hereby freely, and with full understanding of what is involved, agree unconditionally to the making of an adoption order [*or an order under section 49 of the 1978 Act*] in relation to the child in this petition.

[(5) That I have not received or given any payment or reward for, or in consideration of, the adoption of the child, for any agreement to the making of an adoption order or placing the child for adoption with any person or making any arrangements for the adoption of the child, other than a payment to an adoption agency for their expenses incurred in connection with the adoption.]

(Signed by parent or guardian)

**Status:** This is the original version (as it was originally made).

This agreement was signed by  
the                      day of

before me at

on

(Signed)

(Designation)

(Address)



FORM 67.5—B Form of agreement of a parent or guardian to an adoption order in a petition for an order freeing a child for adoption under section 18 of the Adoption (Scotland) Act 1978

*Status: This is the original version (as it was originally made).*

Rule 67.5(1)(c)

**FORM 67.5-B**

**Rule 67.5(1)(c)**

**Form of agreement of a parent or guardian to an adoption order in a petition for an order  
freeing a child for adoption under section 18 of the Adoption (Scotland) Act 1978**

**IN THE COURT OF SESSION**

in the PETITION of

[A.B.] (*designation and address*)

for

an Order freeing the child [E.F.] for adoption under  
section 18 of the Adoption (Scotland) Act 1978

I, \_\_\_\_\_, of (*address*) being a parent [*or guardian*]  
of the child, [E.F.], hereby state—

(1) That I understand that the effect of an adoption order would be to deprive me permanently of the parental rights and duties relating to the child and to vest them in the adopters; and that if and when an adoption order is made, I shall have no right to see or get in touch with the child or to have him [*or her*] returned to me.

(2) That I understand that the court cannot make an order freeing a child for adoption without the agreement of each parent or guardian of the child to the making of an adoption order, unless the court dispenses with an agreement on the ground that the person concerned—

- (a) cannot be found or is incapable of giving agreement, or
- (b) is withholding his agreement unreasonably, or
- (c) has persistently failed without reasonable cause to discharge the parental duties in relation to the child; or
- (d) has abandoned or neglected the child, or
- (e) has persistently ill-treated the child, or
- (f) has seriously ill-treated the child and the rehabilitation of the child within the household of the parent or guardian is unlikely.

(3) That I also understand that when the hearing on the petition to determine the application for an order freeing the child for adoption is heard, this document may be used as evidence of my agreement to the making of an adoption order unless I inform the court that I no longer agree.

(4) That I freely, and with full understanding of what is involved, agree unconditionally to the making of an adoption order.

(5) [That I have been given an opportunity of making a declaration that I prefer not to be involved in future questions concerning the adoption of the child. I understand that if I make such a declaration I will not be told when the child has been adopted or whether he has been placed for adoption. I also understand that I will not be able to apply for a revocation of the order freeing the child for adoption if I make such a declaration. I hereby declare freely, and with full understanding of what is involved, that I do not wish to be involved in future questions concerning the adoption of the child.] [*or That I have been given an opportunity of making a declaration that I prefer not to be involved in future questions concerning the adoption of the child, and the effect of making such a declaration has been explained to me. I do not wish to make such declaration.*]

[(6) That I have not received or given any payment or reward for, or in consideration of, the adoption of the child, for any agreement to the making of an adoption or consent to the making of an application for an order freeing the child for adoption, for placing the child for adoption with any person or making any arrangements for adoption of the child, other than a payment to an adoption agency for their expenses incurred in connection with the adoption.]

(Signed by parent or guardian)

**Status:** This is the original version (as it was originally made).

This agreement was signed by  
the day of

before me at

on

(Signed)

(Designation)

(Address)

**Status:** This is the original version (as it was originally made).

FORM 67.5—C Form of consent of a child to an order for his adoption or to an order under section 49 of the Adoption (Scotland) Act 1978

Rule 67.5(2)(a)

**FORM 67.5-C**

**Rule 67.5(2)(a)**

**Form of consent of a child to an order for his adoption or to an order under section 49 of  
the Adoption (Scotland) Act 1978**

IN THE COURT OF SESSION

in the PETITION of

[A.B.] (*designation and address*)

[*or serial number where one has been assigned*]

for

An Adoption Order under the Adoption (Scotland) Act 1978

[*or an Order under section 49(1) of the Adoption (Scotland) Act 1978*]

in respect of

[E.F.] (*address*)

I, \_\_\_\_\_, of (*address*) being a child and the child  
in respect of whom the petition for an order for my adoption [*or an order under section 49 of the*  
Adoption (Scotland) Act 1978] is presented, hereby state—

(1) That I understand that an order for my adoption [*or an order under section 49 of the 1978 Act*]  
cannot be made without my consent. The effect of my consent has been explained to me.

(2) That I also understand that, when the hearing on the petition to determine the application for  
an adoption order [*or an order under section 49 of the 1978 Act*] is heard, this document may be used  
as evidence of my consent to the making of an order for my adoption [*or an order under section 49*  
of the 1978 Act] by the petitioner unless I inform the court that I no longer consent.

(3) That I, with full understanding of what it involves, consent to the making of an order for my  
adoption [*or an order under section 49 of the 1978 Act*] by the petitioner.

(*Signed by the child*)

This consent was signed by  
the \_\_\_\_\_ day of \_\_\_\_\_

before me at \_\_\_\_\_ on \_\_\_\_\_

(*Signed*)

(*Designation*)

(*Address*)

**Status:** This is the original version (as it was originally made).

FORM 67.5—D Form of consent of a parent or guardian to petition for an order freeing a child for adoption under section 18 of the Adoption (Scotland) Act 1978

Rule 67.5(2)(b)

**FORM 67.5-D**

**Rule 67.5(2)(b)**

**Form of consent of a parent or guardian to petition for an order freeing a child for adoption  
under section 18 of the Adoption (Scotland) Act 1978**

**IN THE COURT OF SESSION**

in the PETITION of

[A.B.] (*designation and address*)

for

An order freeing the child [E.F.] for adoption  
under section 18 of the Adoption (Scotland) Act 1978

I, \_\_\_\_\_, of (*address*) being a parent [*or guardian*]  
of the child [E.F.], hereby state—

(1) That I consent to the petition of [A.B.], an adoption agency, for an order freeing the child for adoption.

(2) That I understand that the petitioner cannot apply to the court for an order freeing the child for adoption without the consent of a parent or guardian, unless the petitioner is applying for dispensation of the agreement of each parent or guardian of the child and the child is in the care of the petitioner.

(*Signed by parent or guardian*)

This consent was signed by  
the \_\_\_\_\_ day of \_\_\_\_\_

before me at \_\_\_\_\_ on \_\_\_\_\_

(*Signed*)

(*Designation*)

(*Address*)

\_\_\_\_\_

**Status:** *This is the original version (as it was originally made).*

FORM 67.5—Form of consent of a child to petition for an order freeing him for adoption under section 18 of the Adoption (Scotland) Act 1978



Rule 67.5(2)(c)

**FORM 67.5-E**

**Rule 67.5(2)(c)**

**Form of consent of a child to petition for an order freeing him for adoption under section 18 of the  
Adoption (Scotland) Act 1978**

**IN THE COURT OF SESSION**

in the PETITION of

[A.B.] (*designation and address*)

for

An Order freeing the child [E.F.] for adoption  
under section 18 of the Adoption (Scotland) Act 1978

I, \_\_\_\_\_, of (*address*) being a child and the child  
in respect of whom the petition for an order freeing me for adoption is presented, hereby state—

(1) That I understand that an order freeing me for adoption cannot be made without my consent.  
The effect of my consent has been explained to me.

(2) That I also understand that, when the hearing on the petition to determine the application for  
an order freeing me for adoption is heard, this document may be used as evidence of my consent to  
the making of an order freeing me for adoption unless I inform the court that I no longer consent.

(3) That I, with full understanding of what it involves, consent to the making of an order freeing  
me for adoption.

(4) That I understand, if an order is made freeing me for adoption and a petition for my adoption  
is subsequently presented to the court, that my consent to any order for my adoption will still be required  
to be obtained.

(*Signed by the child*)

This consent was signed by  
the \_\_\_\_\_ day of \_\_\_\_\_

before me at \_\_\_\_\_ on \_\_\_\_\_

(*Signed*)

(*Designation*)

(*Address*)

**Status:** This is the original version (as it was originally made).

FORM 67.12 Form of declaration by parent or guardian under section 18(6) or 19(4) of the Adoption (Scotland) Act 1978

Rule 67.12(1)

**FORM 67.12**

**Rule 67.12(1)**

**Form of declaration by parent or guardian under section 18(6) or 19(4) of the  
Adoption (Scotland) Act 1978**

**IN THE COURT OF SESSION**

in the PETITION of

[A.B.] (*designation and address*)

for

An order freeing the child [E.F.] for adoption  
under section 18 of the Adoption (Scotland) Act 1978

I, \_\_\_\_\_, of (*address*) being a parent [*or guardian*]  
of the child [E.F.], hereby state—

(1) That I declare that I prefer not to be involved in future questions concerning the adoption of  
[E.F.].

(2) [*Where the declaration is made under section 18(6):* That this declaration and its effect has been  
explained to me by the reporting officer appointed by the court] [*or where the declaration is made under  
section 19(4):* That this declaration and its effect has been explained to me by the adoption agency (*insert  
name*)].

(*Signed by parent or guardian*)

This declaration was signed by \_\_\_\_\_ before me at \_\_\_\_\_ on  
the \_\_\_\_\_ day of \_\_\_\_\_

(*Signed*)

(*Designation*)

(*Address*)

**Status:** This is the original version (as it was originally made).

FORM 67.13 Form of notice of hearing to determine application for an order freeing a child for adoption

Rule 67.13(3)

**FORM 67.13**

**Rule 67.13(3)**

**Form of notice of hearing to determine application for an order freeing a child for adoption**

**IN THE COURT OF SESSION**

in the

**PETITION**

of

[A.B.] (*designation and address*)

for

An order freeing the child [E.F.] for adoption under  
section 18 of the Adoption (Scotland) Act 1978

Date: (*date of posting or other method of intimation*)

To: (*name and address*)

**TAKE NOTICE**

1. That the hearing on the petition to determine the application for an order freeing the child, E.F. for adoption will come before the Lord Ordinary in the Court of Session, Parliament Square, Edinburgh on the            day of            , at            o'clock forenoon and that you may then appear and be heard personally or by counsel or other person having a right of audience on the question whether an order freeing the child for adoption should be made.
2. That you are [not] obliged to attend the hearing [unless you wish to do so].
3. That, while the petition is pending, a parent or guardian of the child who did not consent to the making of the application must not, except with the leave of the court, remove the child from the actual custody of the person with whom the child has his home against the will of that person.
- [4. That the court has been requested to dispense with your agreement to the making of an adoption order on the ground[s] that            .]

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for petitioner]  
(Address)

**Status:** This is the original version (as it was originally made).

FORM 67.15 Form of notice of hearing of an application for the revocation of an order freeing a child for adoption

Rule 67.15(4)

**FORM 67.15**

**Rule 67.15(4)**

**Form of notice of hearing of an application for the revocation of an order freeing a child  
for adoption**

IN THE COURT OF SESSION

in the

NOTE

by

[C.D.] (*designation and address*)

for

Revocation of an order freeing the child [E.F.] for adoption

Date: (*date of posting or other method of intimation*)

To: (*name and address*)

TAKE NOTICE

1. That the hearing on the Note to determine the application for revocation of an order freeing the child for adoption will come before the Lord Ordinary in the Court of Session, Parliament House, Edinburgh on the            day of            , at            o'clock forenoon and that you may then appear and be heard personally or by counsel or other person having a right of audience on the question whether the order freeing the child for adoption should be revoked.
2. That you are [not] obliged to attend the hearing [unless you wish to do so].

(Signed)

Messenger-at-Arms  
[or Solicitor [or Agent] for noter]  
(Address)

**Status:** This is the original version (as it was originally made).

FORM 67.22 Form of petition for adoption order or an order under section 49(1) of the Adoption  
(Scotland) Act 1978



**FORM 67.22**

**Form of petition for adoption order or an order under section 49(1) of the Adoption (Scotland) Act 1978**

# PETITION

[A.B.] (*designation and address*)

[or serial number where one has been assigned on application]

**Petitioner**

for

## An Adoption Order

under the Adoption (Scotland) Act 1978

[or an Order under section 49(1) of the Adoption (Scotland) Act 1978]

[or a Convention Adoption Order under the Adoption (Scotland) Act 1978]

in respect of

[E.F.] (name as in birth certificate,  
or name by which child is ordinarily known, and address)

1. That the petitioner wishes to adopt the child, [E.F.], under the provisions of the Adoption (Scotland) Act 1978.

2. That the petitioner is domiciled in  
and resides at

3. That the occupation of the petitioner is

4. That the petitioner is married [or unmarried], a widow [or a widower] (if married, state whether spouse resides with or apart from, the petitioner).

5. That the petitioner is \_\_\_\_\_ years of age.

6. That the petitioner has resident with him the following persons, namely,

7. That the petitioner [and his spouse] is [or are respectively] related to the child as follows:—[or that the petitioner [and his spouse] is not [or are not, nor is either of them] related to the child].

8. That the child is—

(a) of the sex:

(b) unmarried;

(c) a child of (name of mother) and (name of father, if known);

(d) of British [or \_\_\_\_\_] nationality;

(e) \_\_\_\_\_ years of age, having been born on the \_\_\_\_\_ day of \_\_\_\_\_

; at \_\_\_\_\_ in the county of \_\_\_\_\_ day of \_\_\_\_\_

(f) was received into the care and possession of the petitioner on

(g) has been continuously in his care possession since \_\_\_\_\_ :

*Status: This is the original version (as it was originally made).*

- (h) has the following guardians (*names and addresses*),  
; and  
(i) entitled to the following property, namely,

[9. *Where the child was not placed for adoption.* That a medical report on the health of the child is produced.]

[10. That the child is free for adoption under section 18 of the 1978 Act. A certified copy interlocutor of the (*name of court*) dated the                      day of                      , is produced. The interlocutor freeing the child for adoption has not been revoked under section 20 of the 1978 Act. In terms of that interlocutor the parental rights and duties relating to the child were vested in (*name of adoption agency*). [The parental rights and duties relating to the child were transferred to (*name of adoption agency*) by interlocutor of (*name of court*) under section 21 of the 1978 Act on the                      day of                      . A certified copy of that interlocutor is produced.].]

[11. That the child is in the care of                      who has [or have] the rights and duties of a parent or guardian [or the parental rights and duties] in respect of the child.]

[12. That (*name*) of (*address*) is liable to pay aliment to the child by interlocutor of the (*name of court*) [or by an agreement of (*names of parties to agreement*)] dated the                      day of                      .]

[13. That the petitioner believes and avers that (*name(s)*) is [or are] willing to agree to the making of an adoption order [or an order under section 49 of the 1978 Act] in favour of the petitioner.]

[14. That the petitioner desires the court to dispense with the agreement of (*name(s)*) on the ground[s] that                      .]

[15. That the petitioner believes and avers that the child, being a minor, consents to the making of an adoption order [or an order under section 49(1) of the 1978 Act] in favour of the petitioner. [Or That the petitioners desire the court to dispense with the consent of the child on the ground that he is incapable of giving his consent because (*state reason*)                      .]]

16. That the child has lived with the petitioner continuously since the                      day of 19                      . [He has accordingly had his home with the petitioner during the preceding five years.]

[17. That on the                      day of                      19                      the child was placed with the petitioner for adoption by (*name of adoption agency*) [or received into the custody of the petitioner in the following circumstances                      ].]

[18. That the petitioner notified the (*name of local authority*) on the                      day of 19                      of his intention to petition for an adoption order [or an order under section 49 of the 1978 Act] in respect of the child.]

[19. That the child has not been the subject of an adoption order or of a petition for an adoption order [save that (*state order and petition if any*)].]

[20. That the petitioner is prepared to undertake, if an adoption order [or an order under section 49 of the 1978 Act] is made in this petition, to make the following provision for the child                      .]

[21. That the petitioner has not received or agreed to receive and no person has made or agreed to make or give to the petitioner any payment or reward in consideration of the adoption of the child [except as follows].]

[22. That the petitioner intends to adopt the child under the law of [or within] (*state country*) which is the country of the domicile of the petitioner. [The petitioner wishes to remove the child from Great Britain for the purpose of adoption.]]

23. That this petition is presented under the provisions of the Adoption (Scotland) Act 1978, and rule 67.22 of the Rules of the Court of Session 1994.<sup>670</sup>

MAY IT THEREFORE please your Lordships to dispense with intimation and to order notice of this petition to be served by registered or recorded delivery, letter post or otherwise on such person or persons as your Lordships may think proper; and to

appoint a reporting officer, and, if necessary, a curator *ad litem* to the child sought to be adopted, and direct him [or them] to report; and thereafter, on resuming consideration hereof, together with the report by the reporting officer, and that of the curator *ad litem* if one is appointed, pronounce an interlocutor authorising the petitioner to adopt the child [or vesting in the petitioner the parental rights and duties relating to the child under section 49 of the Adoption (Scotland) Act 1978], [E.F.], in terms of the Adoption (Scotland) Act 1978, on such terms and conditions, if any, as your Lordships may think fit; and to direct the Registrar General for Scotland to make an entry regarding the adoption [or order under section 49 of the 1978 Act] in the Adopted Children Register in the form prescribed by him, giving the name[s] as the Christian [or forename[s]] and as the surname of the child in that form; and, further, upon proof to the satisfaction of your Lordships in the course of the proceedings to follow hereon, to find that the child was born on the day of in the year and is identical with the child to whom an entry numbered and made on the day of in the year, in the register of births for the registration district of in the country of relates: and to direct the Registrar General to cause such birth entry to be marked with the word "Adopted" [or "Proposed Foreign Adoption"] [and (*inserted only where the child was born in Scotland*) to include the above-mentioned date of birth in the entry recording the adoption in the manner indicated in that form]: and to pronounce such other or further orders or directions upon such matters, including the expenses of this petition, as your Lordships may think fit.

ACCORDING TO JUSTICE ETC.

(Signed)

Solicitor [or Agent] for the petitioner  
(Address of solicitor or agent)

[or counsel or other person having a right of audience]

**Status:** This is the original version (as it was originally made).

FORM 67.23 Form of notice to adoption agency or local authority of presenting a petition for an adoption order or for an order under section 49 of the Adoption (Scotland) Act 1978

Rule 67.23(1)(a)

**FORM 67.23**

**Rule 67.23(1)(a)**

**Form of notice to adoption agency or local authority of presenting a petition for an adoption order or for an order under section 49 of the Adoption (Scotland) Act 1978**

**IN THE COURT OF SESSION**

in the

**PETITION**

of

[A.B.] (*designation and address*)

for

An adoption order [*or an order under section 49 of the Adoption (Scotland) Act 1978*] in respect of the child [E.F.]

Date: (*insert date of posting or other method of intimation*)

To: (*name and address*)

**TAKE NOTICE**

1. That the petitioner has presented a petition to the Court of Session for an adoption order [*or an order under section 49 of the Adoption (Scotland) Act 1978*] in respect of the child [E.F.]
2. That the petition relates to a child who was placed for adoption by you on the                      day of                      [*or was not placed for adoption*].
3. That you are required under section 23 [*or where notice has been given under section 22(1), you were notified on the                      day of                      that you were required*] [*or where notice has not been given under section 22(1), you are required*] under section 22(1) of the 1978 Act to submit to the court a report including the matters mentioned in rule 67.21(1) of the Rules of the Court of Session 1994.
4. That on completion of your report you are required under rule 67.21(2) of the Rules of the Court of Session 1994 to send the report and a copy of it for each party to the Deputy Principal Clerk of Session, Court of Session, Parliament Square, Edinburgh EH1 1RQ, and to send a copy to (*name and address*), the reporting officer [and a copy to (*name and address*), the curator *ad litem* to the child [E.F.]] in this petition.

(Signed)

Messenger-at-Arms  
[*or Solicitor*] [*or Agent*] for petitioner]  
(Address)

**Status:** This is the original version (as it was originally made).

FORM 67.25 Form of notice of hearing of application for an adoption order or an order under section 49 of the Adoption (Scotland) Act 1978

Rule 67.25(3)

**FORM 67.25**

**Rule 67.25(3)**

**Form of notice of hearing of application for an adoption order or an order under section 49  
of the Adoption (Scotland) Act 1978**

**IN THE COURT OF SESSION**

in the

**PETITION**

of

[A.B.] (*designation and address*)

for

An adoption order [*or an order under section 49 of the  
Adoption (Scotland) Act 1978*] in respect of the child [E.F.]

Date: (*insert date of posting or other method of intimation*)

To: (*name and address*)

**TAKE NOTICE**

1. That the hearing on the petition to determine the application for an adoption order [*or an order under section 49 of the Adoption (Scotland) Act 1978*] will come before the Lord Ordinary in the Court of Session, Parliament House, Edinburgh on the                      day of                      , at                      o'clock and that you may then appear and be heard personally or by counsel or other person having a right of audience on the question whether an adoption order [*or an order under section 49 of the 1978 Act*] should be made.

2. That you are [not] obliged to attend the hearing [unless you wish to do so].

3. That, while the petition is pending, a parent or guardian of the child who has agreed to the making of an order must not, except with the leave of the court, remove the child from the actual custody of the petitioner.

[4. That the petition states that the child has had his home with the petitioner for the five years preceding the presentation of the petition and accordingly, if that is correct, no person is entitled, against the will of the petitioner, to remove the child from the actual custody of the petitioner except with the leave of the court or under authority conferred by any enactment or on the arrest of the child.]

[5. That the court has been requested to dispense with your agreement to the making of an order on the ground[s] that                      .]

(Signed)

Messenger-at-Arms  
[*or Solicitor [or Agent] for petitioner*]  
(Address)

**Status:** *This is the original version (as it was originally made).*

FORM 69.2 Form of Parliamentary or European parliamentary election petition



Rule 69.2(1)

**FORM 69.2**

**Rule 69.2(1)**

**Form of Parliamentary or European parliamentary election petition**

**IN THE ELECTION COURT**

**PETITION**

under the Representation of the People Act 1983

of

[A.B.] [and [C.D.]] (*designation and address*)  
Petitioner[s]

against

[E.F.] (*designation and address*), as the member  
whose election or return is complained of  
First Respondent

and

[G.H.] (*designation and address*), the returning officer  
Second Respondent

in respect of

The election for (*place*) held on                      day of

**HUMBLY SHEWETH:-**

1. That the [first named] petitioner voted [*or had a right to vote, as the case may be*] as an elector at the above election [*or claims to have had a right to be elected or returned at the above election, or was a candidate at the above election, as the case may be*]. The second named petitioner (*here state in like manner the right of each petitioner*).

2. That the election was held on the                      day of                      , when [A.B.] and [C.D.] (*name them*) were candidates, and the returning officer has returned [E.F.] (*name*) as being duly elected.

3. That (*state the facts on which the petitioners rely in this and following numbered paragraphs*).

[4.] That the petition is presented under the Representation of the People Act 1983 and rule 69.2 of the Rules of the Court of Session 1994.

MAY IT THEREFORE please the court to determine that [E.F.] was not duly elected or returned, and that the election was void [*or that [A.B. [or C.D.]] was duly elected, and ought to have been returned, or as the case may be*].

According to Justice etc.

(*Signed*)

**Status:** This is the original version (as it was originally made).

FORM 69.4 Form of bond of caution in election petition

Rule 69.4(3)

**FORM 69.4**

**Rule 69.4(3)**

**Form of bond of caution in election petition**

**BOND OF CAUTION**

**Representation of the People Act 1983**

We, [I.J.] and [K.L.] (*names and designations*), considering that a petition has been presented by [A.B.], complaining of an undue return (*or undue election as the case may be*) of [E.F.] as a member to serve in Parliament for the constituency of [or representative to the European Parliament for (*name of constituency*)] on the                      day of                      , and that by section 136 of the Representation of the People Act 1983, it is provided that security for the payment of all costs, charges, and expenses that may become payable by the petitioner in terms of the Act, shall, on presentation of such petition, be given on behalf of the petitioners, to the amount of £                      ; and that by rule 69.4(3) of the Rules of the Court of Session 1994 for the trial of election petitions, under the Act, it is prescribed that the security so to be given on behalf of the petitioners may be by lodging a bond of caution, in terms of the Act; and seeing that we, the said parties, are willing to grant such bond, therefore we, the said parties, as cautioners, sureties, and full debtors for and with [A.B.], petitioner, do hereby bind and oblige ourselves conjunctly and severally, and our respective heirs, executors, and successors whomsoever, that [A.B.], petitioner shall make payment of all costs, charges, and expenses that may become payable by him to any person or persons, by virtue of any decree to be pronounced in the petition; and that to the amount of £                      sterling, with one-fifth part more of liquidate penalty in case of failure; and we consent to the registration hereof for execution. IN WITNESS WHEREOF, etc.

**Status:** This is the original version (as it was originally made).

FORM 69.5 Form of notice of the presentation of an election petition and of the nature of the proposed security

Rule 69.5(2)

**FORM 69.5**

**Rule 69.5(2)**

**Form of notice of the presentation of an election petition and of the nature of the proposed security**

**Representation of the People Act 1983**

Date: (insert date of posting or other method of intimation)

To: (name and address)

**TAKE NOTICE**

(1) That, under the Representation of the People Act 1983 and rule 69.3 of the Rules of the Court of Session 1994, a petition has been presented to the Court of Session, Edinburgh touching the election of a Member of Parliament [or representative to the European Parliament] for the (place), of which petition the foregoing is a full copy, and that you are named therein as a respondent.

(2) That the security which has been given in terms of section 136 of the above Act is in the form of a bond of caution to the amount of £ granted by [A.B.] and [C.D.] (names, designations and addresses) or by consignation of £ in the Bank of . If you desire to object to the above bond of caution in terms of section 136(4) of the above Act, you may do so within [14] days of the date of this notice by lodging the objection in writing in the Petition Department, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ and sending or delivering a full copy of it to me at the following address (address).

(Signed)

Petitioner  
[or Solicitor [or Agent] for petitioner]  
(Address)

**Status:** This is the original version (as it was originally made).

FORM 64.15 Form of warrant to cite witnesses in election petition

Rule 64.15

**FORM 64.15**

**Rule 64.15**

**Form of warrant to cite witnesses in election petition**

**Representation of the People Act 1983**

*(place and date)*

Having considered the motion for the petitioner [*or respondent*], grants warrant to all officers of the law for citing *(name them)*, to attend the Election Court, for the trial of the election petition to be held at *within (name court-house)* on the *day of*, at *o'clock forenoon [or forthwith, as the case may be]*, to be severally examined as witnesses in the petition, and to attend the Election Court until their examination shall have been completed.

*(Signed)*

Judge of the Election Court

**Status:** *This is the original version (as it was originally made).*

FORM 69.19—A Form of notice of intention to withdraw election petition



Rule 69.19(1)

**FORM 69.19-A**

**Rule 69.19(1)**

**Form of notice of intention to withdraw election petition**

**Representation of the People Act 1983**

In the Election Petition for \_\_\_\_\_ in which \_\_\_\_\_ is  
petitioner and \_\_\_\_\_ is respondent.

Date: (insert date of posting or other method of intimation)

To: (name and address)

**TAKE NOTICE**

(1) That the above petitioner has, on the \_\_\_\_\_ day of \_\_\_\_\_, lodged at the office of the Deputy Principal Clerk of Session notice of application to withdraw his petition, of which the following is a copy:- (Set it out)

(2) That under section 150 of the Representation of the People Act 1983 and rule 69.20 of the Rules of the Court of Session 1994, any person who might have been a petitioner, in respect of the election, may, within five days after publication of this Notice give notice in writing, signed by him or on his behalf, to the said Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh EH1 1RQ, of his intention to apply at the hearing to be substituted for the petitioner.

(Signed)

Petitioner  
[or Solicitor [or Agent] for petitioner]  
(Address)

**Status:** This is the original version (as it was originally made).

FORM 69.19–B Form of application for leave to withdraw election petition

Rule 69.19(4)

**FORM 69.19-B**

**Rule 69.19(4)**

**Form of application for leave to withdraw election petition**

Representation of the People Act 1983

Parliamentary [*or European*  
Parliament] constituency of

IN THE ELECTION COURT

APPLICATION TO WITHDRAW

by

[A.B.] [and [C.D.]] (*designation and addresses*)  
Petitioner[s]

in the PETITION of

[A.B.] [and [C.D.]] (*designation and addresses*)  
Petitioner

against

[E.F.] (*designation and address*)  
First Respondent

[G.H.] (*designation and address*)  
Second Respondent

The petitioner [A.B.], with the consent of the petitioner [C.D.], applies for leave to withdraw his petition on the following grounds: (*state grounds in numbered paragraphs*), and prays that a day may be appointed for hearing his application.

Dated the                      day of

*(To be signed by the applicant and consenter, if any, or their respective solicitors, who shall each append to their signatures a statement of whether they sign as or on behalf of an applicant or a consenter.)*

**Status:** This is the original version (as it was originally made).

FORM 69.23 Form of notice of abatement of petition by death of petitioner

Rule 69.23(1)

**FORM 69.23**

**Rule 69.23(1)**

**Form of notice of abatement of petition by death of petitioner**

Representation of the People Act 1983

Constituency of

The election for *(place)* held on                      day of

The election petition presented by [A.B.] [and [C.D.]] (*designations and addresses*) against [E.F.] (*designation and address*), the member whose election or action is complained of, has been abated by the death of [A.B.] the [surviving] petitioner.

Any person who might have been a petitioner in respect of this election may apply by motion in the Election Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ within [14] days after the date of this notice to be substituted as a petitioner.

Date (*insert date*)

(*Signed*)

**Status:** *This is the original version (as it was originally made).*

FORM 72.6–A Information to be contained in the Register of Insolvencies

Rule 72.6(1)

**FORM 72.6-A**

**Rule 72.6(1)**

**Information to be contained in the Register of Insolvencies**

**A. Sequestrations**

Name of debtor

Debtor's residence and his principal place of business (if any) at date of sequestration or date of death

Date of death in case of deceased debtor

Occupation of debtor

Name and address of petitioner for sequestration

Court by which sequestration awarded

Sheriff court to which sequestration remitted (where applicable)

Date of first order

Date of award of sequestration

Date of recall of sequestration (where applicable)

Date certificate for summary administration of sequestration of debtor's estate granted (where applicable)

Date certificate for summary administration of sequestration of debtor's estate withdrawn (where applicable)

Name and address of interim trustee and date of appointment

Level of debt when interim trustee's statement of debtor's affairs is produced

Level of assets when interim trustee's statement of debtor's affairs is produced

Name and address of permanent trustee and date of confirmation of appointment

Date of debtor's discharge and whether on composition or by operation of law

Date of interim trustee's discharge

Date of permanent trustee's discharge

**B. Protected Trust Deeds for Creditors**

Name and address of grantor of trust deed

Name and address of trustee under the deed

Date (or dates) of execution of deed

Date on which copy deed and certificate of accession were registered

Date of registration of statement indicating how the estate was realised and distributed and certificate to the effect that the distribution was in accordance with the trust deed

Date of trustee's discharge

Date of registration of copy of order of court that non-acceding creditor is not bound by trustee's discharge

**Status:** This is the original version (as it was originally made).

FORM 72.6-B Form of undertaking required by section 2(3)(c) of the Bankruptcy (Scotland) Act  
1985



Rule 72.6(2)

**FORM 72.6-B**

**Rule 72.6(2)**

**Form of undertaking required by section 2(3)(c) of the Bankruptcy (Scotland) Act 1985**

I, (*insert name, designation and address*), a qualified insolvency practitioner undertake, if appointed by the court to do so:-

- (a) to act as interim trustee in the sequestration of (*insert full name and address of debtor*); and
- (b) to act as permanent trustee in the sequestration where no permanent trustee is elected.

Date (*insert date*)

(*Signed*)

Qualified insolvency practitioner

**Status:** *This is the original version (as it was originally made).*

FORM 72.6—C Form of memorandum by permanent trustee to be recorded in the Register of Inhibitions and Adjudications under section 14(4) of the Bankruptcy (Scotland) Act 1985

Rule 72.6(3)

**FORM 72.6-C**

**Rule 72.6(3)**

**Form of memorandum by permanent trustee to be recorded in the Register of Inhibitions and Adjudications under section 14(4) of the Bankruptcy (Scotland) Act 1985**

**From:** *(name, designation and address of permanent trustee)* trustee in the sequestration of *(full name and address of debtor)*.

**To:** The Keeper of the Register of Inhibitions and Adjudications.

A certified copy of the court order of *(date)* awarding sequestration in respect of *(full name and address of debtor)* was recorded in your Register on *(date)*.

Please record this memorandum to renew the effect of that recording for a further period of three years from the date of presentment of this memorandum.

Date *(insert date)*

*(Signed)*

Permanent trustee  
[or Solicitor [or Agent] for permanent trustee]

**Status:** This is the original version (as it was originally made).

FORM 72.6—D Form of notice of inhibition by trustee under trust deed to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Bankruptcy (Scotland) Act 1985

Rule 72.6(4)

**FORM 72.6-D**

**Rule 72.6(4)**

**Form of notice of inhibition by trustee under trust deed to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Bankruptcy (Scotland) Act 1985**

A trust deed within the meaning of the Bankruptcy (Scotland) Act 1985 has been granted by (*full name and address of debtor*) and delivered to (*name, designation and address of permanent trustee*) as trustee acting under the trust deed.

Under the trust deed the estate of (*full name of debtor*) has been conveyed to (*name of permanent trustee*) as trustee for the benefit of the creditors generally of (*full name of debtor*).

Date (*insert date*)

(*Signed*)

Permanent trustee  
[or Solicitor [or Agent] for permanent  
trustee]

**Status:** *This is the original version (as it was originally made).*

FORM 72.6—EForm of notice of recall of inhibition to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(2) of Schedule 5 to the Bankruptcy (Scotland) Act 1985

Rule 72.6(5)

**FORM 72.6-E**

**Rule 72.6(5)**

**Form of notice of recall of inhibition to be recorded in the Register of Inhibitions and  
Adjudications under paragraph 2(2) of Schedule 5 to the Bankruptcy (Scotland) Act 1985**

The notice by (*name, designation and address of permanent trustee*) as trustee under a trust deed within the meaning of the Bankruptcy (Scotland) Act 1985 for creditors generally of (*full name and address of debtor*) recorded on (*date*) is now recalled.

Date (*insert date*)

(*Signed*)

Permanent trustee  
[*or Solicitor [or Agent] for permanent trustee*]

**Status:** This is the original version (as it was originally made).

FORM 76.9 Form of notice to person with interest in property subject to an application for an order under section 24 of the Criminal Justice (Scotland) Act 1987



Rule 76.9

**FORM 76.9**

**Rule 76.9**

**Form of notice to person with interest in property subject to an application for an order  
under section 24 of the Criminal Justice (Scotland) Act 1987**

*(Cause reference number)*

IN THE COURT OF SESSION

in the

PETITION [*or* NOTE]

of

[A.B.] (*designation and address*)

for an order under sections 13 and 24 [*or* section 24] of the  
Criminal Justice (Scotland) Act 1987

in respect of the estates of [C.D.] (*address*)

Date: (*date of posting or other method of service*)

To: (*name and address of person on whom notice is to be served*)

This Notice—

- (a) gives you warning that an application has been made to the Court of Session for an order which may affect your interest in property; and
- (b) informs you that you have an opportunity to appear and make representations to the court before the application is determined.

**TAKE NOTICE**

1. That on (*date*) in the High Court of Justiciary at (*place*) a confiscation order was made under section 1 of the Criminal Justice (Scotland) Act 1987 in respect of [C.D.] (*address*).

2. That on (*date*) the administrator appointed under section 13(1)(a) of the Act of 1987 on (*date*) was empowered to realise property belonging to [C.D.].

*or*

2. That on (*date*) the administrator was appointed under section 13(1)(b) of the Act of 1987 on (*date*) to realise property belonging to [C.D.].

3. That application has been made by petition [*or* note] for an order under section 24 of the Act of 1987 (*here set out briefly the nature of the order sought*). A copy of the petition [*or* note] is attached.

4. That you have the right to appear before the court in person or by counsel or other person having a right of audience and make such representations as you may have in respect of the order applied for. The court has fixed (*insert day and date fixed for hearing the application*) at 10 a.m. in the Court of Session, 2 Parliament Square, Edinburgh as the time when you should appear to do this.

5. That if you do not appear or are not represented on the above date, the order applied for may be made in your absence.

**IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a Solicitor, Citizens Advice Bureau or other legal advice agency or adviser immediately.**

(Signed)

Messenger-at-Arms  
[*or* Solicitor [*or* Agent] for petitioner [*or*  
noter]  
(Address)

**Status:** This is the original version (as it was originally made).

FORM 77.10 Form of joint minute to transfer summary trial petition to another Lord Ordinary  
because of death, disability or absence

Rule 77.10(1)

**FORM 77.10**

**Rule 77.10(1)**

**Form of joint minute to transfer summary trial petition to another Lord Ordinary because  
of death, disability or absence**

IN THE COURT OF SESSION

JOINT MINUTE

for the Parties

in the PETITION of

[A.B.] and [C.D.] (*designations and addresses*)  
Petitioners

[E.F.] and [G.H.] for the parties concur in craving the court that the cause shall be remitted to Lord  
(*name*) for determination by him because of the death [*or disability or absence*] of Lord  
(*name*).

IN RESPECT WHEREOF

(*Signed by counsel or other person having a  
right of audience*)

**Status:** *This is the original version (as it was originally made).*

FORM 77.11 Form of joint minute to adopt summary trial procedure in action in dependence

Rule 77.11(1)

**FORM 77.11**

**Rule 77.11(1)**

**Form of joint minute to adopt summary trial procedure in action in dependence**

**IN THE COURT OF SESSION**

**JOINT MINUTE**

**for the Parties**

*in causa*

[A.B.] (*designation and address*)

Pursuer

against

[C.D.] (*designation and address*)

Defender

[E.F.] and [G.H.] for the parties concur in craving the court that the cause shall be remitted to Lord  
(*name*) for determination by him under section 26 of the Court of Session Act 1988.

**IN RESPECT WHEREOF**

(*Signed by counsel or other person having a  
right of audience*)

*Status: This is the original version (as it was originally made).*

### SCHEDULE 3

Paragraph 3(1)

#### AMENDMENT TO ENACTMENT

##### *Presumption of Death (Scotland) Act 1977 (c. 27)*

In section 4(3) of the Presumption of Death (Scotland) Act 1977 (person having an interest seeking determination or appointment in application for variation order), for the words “lodge a minute”, substitute the words “make an application to the court”.

### SCHEDULE 4

Paragraph 3(2)

#### ENACTMENTS REPEALED

<i>Year of Session and Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>	<i>Rules of the Court of Session 1994</i>
c.10(S.)	Citation Act 1540	The whole Act	r. 16.1
c.21 (S.)	Citation Act 1693	The whole Act	Ch. 16
6 Geo. 4, c.120	Court of Session Act 1825	Section 53	r. 16.12(4)
1 & 2 Vict., c.114	Debtors (Scotland) Act 1838	Sections 16, 18 and 20	r. 13.6(c) r. 3.5(4) r. 13.11
31 & 32 Vict., c.100	Court of Session Act 1868	Section 39	r. 29.1(2)(b)
31 & 32 Vict., c.101	Titles to Land Consolidation Act 1868	Section 158 and Schedule QQ	r. 13.11 r. 59.1
45 & 46 Vict., c.77	Citation Amendment (Scotland) Act 1882	Sections 3, 4(1) to (4), 5 and 6 and Schedules 1 and 2 in their application to any cause or proceedings in the Court of Session	r. 16.4
57 & 58 Vict., c.40	Nautical Assessors (Scotland) Act 1894	Sections 2, 3, 4 and 5 in their application to the Court of Session	r. 12.1(3) r. 12.8 r. 12.5 r. 12.9
58 & 59 Vict., c.19	Court of Session Consignations (Scotland) Act 1895	In section 3, the words from “, and the Clerk of Court” to “such Clerk”	r. 35.11(2)

## SCHEDULE 5

Paragraph 3(3)

## ACTS OF SEDERUNT REVOKED

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1949/1896	Act of Sederunt (Court of Session Jury Trials) 1949	The whole of the Act of Sederunt
1964/1901	Act of Sederunt (Rules of Court Amendment No.5) 1964	The whole of the Act of Sederunt
1965/321	Act of Sederunt (Rules of Court, consolidation and amendment) 1965	The whole of the Act of Sederunt
1965/1090	Act of Sederunt (Rules of Court Amendment No.1) 1965	The whole of the Act of Sederunt
1965/1266	Act of Sederunt (Rules of Court Amendment No.2) 1965	The whole of the Act of Sederunt
1965/1405	Act of Sederunt (Rules of Court Amendment No.3) 1965	The whole of the Act of Sederunt
1966/335	Act of Sederunt (Rules of Court Amendment No.1) 1966	The whole of the Act of Sederunt
1966/868	Act of Sederunt (Rules of Court Amendment No.2) 1966	The whole of the Act of Sederunt
1966/1283	Act of Sederunt (Rules of Court Amendment No.3) 1966	The whole of the Act of Sederunt
1966/1531	Act of Sederunt (Rules of Court Amendment No.4) 1966	The whole of the Act of Sederunt
1966/1620	Act of Sederunt (Rules of Court Amendment No.5) 1966	The whole of the Act of Sederunt
1967/387	Act of Sederunt (Rules of Court Amendment No.1) 1967	The whole of the Act of Sederunt
1967/487	Act of Sederunt (Appointment of Judicial Factors and Rules of Court Amendment No.2) 1967	Paragraphs 5, 6, 7 and 8
1967/1090	Act of Sederunt (Rules of Court Amendment No.3) 1967	The whole of the Act of Sederunt
1967/1789	Act of Sederunt (Rules of Court Amendment No.4) 1967	The whole of the Act of Sederunt
1968/1016	Act of Sederunt (Rules of Court Amendment No.1) 1968	The whole of the Act of Sederunt
1968/1122	Act of Sederunt (Form of Extract Decree of Divorce) 1968	The whole of the Act of Sederunt

**Status:** This is the original version (as it was originally made).

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1968/1150	Act of Sederunt (Rules of Court Amendment No.2) 1968	The whole of the Act of Sederunt
1968/1602	Act of Sederunt (Rules of Court Amendment No.3) 1968	The whole of the Act of Sederunt
1968/1759	Act of Sederunt (Rules of Court Amendment No.4) 1968	The whole of the Act of Sederunt
1968/1760	Act of Sederunt (Rules of Court Amendment No.5) 1968	The whole of the Act of Sederunt
1969/474	Act of Sederunt (Rules of Court Amendment No.1) 1969	The whole of the Act of Sederunt
1969/475	Act of Sederunt (Rules of Court Amendment No.2) 1969	The whole of the Act of Sederunt
1969/1702	Act of Sederunt (Rules of Court Amendment No.3) 1969	The whole of the Act of Sederunt
1969/1703	Act of Sederunt (Rules of Court Amendment No.4) 1969	The whole of the Act of Sederunt
1969/1819	Act of Sederunt (Rules of Court Amendment No.5) 1969	The whole of the Act of Sederunt
1970/96	Act of Sederunt (Rules of Court Amendment No.1) 1970	The whole of the Act of Sederunt
1970/134	Act of Sederunt (Rules of Court Amendment No.2) 1970	The whole of the Act of Sederunt
1970/682	Act of Sederunt (Rules of Court Amendment No.3) 1970	The whole of the Act of Sederunt
1970/1058	Act of Sederunt (Rules of Court Amendment No.4) 1970	The whole of the Act of Sederunt
1970/1746	Act of Sederunt (Rules of Court Amendment No.5) 1970	The whole of the Act of Sederunt
1971/66	Act of Sederunt (Rules of Court Amendment No.1) 1971	The whole of the Act of Sederunt
1971/201	Act of Sederunt (Rules of Court Amendment No.1) (Alteration of Operative Date) 1971	The whole of the Act of Sederunt
1971/202	Act of Sederunt (Rules of Court Amendment No.2) 1971	The whole of the Act of Sederunt
1971/203	Act of Sederunt (Rules of Court Amendment No.3) 1971	The whole of the Act of Sederunt
1971/265	Act of Sederunt (Rules of Court Amendment No.4) 1971	The whole of the Act of Sederunt



<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1971/1161	Act of Sederunt (Rules of Court Amendment No.5) 1971	The whole of the Act of Sederunt
1971/198	Act of Sederunt (Rules of Court Amendment No.5) 1970 (Alteration of Fees to Shorthand Writers) 1971	The whole of the Act of Sederunt
1971/1162	Act of Sederunt (Rules of Court Amendment No.6) 1971	The whole of the Act of Sederunt
1971/1165	Act of Sederunt (Edictal Citations, Commissary Petitions and Petitions of Service) 1971	Paragraph 1
1971/1215	Act of Sederunt (Rules of Court Amendment No.7) 1971	The whole of the Act of Sederunt
1971/1714	Act of Sederunt (Rules of Court Amendment No.8) 1971	The whole of the Act of Sederunt
1971/1797	Act of Sederunt (Rules of Court Amendment No.9) 1971	The whole of the Act of Sederunt
1971/1809	Act of Sederunt (Rules of Court Amendment No.10) 1971	The whole of the Act of Sederunt
1972/164	Act of Sederunt (Rules of Court Amendment No.1) 1972	The whole of the Act of Sederunt
1972/1530	Act of Sederunt (Rules of Court Amendment No.2) 1972	The whole of the Act of Sederunt
1972/1672	Act of Sederunt (Rules of Court Amendment No.3) 1972 (Alteration of Fees to Shorthand Writers) 1972	The whole of the Act of Sederunt
1972/1835	Act of Sederunt (Rules of Court Amendment No.4) 1972	The whole of the Act of Sederunt
1972/1981	Act of Sederunt (Rules of Court Amendment No.5) 1972	The whole of the Act of Sederunt
1972/1982	Act of Sederunt (Rules of Court Amendment No.6) 1972	The whole of the Act of Sederunt
1972/2021	Act of Sederunt (Rules of Court Amendment No.7) 1972	The whole of the Act of Sederunt
1972/2022	Act of Sederunt (Rules of Court Amendment No.8) 1972	The whole of the Act of Sederunt
1973/145	Act of Sederunt (Rules of Court Amendment No.1) 1973	The whole of the Act of Sederunt

**Status:** This is the original version (as it was originally made).

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1973/360	Act of Sederunt (Rules of Court Amendment No.2) 1973	The whole of the Act of Sederunt
1973/540	Act of Sederunt (Rules of Court Amendment No.3) 1973	The whole of the Act of Sederunt
1973/541	Act of Sederunt (Rules of Court Amendment No.4) 1973	The whole of the Act of Sederunt
1973/984	Act of Sederunt (Rules of Court Amendment No.5 1973) (Alteration of fees to Shorthand Writers) 1973	The whole of the Act of Sederunt
1973/1991	Act of Sederunt (Rules of Court Amendment No.6) 1973	The whole of the Act of Sederunt
1974/845	Act of Sederunt (Rules of Court Amendment) 1974	The whole of the Act of Sederunt
1974/945	Act of Sederunt (Rules of Court Amendment No.2) 1974	The whole of the Act of Sederunt
1974/946	Act of Sederunt (Rules of Court Amendment No.3) 1974	The whole of the Act of Sederunt
1974/1603	Act of Sederunt (Rules of Court Amendment No.4) 1974	The whole of the Act of Sederunt
1974/1628	Act of Sederunt (Rules of Court Amendment No.5) (Alteration of Fees to Shorthand Writers) 1974	The whole of the Act of Sederunt
1974/1686	Act of Sederunt (Rules of Court Amendment No.6) 1974	The whole of the Act of Sederunt
1974/2090	Act of Sederunt (Rules of Court Amendment No.7) 1974	The whole of the Act of Sederunt
1975/89	Act of Sederunt (Rules of Court Amendment) 1975	The whole of the Act of Sederunt
1975/1106	Act of Sederunt (Rules of Court Amendment No.2) 1975	The whole of the Act of Sederunt
1975/1585	Act of Sederunt (Rules of Court Amendment No.3) (Alteration of Fees to Shorthand Writers) 1975	The whole of the Act of Sederunt
1976/137	Act of Sederunt (Rules of Court Amendment) 1976	The whole of the Act of Sederunt
1976/282	Act of Sederunt (Rules of Court Amendment No.2) 1976	The whole of the Act of Sederunt
1976/372	Act of Sederunt (Rules of Court Amendment No.3)	The whole of the Act of Sederunt

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
	(Alteration of Fees to Shorthand Writers) 1976	
1976/745	Act of Sederunt (Rules of Court Amendment No.4) (Transmission of Records) 1976	The whole of the Act of Sederunt
1976/779	Act of Sederunt (Rules of Court Amendment No.5) (Appeals under Social Security Acts) 1976	The whole of the Act of Sederunt
1976/847	Act of Sederunt (Rules of Court Amendment No.6) (Appeals under Consumer Credit Act 1974) 1976	The whole of the Act of Sederunt
1976/867	Act of Sederunt (Rules of Court Amendment No.7) (Solicitor's Admission Fees) 1976	The whole of the Act of Sederunt
1976/1605	Act of Sederunt (Rules of Court Amendment No.9) (Alteration of Fees to Shorthand Writers No.2) 1976	The whole of the Act of Sederunt
1976/1849	Act of Sederunt (Rules of Court Amendment No.10) (Revenue Appeals) 1976	The whole of the Act of Sederunt
1976/1994	Act of Sederunt (Rules of Court Amendment No.11) (Consistorial Actions) 1976	The whole of the Act of Sederunt
1976/2196	Act of Sederunt (Rules of Court Amendment No.13) (Medical Witnesses' Fees) 1976	The whole of the Act of Sederunt
1976/2197	Act of Sederunt (Rules of Court Amendment No.14) (Third Party Procedure) 1976	The whole of the Act of Sederunt
1977/472	Act of Sederunt (Rules of Court Amendment No.2) (Adoption Proceedings) 1977	The whole of the Act of Sederunt
1977/974	Act of Sederunt (Rules of Court Amendment No.3) (Applications under Companies and Insolvency Acts 1976) 1977	The whole of the Act of Sederunt

**Status:** This is the original version (as it was originally made).

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1977/978	Act of Sederunt (Rules of Court Amendment No.4) (Shorthand Writers' Fees) 1977	The whole of the Act of Sederunt
1977/1621	Act of Sederunt (Rules of Court Amendment No.5) (Miscellaneous Amendments) 1977	The whole of the Act of Sederunt
1978/106	Act of Sederunt (Rules of Court Amendment No.1) (Consistorial Causes) 1978	The whole of the Act of Sederunt
1978/161	Act of Sederunt (Rules of Court Amendment No.3) (Presumption of Death) 1978	The whole of the Act of Sederunt
1978/690	Act of Sederunt (Rules of Court Amendment No.4) (Commercial Causes) 1978	The whole of the Act of Sederunt
1978/799	Act of Sederunt (Rules of Court Amendment No.5) (Depute Clerks of Session) 1978	The whole of the Act of Sederunt
1978/925	Act of Sederunt (Rules of Court Amendment No.6) (Shorthand Writers' Fees) 1978	The whole of the Act of Sederunt
1978/955	Act of Sederunt (Rules of Court Amendment No.8) (Patent Rules) 1978	The whole of the Act of Sederunt
1978/1373	Act of Sederunt (Rules of Court Amendment No.9) (Convention Adoption Rules) 1978	The whole of the Act of Sederunt
1978/1804	Act of Sederunt (Rules of Court Amendment No.10) (Induciae) 1978	The whole of the Act of Sederunt
1979/516	Act of Sederunt (Rules of Court Amendment No.2) (European Assembly Election Petitions) 1979	The whole of the Act of Sederunt
1979/670	Act of Sederunt (Rules of Court Amendment No.3) (International Oil Pollution Compensation Fund) 1979	The whole of the Act of Sederunt
1079/1033	Act of Sederunt (Rules of Court Amendment No.4) (Shorthand Writers' Fees) 1979	The whole of the Act of Sederunt

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1979/1410	Act of Sederunt (Rules of Court Amendment No.5) 1979	The whole of the Act of Sederunt
1980/290	Act of Sederunt (Rules of Court Amendment No.1) (Adoption Proceedings) 1980	The whole of the Act of Sederunt
1980/891	Act of Sederunt (Rules of Court Amendment No.3) (Protection of Trading Interests Act 1980) 1980	The whole of the Act of Sederunt
1980/892	Act of Sederunt (Rules of Court Amendment No.4) (Applications under section 85 of Fair Trading Act 1973) 1980	The whole of the Act of Sederunt
1980/909	Act of Sederunt (Rules of Court Amendment No.5) (Witnesses' Fees) 1980	The whole of the Act of Sederunt
1980/1016	Act of Sederunt (Rules of Court Amendment No.6) (Shorthand Writers' Fees) 1980	The whole of the Act of Sederunt
1980/1144	Act of Sederunt (Rules of Court Amendment No.7) (Miscellaneous Amendments) 1980	The whole of the Act of Sederunt
1980/1754	Act of Sederunt (Rules of Court Amendment No.8) (Leave to appeal and appeals from Social Security Commissioners) 1980	The whole of the Act of Sederunt
1980/1801	Act of Sederunt (Rules of Court Amendment No.9) (Remits from Sheriff Court) 1980	The whole of the Act of Sederunt
1981/1137	Act of Sederunt (Rules of Court Amendment No.3) (Shorthand Writers' Fees) 1981	The whole of the Act of Sederunt
1982/654	Act of Sederunt (Rules of Court Amendment No.3) (Court Fees) 1982	The whole of the Act of Sederunt
1982/804	Act of Sederunt (Rules of Court Amendment No.4) (Shorthand Writers' Fees) 1982	The whole of the Act of Sederunt
1982/1381	Act of Sederunt (Rules of Court Amendment No.5) (Application under	The whole of the Act of Sederunt

**Status:** This is the original version (as it was originally made).

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
	Matrimonial Homes (Family Protection) (Scotland) Act 1981) 1982	
1982/1679	Act of Sederunt (Rules of Court Amendment No.6) (Simplified Divorce Procedure) 1982	The whole of the Act of Sederunt
1982/1723	Act of Sederunt (Rules of Court Amendment No.7) (Witnesses' Fees) 1982	The whole of the Act of Sederunt
1982/1824	Act of Sederunt (Rules of Court Amendment No.8) (Court Fees in Simplified Divorce Procedure) 1982	The whole of the Act of Sederunt
1982/1825	Act of Sederunt (Rules of Court Amendment No.9) (Miscellaneous Amendments) 1982	The whole of the Act of Sederunt
1983/397	Act of Sederunt (Rules of Court Amendment No.1) (Appeals under Social Security Acts) 1983	The whole of the Act of Sederunt
1983/398	Act of Sederunt (Rules of Court Amendment No.2) (Interest in Decrees or Extracts) 1983	The whole of the Act of Sederunt
1983/656	Act of Sederunt (Rules of Court Amendment No.3) (Letters of Request) 1983	The whole of the Act of Sederunt
1983/826	Act of Sederunt (Rules of Court Amendment No.4) (Taxation of Accounts) 1983	The whole of the Act of Sederunt
1983/1210	Act of Sederunt (Rules of Court Amendment No.6) (Simplified Divorce Procedure) 1983	The whole of the Act of Sederunt
1984/1642	Act of Sederunt (Rules of Court Amendment No.7) (Shorthand Writers' Fees) 1983	The whole of the Act of Sederunt
1984/235	Act of Sederunt (Rules of Court Amendment No.1) (Court Fees) 1984	The whole of the Act of Sederunt

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1984/472	Act of Sederunt (Rules of Court Amendment No.2) (Miscellaneous) 1984	The whole of the Act of Sederunt
1984/499	Act of Sederunt (Rules of Court Amendment No.3) (Summary Decree and Other Amendments) 1984	The whole of the Act of Sederunt
1984/919	Act of Sederunt (Amendment of Rules of Court No.4) (Provisional Damages) 1984	The whole of the Act of Sederunt
1984/920	Act of Sederunt (Amendment of Rules of Court No.5) (Intimation in fatal accident cases) 1984	The whole of the Act of Sederunt
1984/997	Act of Sederunt (Rules of Court Amendment No.6) (Adoption Proceedings) 1984	The whole of the Act of Sederunt
1985/1133	Act of Sederunt (Rules of Court Amendment No.8) (Shorthand Writers' Fees) 1984	The whole of the Act of Sederunt
1985/227	Act of Sederunt (Rules of Court Amendment No.1) (Optional Procedure in Certain Actions of Reparation) 1985	The whole of the Act of Sederunt
1985/500	Act of Sederunt (Rules of Court Amendment No.2) (Judicial Review) 1985	The whole of the Act of Sederunt
1985/760	Act of Sederunt (Rules of Court Amendment No.4) (Shorthand Writers' Fees) 1985	The whole of the Act of Sederunt
1985/1178	Act of Sederunt (Rules of Court Amendment No.5) (Interest in Decrees or Extracts) 1985	The whole of the Act of Sederunt
1985/1426	Act of Sederunt (Rules of Court Amendment No.6) (Election Petitions) 1985	The whole of the Act of Sederunt
1986/1600	Act of Sederunt (Rules of Court Amendment No.7) (Miscellaneous Amendments) 1985	The whole of the Act of Sederunt
1986/514	Act of Sederunt (Rules of Court Amendment No.1) (Bankruptcy Forms) 1986	The whole of the Act of Sederunt

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<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1986/515	Act of Sederunt (Rules of Court Amendment No.2) (Custody of Children) 1986	The whole of the Act of Sederunt
1986/694	Act of Sederunt (Rules of Court Amendment No.3) (Companies and Insolvency) 1986	The whole of the Act of Sederunt
1986/799	Act of Sederunt (Rules of Court Amendment No.4) (Liner Conferences) 1986	The whole of the Act of Sederunt
1986/9678	Act of Sederunt (Rules of Court Amendment No.5) (Solicitors' Fees) 1986	The whole of the Act of Sederunt
1986/1128	Act of Sederunt (Rules of Court Amendment No.6) (Shorthand Writers' Fees) 1986	The whole of the Act of Sederunt
1986/1231	Act of Sederunt (Rules of Court Amendment No.7) (Consistorial Causes) 1986	The whole of the Act of Sederunt
1986/1937	Act of Sederunt (Rules of Court Amendment No.8) (Miscellaneous) 1986	The whole of the Act of Sederunt
1986/1941	Act of Sederunt (Rules of Court Amendment No.9) (Jurisdiction and Enforcement) 1986	The whole of the Act of Sederunt
1986/1955	Act of Sederunt (Rules of Court Amendment No.10) (Miscellaneous Amendments) 1986	The whole of the Act of Sederunt
1987/2298	Act of Sederunt (Rules of Court Amendment No.11) (Companies) 1986	The whole of the Act of Sederunt
1987/12	Act of Sederunt (Rules of Court Amendment No.1) (Drug Trafficking) 1987	The whole of the Act of Sederunt
1987/871	Act of Sederunt (Rules of Court Amendment No.2) (Solicitors' Fees) 1987	The whole of the Act of Sederunt
1987/1079	Act of Sederunt (Rules of Court Amendment No.3) (Shorthand Writers' Fees) 1987	The whole of the Act of Sederunt



<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1987/1206	Act of Sederunt (Rules of Court Amendment No.4) (Miscellaneous) 1987	The whole of the Act of Sederunt
1988/2160	Act of Sederunt (Rules of Court Amendment No.5) (Miscellaneous) 1987	The whole of the Act of Sederunt
1988/615	Act of Sederunt (Rules of the Court of Session Amendment No.1) (Family Law) 1988	The whole of the Act of Sederunt
1988/684	Act of Sederunt (Rules of the Court of Session Amendment No.2) (Solicitors' Fees) 1988	The whole of the Act of Sederunt
1988/1032	Act of Sederunt (Rules of the Court of Session Amendment No.3) (Shorthand Writers' Fees) 1988	The whole of the Act of Sederunt
1988/1521	Act of Sederunt (Rules of the Court of Session Amendment No.4) (Commercial Actions) 1988	The whole of the Act of Sederunt
1988/2059	Act of Sederunt (Form of charge for payment) 1988	The whole of the Act of Sederunt in its application to the Court of Session
1988/2060	Act of Sederunt (Rules of the Court of Session Amendment No.5) (Time to pay directions) 1988	The whole of the Act of Sederunt
1988/435	Act of Sederunt (Rules of the Court of Session Amendment No.1) (Written Statements) 1989	The whole of the Act of Sederunt
1988/445	Act of Sederunt (Rules of the Court of Session Amendment No.2) (Solicitors' Fees) 1989	The whole of the Act of Sederunt
1989/778	Act of Sederunt (Rules of the Court of Session Amendment No.3) (Shorthand Writers' Fees) 1989	The whole of the Act of Sederunt
1990/705	Act of Sederunt (Rules of the Court of Session Amendment No.1) (Miscellaneous) 1990	The whole of the Act of Sederunt
1990/717	Act of Sederunt (Rules of the Court of Session Amendment No.2) (Solicitors' Fees) 1990	The whole of the Act of Sederunt

**Status:** This is the original version (as it was originally made).

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
1990/798	Act of Sederunt (Rules of the Court of Session Amendment No.3) (Shorthand Writers' Fees) 1990	The whole of the Act of Sederunt
1990/1262	Act of Sederunt (Rules of the Court of Session Amendment No.4) (Solicitors' Fees) 1990	The whole of the Act of Sederunt
1990/272	Act of Sederunt (Rules of the Court of Session Amendment No.1) (Fees of Solicitors) 1991	The whole of the Act of Sederunt
1991/1157	Act of Sederunt (Rules of the Court of Session Amendment No.2) (Miscellaneous) 1991	The whole of the Act of Sederunt
1991/846	Act of Sederunt (Rules of the Court of Session Amendment No.3) (Solicitors' Fees) 1991	The whole of the Act of Sederunt
1991/1158	Act of Sederunt (Rules of the Court of Session Amendment No.4) (Shorthand Writers' Fees) 1991	The whole of the Act of Sederunt
1991/1183	Act of Sederunt (Rules of the Court of Session Amendment No.5) (Prevention of Terrorism) 1991	The whole of the Act of Sederunt
1991/1621	Act of Sederunt (Rules of the Court of Session Amendment No.7) (Patents Rules) 1991	The whole of the Act of Sederunt
1991/1915	Act of Sederunt (Rules of the Court of Session Amendment No.8) (Discharge of Judicial Factors) 1991	The whole of the Act of Sederunt
1991/2213	Act of Sederunt (Rules of the Court of Session Amendment No.9) (International Commercial Arbitration) 1991	The whole of the Act of Sederunt
1991/2483	Act of Sederunt (Rules of the Court of Session Amendment No.10) (Miscellaneous) 1991	The whole of the Act of Sederunt
1991/2652	Act of Sederunt (Rules of the Court of Session Amendment No.11) (Applications under the Access to Health Records Act 1990) 1991	The whole of the Act of Sederunt

<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
<a href="#">1992/88</a>	Act of Sederunt (Rules of the Court of Session Amendment) (Optional Procedure and Miscellaneous) 1992	The whole of the Act of Sederunt
<a href="#">1992/894</a>	Act of Sederunt (Rules of the Court of Session Amendment No.2) (Solicitors' Fees) 1992	The whole of the Act of Sederunt
<a href="#">1992/1433</a>	Act of Sederunt (Rules of the Court of Session Amendment No.3) (Taxation of Accounts) 1992	The whole of the Act of Sederunt
<a href="#">1992/1422</a>	Act of Sederunt (Rules of the Court of Session Amendment No.4) (Solicitors, Notaries Public, Qualified Conveyancers and Executry Practitioners) 1992	The whole of the Act of Sederunt
<a href="#">1992/1533</a>	Act of Sederunt (Rules of the Court of Session Amendment No.5) (Public Trusts) 1992	The whole of the Act of Sederunt
<a href="#">1992/1905</a>	Act of Sederunt (Rules of the Court of Session Amendment No.6) (Shorthand Writers' Fees) 1992	The whole of the Act of Sederunt
<a href="#">1992/1906</a>	Act of Sederunt (Rules of the Court of Session Amendment No.7) (Witnesses' Fees) 1992	The whole of the Act of Sederunt
<a href="#">1992/1898</a>	Act of Sederunt (Rules of the Court of Session Amendment No.8) (Fees of Solicitors in Speculative Actions) 1992	The whole of the Act of Sederunt
<a href="#">1992/2289</a>	Act of Sederunt (Rules of the Court of Session Amendment No.9) (Miscellaneous) 1992	The whole of the Act of Sederunt
<a href="#">1993/770</a>	Act of Sederunt (Rules of the Court of Session Amendment) (Interest in Decrees and Extracts) 1993	The whole of the Act of Sederunt
<a href="#">1993/899</a>	Act of Sederunt (Rules of the Court of Session Amendment) (Register of Insolvencies) 1993	The whole of the Act of Sederunt
<a href="#">1993/900</a>	Act of Sederunt (Rules of the Court of Session Amendment No.2) (Fees of Solicitors) 1993	The whole of the Act of Sederunt

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<i>Statutory Instrument Year and Number</i>	<i>Title of Act of Sederunt</i>	<i>Extent of Revocation</i>
<a href="#">1993/1357</a>	Act of Sederunt (Rules of the Court of Session Amendment No.3) (Shorthand Writers' Fees) 1993	The whole of the Act of Sederunt
<a href="#">1994/1139</a>	Act of Sederunt (Rules of the Court of Session Amendment No.1) (Fees of Solicitors) 1994	The whole of the Act of Sederunt
<a href="#">1994/1140</a>	Act of Sederunt (Rules of the Court of Session Amendment No.2) (Shorthand Writers' Fees) 1994	The whole of the Act of Sederunt

## EXPLANATORY NOTE

*(This note is not part of the Act of Sederunt)*

### 1. This Act of Sederunt—

- (a) makes provision for new rules of court for the Court of Session, consolidating, with amendments, the Act of Sederunt (Rules of Court, consolidation and amendment) 1965, certain enactments (see Schedules 3, 4 and 5) and practice notes, including new provisions (see paragraph 2 below) and setting out the rules in a new way (paragraph 2 and Schedule 2);
- (b) amends the Presumption of Death (Scotland) Act 1977 on a procedural matter (paragraph 3(1) and Schedule 3);
- (c) repeals certain procedural provisions of enactments for which provision is made in the new Rules of the Court of Session in Schedule 2 (paragraph 3(2) and Schedule 4);
- (d) revokes the Act of Sederunt (Rules of Court, consolidation and amendment) 1965 and the Acts of Sederunt which amended it, revokes the Act of Sederunt (Court of Session Jury Trials) 1949, in respect of which provision is made in the Court of Session etc. Fees Order 1984 [[S.I. 1984/256](#)], and revokes certain Acts of Sederunt for which provision is made in the new Rules of the Court of Session in Schedule 2, namely paragraph 1 of the Act of Sederunt (Form of Extract Decree of Divorce) 1968, paragraph 1 of the Act of Sederunt (Edictal Citations, Commissary Petitions and Petitions of Service) 1971 and the Act of Sederunt (Form of Charge for Payment) 1988 (paragraph 3(3) and Schedule 5); and
- (e) revokes all Acts of Sederunt to the extent that they relate to practice or procedure in the Court of Session made before 10th November 1965, being the date on which the Act of Sederunt (Rules of Court, consolidation and amendment) 1965 was made (paragraph 3(4)).

### 2. The Rules of the Court of Session 1994 in Schedule 2 to this Act of Sederunt contain new provisions. These include—

- (a) making provision to extend the time the court is in session during the year (rule 10.1);

- (b) providing a procedure for a party litigant to bring an action or present a petition which would otherwise require the signature of counsel or other person having a right of audience or a solicitor (rule 4.2(5));
- (c) reducing the period of time for lodging defences from 14 days to 7 days (rule 18.2(2));
- (d) providing rules for applications by minute or note (Chapter 15);
- (e) allowing for a note of argument to be sought in any cause appointed to the Procedure Roll (rule 22.4);
- (f) providing a formal procedure for applying to the court for early disposal of a reclaiming motion or an appeal (rules 38.13 and 40.11);
- (g) providing for accounts of expenses to be lodged within four months after a final interlocutor in which a finding for expenses is made (rule 42.1(2));
- (h) providing for appeals from the Employment Appeals Tribunal to be subject to the rules for appeals from inferior courts (rule 40.1(2)(c)(iii));
- (i) providing for the taxation of accounts between husband and wife in consistorial causes to be on the same basis as taxation of accounts between party and party by omitting any reference to a separate basis for husband and wife (rule 42.16(1));
- (j) providing for all consistorial and other family related causes to be brought by action and none to be by petition, and bringing together all such causes into one chapter (Chapter 49, and see definition of “family action” in rule 49.1(1));
- (k) providing a new procedure for family actions after defences have been lodged (rule 49.33); and
- (l) providing for a petition in relation to a public trust presented in the Outer House to be remitted where necessary to the Inner House (rule 63.9).

**3.** The Act of Sederunt (Rules of the Court of Session Amendment No. 1) 1994 and the Act of Sederunt (Rules of the Court of Session Amendment No. 2) 1994 (Shorthand Writers' Fees) 1994 revoked by this Act of Sederunt (see Schedule 5) are re-enacted by this Act of Sederunt (paragraph 3 and Schedule 5). The re-enactments do not involve any increase in the fees, outlays or allowances in those revoked instruments. In paragraph 5 (time charge) of Chapter I of the Table of Fees, preparation and attendance have been placed in separate items whereas previously they were in one item: this does not represent an additional fee item, because a fee has always been allowed for each of preparation and attendance as appropriate.