

---

STATUTORY INSTRUMENTS

---

**1999 No. 929**

**Act of Sederunt (Summary Applications, Statutory  
Applications and Appeals etc. Rules) 1999**

**CHAPTER 2**

**SUMMARY APPLICATION RULES**

**PART I**

**INTERPRETATION**

**Interpretation**

**2.1** In this Chapter, unless the context otherwise requires—

“decree” includes any judgment, deliverance, interlocutor, act, order, finding or authority which may be extracted;

“defender” means any person other than the pursuer who is a party to a summary application; and

“pursuer” means any person making a summary application.

**PART II**

**GENERAL RULES**

**Application**

**2.2** This Part applies to summary applications.

**Relief from failure to comply with rules**

**2.3.—(1)** The sheriff may relieve a party from the consequences of failure to comply with a provision in this Part which is shown to be due to mistake, oversight or other excusable cause, on such conditions as he thinks fit.

(2) Where the sheriff relieves a party from the consequences of a failure to comply with a provision in this Part of these Rules under paragraph (1), he may make such order as he thinks fit to enable the summary application to proceed as if the failure to comply with the provision had not occurred.

**The initial writ**

**2.4.—(1)** Unless otherwise prescribed by any other enactment, a summary application shall be commenced by initial writ in Form 1.

(2) The initial writ shall be written, typed or printed on A4 size paper of durable quality and shall not be backed or folded.

(3) Where the pursuer has reason to believe that an agreement exists prorogating jurisdiction over the subject-matter of the summary application to another court, the initial writ shall contain details of that agreement.

(4) Where the pursuer has reason to believe that proceedings are pending before another court involving the same cause of action and between the same parties as those named in the instance of the initial writ, the initial writ shall contain details of those proceedings.

(5) An article of condescendence shall be included in the initial writ averring—

- (a) the ground of jurisdiction; and
- (b) the facts upon which the ground of jurisdiction is based.

(6) Where the residence, registered office or place of business, as the case may be, of the defender is not known and cannot reasonably be ascertained, the pursuer shall set out in the instance of the initial writ that the whereabouts of the defender are not known and aver in the condescendence what steps have been taken to ascertain his present whereabouts.

(7) The initial writ shall be signed by the pursuer or his solicitor (if any) and the name and address of that solicitor shall be stated on the back of every service copy of that writ.

(8) The initial writ shall include averments about those persons who appear to the pursuer to have an interest in the application and in respect of whom a warrant for citation is sought.

### **Order for intimation to interested persons by sheriff**

**2.5** The sheriff may make an order for intimation to any person who appears to him to have an interest in the summary application.

### **Time limits**

**2.6.**—(1) This rule applies to a summary application where the time within which the application may be made is not otherwise prescribed.

(2) An application to which this rule applies shall be lodged with the sheriff clerk within 21 days after the date on which the decision, order, scheme, determination, refusal or other act complained of was intimated to the pursuer.

(3) On special cause shown, the sheriff may hear an application to which this rule applies notwithstanding that it was not lodged within the period prescribed in paragraph (2).

### **Warrants, forms and certificate of citation**

**2.7.**—(1) Subject to paragraph (2), a warrant for citation, intimation or arrestment on the dependence may be signed by the sheriff or sheriff clerk.

(2) A warrant containing a period of notice shorter than the period of notice to be given to a defender under rule 3.6(1)(a) or (b), as the case may be, of the Ordinary Cause Rules or any other warrant which the sheriff clerk may not sign, shall be signed by the sheriff.

(3) Where the sheriff clerk refuses to sign a warrant which he may sign, the party presenting the summary application may apply to the sheriff for the warrant.

(4) Where citation is necessary—

- (a) the warrant of citation shall, subject to paragraph (5), be in Form 2; and
- (b) citation shall, subject to paragraph (7) and rule 2.13 (service where address of person is not known), be in Form 3.

(5) Where a time to pay direction under the Debtors (Scotland) Act 1987(1) may be applied for by the defender, the warrant of citation shall be in Form 4.

(6) Where a warrant of citation in accordance with Form 4 is appropriate, there shall be served on the defender (with the initial writ and warrant) a notice in Form 5.

(7) Where a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be in Form 6 which shall be attached to a copy of the initial writ and warrant of citation.

(8) Where citation is necessary, the certificate of citation shall be in Form 7 which shall be attached to the initial writ.

(9) Where citation is by a sheriff officer, one witness shall be sufficient for the execution of citation.

(10) Where citation is by a sheriff officer, the certificate of citation shall be signed by the sheriff officer and the witness and shall state—

- (a) the method of citation; and
- (b) where the method of citation was other than personal or postal citation, the full name and designation of any person to whom the citation was delivered.

(11) Where citation is executed under paragraph (3) of rule 2.11 (depositing or affixing by sheriff officer), the certificate shall include a statement—

- (a) of the method of service previously attempted;
- (b) of the circumstances which prevented such service being executed; and
- (c) that a copy of the document was sent in accordance with the provisions of paragraph (4) of that rule.

### **Orders against which caveats may be lodged**

**2.8** A person may lodge a caveat against an interim order (other than an order under section 1 of the Administration of Justice (Scotland) Act 1972 (orders for inspection of documents and other property, etc.))(2) sought before service of the initial writ.

### **Form, lodging and renewal of caveats**

**2.9.**—(1) A caveat shall be in Form 8 and shall be lodged with the sheriff clerk.

(2) A caveat shall remain in force for a period of one year from the date on which it was lodged and may be renewed on its expiry for a further period of one year and yearly thereafter.

(3) Where a caveat has been lodged and has not expired, no order in respect of which the caveat was lodged may be pronounced unless the sheriff is satisfied that all reasonable steps have been taken to afford the person who lodged the caveat an opportunity of being heard; and the sheriff may continue the hearing on such an order until he is satisfied that such steps have been taken.

### **Postal service or intimation**

**2.10.**—(1) In any summary application in which service or intimation of any document or citation of any person may be by recorded delivery, such service, intimation or citation shall be by the first class recorded delivery service.

---

(1) 1987 c. 18.

(2) 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.

(2) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882 (time from which period of notice reckoned)(3), where service or intimation is by post, any period of notice contained in the warrant of citation shall run from the beginning of the day after the date of posting.

(3) On the face of the envelope used for postal service or intimation under this rule there shall be written or printed the following notice:–

“This envelope contains a citation to or intimation from (*specify the court*). If delivery cannot be made at the address shown it is to be returned immediately to:– The Sheriff Clerk (*insert address of sheriff clerk’s office*).”.

(4) The certificate of citation or intimation in the case of postal service shall have attached to it any relevant postal receipts.

### **Service within Scotland by sheriff officer**

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

- (a) personally; or
- (b) by being left in the hands of a resident at the person’s dwelling place or an employee at his place of business.

(2) Where service is executed under paragraph (1)(b), the certificate of citation or service shall contain the full name and designation of any person in whose hands the initial writ, decree, charge, warrant or other order or writ, as the case may be, was left.

(3) Where a sheriff officer has been unsuccessful in executing service in accordance with paragraph (1), he may, after making diligent enquiries, serve the document in question by–

- (a) depositing it in that person’s dwelling place or place of business; or
- (b) affixing it to the door of that person’s dwelling place or place of business.

(4) Subject to rule 2.18 (service of schedule of arrestment), where service is executed under paragraph (3), the sheriff officer shall, as soon as possible after such service, send a letter containing a copy of the document by ordinary first class post to the address at which he thinks it most likely that the person on whom service has been executed may be found.

### **Service on persons furth of Scotland**

**2.12.**—(1) Subject to the following provisions of this rule, an initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served on a person furth of Scotland shall be served–

- (a) at a known residence or place of business in England, Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country–
  - (i) in accordance with the rules for personal service under the domestic law of the place in which service is to be executed; or
  - (ii) by posting in Scotland a copy of the document in question in a registered letter addressed to the person at his residence or place of business;
- (b) in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November

1965(4) or the Convention in Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982(5)–

- (i) by a method prescribed by the internal law of the country where service is to be executed for the service of documents in domestic actions upon persons who are within its territory;
  - (ii) by or through the central, or other appropriate, authority in the country where service is to be executed at the request of the Secretary of State for Foreign and Commonwealth Affairs;
  - (iii) by or through a British Consular Office in the country where service is to be executed at the request of the Secretary of State for Foreign and Commonwealth Affairs;
  - (iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered letter addressed to the person at his residence; or
  - (v) where the law of the country in which service is to be executed permits, service by an *huissier*, other judicial officer or competent official of the country where service is to be executed; or
- (c) in a country with which the United Kingdom has a convention on the service of writs in that country other than the conventions mentioned in sub-paragraph (b), by one of the methods approved in the relevant convention.
- (2) Any document which requires to be posted in Scotland for the purposes of this rule shall be posted by a solicitor or a sheriff officer, and on the face of the envelope there shall be written or printed the notice set out in rule 2.10(3).
- (3) In the case of service by a method referred to in paragraph (1)(b)(ii) and (iii), the pursuer shall–
- (a) send a copy of the writ and warrant of service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and
  - (b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.
- (4) In the case of service by a method referred to in paragraph (1)(b)(v), the pursuer or the sheriff officer shall–
- (a) send a copy of the writ and warrant for service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the official in the country in which service is to be executed; and
  - (b) lodge in process a certificate of the official who executed service stating that it has been, and the manner in which it was, served.
- (5) Where service is executed, in accordance with paragraph (1)(a)(i) or (1)(b)(i) other than on another party in the United Kingdom, the Isle of Man or the Channel Islands, the party executing service shall lodge a certificate by a person who is conversant with the law of the country concerned and who practises or has practised law in that country or is a duly accredited representative of the Government of that country, stating that the method of service employed is in accordance with the law of the place where service was executed.
- (6) Every writ, document, citation or notice on the face of the envelope mentioned in rule 2.10(3) shall be accompanied by a translation in an official language of the country in which service is to be executed unless English is an official language of that country.

---

(4) Cmnd. 3986 (1969).

(5) 1982 c. 27; Schedule 1 was substituted by S.I. 1990/2591. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1 and Schedule 1.

(7) A translation referred to in paragraph (6) shall be certified as correct by the person making it and the certificate shall—

- (a) include his full name, address and qualifications; and
- (b) be lodged with the execution of citation or service.

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

**2.13.**—(1) Where the address of a person to be cited or served with a document is not known and cannot reasonably be ascertained, the sheriff shall grant warrant for citation or service upon that person by—

- (a) the publication of an advertisement in Form 9 in a specified newspaper circulating in the area of the last known address of that person; or
- (b) displaying on the walls of court a copy of the instance and crave of the initial writ, the warrant of citation and a notice in Form 10;

and any period of notice contained in the warrant of citation shall run from the date of publication of the advertisement or display on the walls of court, as the case may be.

(2) Where service requires to be executed under paragraph (1), the pursuer shall lodge a service copy of the initial writ and a copy of any warrant of citation with the sheriff clerk from whom they may be uplifted by the person for whom they are intended.

(3) Where a person has been cited or served in accordance with paragraph (1) and, after the summary application has commenced, his address becomes known, the sheriff may allow the initial writ to be amended subject to such conditions as to re-service, intimation, expenses or transfer of the summary application as he thinks fit.

(4) Where advertisement in a newspaper is required for the purpose of citation or service under this rule, a copy of the newspaper containing the advertisement shall be lodged with the sheriff clerk by the pursuer.

(5) Where display on the walls of court is required under paragraph (1)(b), the pursuer shall supply to the sheriff clerk for that purpose a certified copy of the instance and crave of the initial writ and any warrant of citation.

### **Persons carrying on business under trading or descriptive name**

**2.14.**—(1) A person carrying on a business under a trading or descriptive name may be designed in the instance of the initial writ by such trading or descriptive name alone, and an extract of a—

- (a) decree pronounced in the sheriff court; or
- (b) decree proceeding upon any deed, decree arbitral, bond, protest of a bill, promissory note or banker's note or upon any other obligation or document on which execution may proceed, recorded in the sheriff court books,

against such person under such trading or descriptive name, shall be a valid warrant for diligence against such person.

(2) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree in a summary application in which a person carrying on business under a trading or descriptive name is designed in the instance of the initial writ by that name shall be served—

- (a) at any place of business or office at which such business is carried on within the sheriffdom of the sheriff court in which the cause is brought; or
- (b) where there is no place of business within that sheriffdom, at any place where such business is carried on (including the place of business or office of the clerk or secretary of any company, corporation or association or firm).

### **Endorsation unnecessary**

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

### **Re-service**

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

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

**2.17.—(1)** A person who appears in a summary application shall not be entitled to state any objection to the regularity of the execution of citation, service or intimation on him, and his appearance shall remedy any defect in such citation, service or intimation.

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

### **Service of schedule of arrestment**

**2.18** If a schedule of arrestment has not been personally served on an arrestee, the arrestment shall have effect only if a copy of the schedule is also sent by registered post or the first class recorded delivery service to—

- (a) the last known place of residence of the arrestee; or
- (b) if such a place of residence is not known, or if the arrestee is a firm or corporation, to the arrestee's principal place of business if known, or, if not known, to any known place of business of the arrestee,

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

### **Arrestment on dependence before service**

**2.19.—(1)** An arrestment on the dependence of a summary application used before service shall cease to have effect if the initial writ is not served within 20 days from the date of arrestment and either—

- (a) in the case where the pursuer is entitled to minute for decree in absence on the expiry of a period of notice contained in the warrant of citation, decree in absence has not been pronounced within 20 days after the expiry of the period of notice; or
- (b) in the case where the pursuer is not entitled to minute for decree in absence prior to the first hearing of the summary application, there is no appearance by the pursuer at the first hearing and the summary application drops from the roll.

(2) After such an arrestment has been executed, the party who executed it shall forthwith report the execution to the sheriff clerk.

### **Movement of arrested property**

**2.20.—(1)** Any person having an interest may apply by motion for a warrant authorising the movement of a vessel or cargo which is the subject of an arrestment to found jurisdiction or on the dependence of a summary application.

(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.

### **Transfer to another sheriff court**

**2.21.**—(1) The sheriff may, on cause shown, remit a summary application to another sheriff court.

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

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

(4) The sheriff shall not transfer a summary application to another sheriff court under paragraph (2) or (3) except—

- (a) on the motion of a party; and
- (b) where he considers it expedient to do so having regard to the convenience of the parties and their witnesses.

(5) On making an order under paragraph (1), (2) or (3), the sheriff—

- (a) shall state his reasons for doing so in the interlocutor; and
- (b) may make the order on such conditions as to expenses or otherwise as he thinks fit.

(6) The court to which a summary application is transferred under paragraph (1), (2) or (3) shall accept the summary application.

(7) A transferred summary application shall proceed in all respects as if it had been originally brought in the court to which it is transferred.

(8) An interlocutor transferring a summary application may, with leave of the sheriff, be appealed to the sheriff principal but shall not be subject to appeal to the Court of Session.

### **Applications for time to pay directions**

**2.22.**—(1) This rule applies to a summary application in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.

(2) A defender may apply for a time to pay direction and, where appropriate, for recall or restriction of an arrestment—

- (a) by appearing and making the appropriate motion at a diet fixed for hearing of the summary application;
- (b) except where the warrant of citation contains a shorter period of notice than the period of notice to be given to a defender under rule 3.6(1)(a) or (b), as the case may be, of the Ordinary Cause Rules, by completing and returning the appropriate portion of Form 5 to the sheriff clerk at least seven days before the first diet fixed for hearing of the summary application or the expiry of the period of notice or otherwise, as the case may be in the warrant of citation; or
- (c) by application to the court at any stage before final decree.

(3) The sheriff may determine an application under paragraph (2)(b) or (c) without the defender having to appear.

### **Remuneration of assessors**

**2.23** Where an assessor is appointed by the sheriff to assist him in determining the summary application, the remuneration to be paid to such assessor shall be part of the expenses of the application.

### **Deposits for expenses**

**2.24** Where, under any enactment, the sheriff requires the pursuer to deposit a sum of money to cover the expenses of an appeal under the enactment, such sum shall, subject to the provisions of that enactment, not exceed an amount which is twenty-five times the amount of the fee payable at that time in respect of lodging the initial writ.

### **When decrees extractable**

**2.25.**—(1) Subject to the following paragraphs—

- (a) subject to sub-paragraph (c), a decree in absence may be extracted after the expiry of 14 days from the date of decree;
- (b) subject to sub-paragraph (c), any decree pronounced in a defended summary application may be extracted at any time after whichever is the later of the following—
  - (i) the expiry of the period within which an application for leave to appeal may be made and no such application has been made;
  - (ii) the date on which leave to appeal has been refused and there is no right of appeal from such refusal;
  - (iii) the expiry of the period within which an appeal may be marked and no appeal has been marked; or
  - (iv) the date on which an appeal has been finally disposed of; and
- (c) where the sheriff has, in pronouncing decree, reserved any question of expenses, extract of that decree may be issued only after the expiry of 14 days from the date of the interlocutor disposing of the question of expenses unless the sheriff otherwise directs.

(2) The sheriff may, on cause shown, grant a motion to allow extract to be applied for and issued earlier than a date referred to in paragraph (1).

(3) In relation to a decree referred to in paragraph (1)(b) or (c), paragraph (2) shall not apply unless—

- (a) the motion under that paragraph is made in the presence of the parties; or
- (b) the sheriff is satisfied that proper intimation of the motion has been made in writing to every party not present at the hearing of the motion.

(4) Nothing in this rule shall affect the power of the sheriff to supersede extract.

### **Form of extract decree**

**2.26** The extract of a decree shall be in Form 11.

### **Form of warrant for execution**

**2.27** An extract of a decree on which execution may proceed shall include a warrant for execution in the following terms:—

“This extract is warrant for all lawful execution hereon.”.

**Date of decree in extract**

**2.28.**—(1) Where the sheriff principal has adhered to the decision of the sheriff following an appeal, the date to be inserted in the extract decree as the date of decree shall be the date of the decision of the sheriff principal.

(2) Where a decree has more than one date it shall not be necessary to specify in an extract what was done on each date.

**Decrees in absence where defender furth of Scotland**

**2.29.**—(1) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the initial writ in sufficient time to arrange for his defence or that all necessary steps have been taken to that end, and for the purposes of this paragraph—

- (a) the question whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982(6);
- (b) the question whether a person is domiciled in another Contracting State shall be determined in accordance with Article 52 of the Convention in Schedule 1 or 3C to that Act(7), as the case may be; and
- (c) the term “Contracting State” has the meaning assigned in section 1 of that Act(8).

(2) Where an initial writ has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of Article 15 of the Convention have been complied with.

**Motion procedure**

**2.30** Except where the sheriff otherwise directs, any motion relating to a summary application shall be made in accordance with, and regulated by, Chapter 15 of the Ordinary Cause Rules.

**Power of sheriff to make orders**

**2.31** The sheriff may make such order as he thinks fit for the progress of a summary application in so far as it is not inconsistent with section 50 of the Sheriff Courts (Scotland) Act 1907.

(6) 1982 c. 27; sections 41 and 42 were amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2, paragraphs 16 and 17 respectively.

(7) Schedule 1 was substituted by S.I. 1990/2591. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1 and Schedule 1.

(8) Section 1 was amended by S.I. 1990/2591 and by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 2.