

## SCHEDULE 1

### SUMMARY CAUSE RULES 2002

#### CHAPTER 30

##### *Recovery of possession of heritable property*

###### **Action raised under section 38 of the 1907 Act**

**30.1.** An action for the recovery of possession of heritable property made in terms of section 38 of the 1907 Act<sup>(1)</sup> may be raised by—

- (a) a proprietor;
- (b) his factor; or
- (c) any other person authorised by law to pursue a process of removing.

###### **Action against persons in possession of heritable property without right or title**

**30.2.**—(1) Subject to paragraph (2), this rule applies only to an action for recovery of possession of heritable property against a person or persons in possession of heritable property without right or title to possess the property.

(2) This rule shall not apply with respect to a person who has or had a title or other right to occupy the heritable property and who has been in continuous occupation since that title or right is alleged to have come to an end.

(3) Where the name of a person in occupation of a heritable property is not known and cannot reasonably be ascertained, the pursuer shall call that person as a defender by naming him as an “occupier”.

(4) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the summons shall be served (whether or not it is also served on a named person), unless the sheriff otherwise directs, by an officer of the court—

- (a) affixing a copy of the summons and a citation in Form 11 addressed to “the occupiers” to the main door or other conspicuous part of the premises, and if practicable, depositing a copy of each of those documents in the premises; or
- (b) in the case of land only, inserting stakes in the ground at conspicuous parts of the occupied land to each of which is attached a sealed transparent envelope containing a copy of the summons and a citation in Form 11 addressed to “the occupiers”.

(5) In an action to which this rule applies, the sheriff may in his discretion, and subject to rule 25.6, shorten or dispense with any period of time provided anywhere in these rules.

(6) An application by a party under this rule to shorten or dispense with any period may be made orally and the provisions in rule 9.1 shall not apply, but the sheriff clerk must enter details of any such application in the Register of Summary Causes.

###### **Effect of decree**

**30.3.** When decree for the recovery of possession is granted, it shall have the same force and effect as—

- (a) a decree of removing;
- (b) a decree of ejection;

---

(1) Section 38 was repealed in part by the Children (Scotland) Act 1995 (c. 36), Schedule 5.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (c) a summary warrant of ejection;
  - (d) a warrant for summary ejection in common form; or
  - (e) a decree pronounced in a summary application for removing,
- in terms of sections 36, 37 and 38 respectively of the 1907 Act.

#### **Preservation of defender's goods and effects**

**30.4.** When decree is pronounced and the defender is neither present nor represented, the sheriff may give such directions as he deems proper for the preservation of the defender's goods and effects.

#### **Action of removing where fixed term of removal**

**30.5.**—(1) Subject to section 21 of the Agricultural Holdings (Scotland) Act 1991(2)—

- (a) if the tenant has bound himself to remove by writing, dated and signed—
  - (i) within 12 months after the term of removal; or
  - (ii) where there is more than one ish, after the ish first in date to remove,an action of removing may be raised at any time; and
- (b) if the tenant has not bound himself, an action of removing may be raised at any time, but—
  - (i) in the case of a lease of lands exceeding two acres in extent for three years and upwards, an interval of not less than one year nor more than two years must elapse between the date of notice of removal and the term of removal first in date;
  - (ii) in the case of a lease of lands exceeding two acres in extent, whether written or oral, held from year to year or under tacit relocation, or for any other period less than three years, an interval of not less than six months must elapse between the date of notice of removal and the term of removal first in date; and
  - (iii) in the case of a house let with or without land attached not exceeding two acres in extent, as also of land not exceeding two acres in extent without houses, as also of mills, fishings, shootings, and all other heritable subjects excepting land exceeding two acres in extent and let for a year or more, 40 days at least must elapse between the date of notice of removal and the term of removal first in date.

(2) In any defended action of removing, the sheriff may order the defender to find caution for violent profits.

#### **Form of notices and letter**

- 30.6.**—(1) A notice under section 34, 35 or 36 of the 1907 Act(3) must be in Form 3a.
- (2) A notice under section 37 of the 1907 Act must be in Form 3b.
  - (3) A letter of removal must be in Form 3c.

#### **Giving notice of removal**

- 30.7.**—(1) A notice under section 34, 35, 36, 37 or 38 of the 1907 Act may be given by—
- (a) a sheriff officer;
  - (b) the person entitled to give such notice; or
  - (c) the solicitor or factor of such person,

---

(2) 1991 c. 55.

(3) Section 35 was repealed in part by the Requirements of Writing (Scotland) Act 1995 (c. 7), Schedule 5.

posting the notice by registered post or the first class recorded delivery service at any post office within the United Kingdom in time for it to be delivered at the address on the notice before the last date on which by law such notice must be given, addressed to the person entitled to receive such notice, and bearing the address of that person at the time, if known, or, if not known, to the last known address of that person.

(2) A sheriff officer may also give notice under any section of the 1907 Act mentioned in paragraph (1) in any manner in which he may serve an initial writ; and, accordingly, rule 5.4 shall, with the necessary modifications, apply to the giving of notice under this paragraph as it applies to service of a summons.

### **Evidence of notice to remove**

**30.8.**—(1) It shall be sufficient evidence that notice has been given if—

- (a) a certificate of the sending of notice under rule 30.7 dated and endorsed on the lease or an extract of it, or on the letter of removal, is signed by the sheriff officer or the person sending the notice, his solicitor or factor; or
- (b) an acknowledgement of the notice is endorsed on the lease or an extract of it, or on the letter of removal, by the party in possession or his agent.

(2) If there is no lease, a certificate of the sending of such notice must be endorsed on a copy of the notice or letter of removal.