

SCHEDULE 1

SUMMARY CAUSE RULES 2002

CHAPTER 34

Action of damages for personal injury

Application of Chapter and disapplication of certain rules

34.1.—(1) This Chapter applies to an action of damages for personal injuries or the death of a person from personal injuries.

(2) In this Chapter “personal injuries” includes any disease or impairment of physical or mental condition.

(3) The following rules shall not apply to an action of damages for personal injuries or death:—

Rule 4.2, other than the requirement to give fair notice of the claim; and

Rule 8.1.

(4) Rules 8.2 to 8.17 shall only apply to an action of damages for personal injuries or death in accordance with rule 34.3(2).

Form of summons

34.2.—(1) The statement of claim in the summons shall be in Form 10 and shall include—

(a) a concise statement of the grounds of action, and the facts relied upon to establish the claim;

(b) the date of birth and where applicable National Insurance number of the pursuer; and

(c) the names of every medical practitioner from whom, and every hospital, or other institution in which, the pursuer, or in an action in respect of the death of a person, the deceased, received treatment for injuries sustained or for disease suffered by him.

(2) There shall be lodged along with the summons—

(a) all medical reports then available to the pursuer on which he intends, or intends to reserve the right, to rely in the action or a statement that there are no such medical reports; and

(b) a statement of valuation of claim (which shall include a list of supporting documents) in Form 10c.

(3) An application for an order under section 12(2)(a) of the Administration of Justice Act 1982⁽¹⁾ (provisional damages for personal injuries) shall be made by including in the summons a claim for provisional damages in Form 10a, and where such application is made, a concise statement as to the matters referred to in paragraphs (a) and (b) of section 12(1) of that Act shall be included in the statement of claim.

(4) In paragraph (3) above “provisional damages” means the damages referred to in section 12(4) (a) of the Administration of Justice Act 1982.

(5) A summons may include—

(a) an application for warrants for intimation in so far as permitted under these Rules; and

(b) a specification of documents containing such of the calls in Form 10e as the pursuer considers appropriate.

(1) 1982 c. 53.

Status: This is the original version (as it was originally made).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

(6) Where a summons includes a specification of documents in accordance with paragraph (5)(b), it must, where necessary, be intimated to the Advocate General for Scotland or the Lord Advocate (and if there is any doubt, both) when lodged.

(7) A copy of Form 10b and a copy of the statement of valuation of claim lodged by the pursuer in Form 10c shall accompany the defender's copy summons when it is served on the defender.

Response to summons

34.3.—(1) A defender wishing to defend the action shall complete and lodge with the sheriff clerk on or before the return day the form of response in Form 10b stating, in a manner which gives the pursuer fair notice, the grounds of fact and law on which the defender intends to resist the claim together with a brief statement of the facts upon which the defender relies in his defence.

(2) Where a defender lodges a form of response in accordance with paragraph (1), the provisions of rules 8.2 to 8.17 shall apply with the necessary modifications.

Inspection and recovery of documents

34.4.—(1) This rule applies where the summons includes a specification of documents in accordance with rule 34.2(5)(b).

(2) Subject to paragraph (5), where a response in Form 10b is lodged stating a defence to the action, the sheriff clerk shall make an order granting commission and diligence for the production and recovery of the documents mentioned in the specification.

(3) An order under paragraph (2) shall be treated for all purposes as an interlocutor of the court granting commission and diligence signed by the sheriff.

(4) Nothing in this rule shall affect the right of a party to apply under rule 18.1 for a commission and diligence for recovery of documents or under rule 18.3 for an order under section 1 of the Administration of Justice (Scotland) Act 1972 in respect of any document or other property not mentioned in the specification included in the summons.

(5) Where the defender, or where appropriate, the Advocate General for Scotland or the Lord Advocate, objects to the specification of documents, he shall make such objection by incidental application.

(6) An incidental application under paragraph (5) shall be—

- (a) lodged on or before the return day; and
- (b) determined at the hearing held in terms of rule 8.2(1).

Statement of valuation of claim

34.5.—(1) Each party to an action who is not required elsewhere in these rules to do so shall make a statement of valuation of claim (which shall include a list of supporting documents) in Form 10c in accordance with the following paragraphs of this rule.

(2) A statement of valuation of claim made in terms of paragraph (1) shall be lodged with the sheriff clerk.

(3) Each party on lodging a statement of valuation of claim in terms of paragraph (2), shall give written intimation to every other party of the statement and the list of documents contained in the statement of valuation of claim.

(4) A party who fails to lodge a statement of valuation of claim not later than 28 days before the date fixed for proof shall be liable to any other party for the expenses of proving the quantification of the claim, unless the sheriff, on special cause shown, otherwise directs.

Intimation to connected persons

34.6.—(1) This rule 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 rule—

“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; and

“relative” has the meaning assigned to it in Schedule 1 to the Damages (Scotland) Act 1976⁽²⁾.

(3) The pursuer shall state in the summons, as the case may be—

- (a) that there are no connected persons;
- (b) that there are connected persons, being the persons specified in the application for warrant for intimation; or
- (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 £200 each.

(4) Where the pursuer makes statements under rule 34.6(3)(b) he shall include an application for warrant in the summons for intimation to any such person.

(5) A notice of intimation in Form 10d shall be attached to the copy of the summons, and a copy of Form 10c shall accompany the summons, where intimation is given on a warrant under paragraph (4).

(6) Where the pursuer makes statements under rule 34.6(3)(c), he shall apply in the summons for an order to dispense with intimation.

(7) In determining an application under paragraph (6), the sheriff shall have regard to—

- (a) the desirability of avoiding a 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.

(8) Where the sheriff is not satisfied that intimation to a connected person should be dispensed with, he may—

- (a) order intimation to a connected person whose name and whereabouts are known;
- (b) order the pursuer to take such further steps as he may specify in the interlocutor to ascertain the name or whereabouts of any connected person; and
- (c) order advertisement in such manner, place and at such times as he may specify in the interlocutor.

(9) Where the name or whereabouts of a person, in respect of whom the sheriff has dispensed with intimation on a ground specified in rule 34.6(3)(c), subsequently becomes known to the pursuer, the pursuer shall apply to the sheriff by incidental application for a warrant for intimation to such a person; and such intimation shall be made in accordance with rule 34.6(5).

(10) A connected person may apply by incidental application to be sisted as an additional pursuer to the action.

(2) 1976 c. 13.

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(11) Such an incidental application shall also seek leave of the sheriff to adopt the existing grounds of action, and to amend the claim.

(12) The period within which answers to an incidental application under paragraph (10) may be lodged shall be 14 days from the date of intimation of the incidental application.

(13) There shall be lodged along with the incidental application a statement of valuation of claim (which shall include a list of supporting documents) in Form 10c.

(14) The statement of valuation of claim lodged in accordance with paragraph (13) shall be intimated to the other parties at the same time as the incidental application.

(15) Where a connected person to whom intimation is made—

(a) does not apply to be sisted as an additional pursuer to the action;

(b) subsequently raises 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.

Application for further damages

34.7.—(1) An application for further damages by a pursuer in respect of whom an order under section 12(2)(b) of the Administration of Justice Act 1982 has been made shall be made by lodging a minute with the sheriff clerk in Form 10f, which minute shall include—

(a) a claim for further damages;

(b) a concise statement of the facts supporting that claim;

(c) an application for warrant to serve the minute on—

(i) every other party; and

(ii) where such other parties are insured or otherwise indemnified, their insurer or indemnifier, if known to the pursuer; and

(d) a request for the court to fix a hearing on the application.

(2) A notice of intimation in Form 10g shall be attached to every copy of the minute served on a warrant granted under paragraph (1)(c).

(3) At the hearing fixed under paragraph (1)(d) above, the sheriff may determine the application or order such further procedure as he thinks fit.