

## SCHEDULE 1

### RULES FOR APPLICATIONS IN THE SHERIFF COURT UNDER THE DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

**Status:** This is the original version (as it was originally made).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

## APPENDIX 2

### GLOSSARY

Rule 1(4)

*Absolve*

To find in favour of and exonerate the defender.

*Absolvitor*

An order of the court granted in favour of and exonerating the defender which means that the pursuer is not allowed to bring the same matter to court again. See also *dismissal* below.

*Action of count, reckoning and payment*

A legal procedure for requiring someone to account for their dealings with assets under their stewardship. For example, a trustee might be subject to such an action.

*Action of furthcoming*

A final stage of diligence or enforcement. It results in whatever has been subject to arrestment being made over to the person who is suing. For example, where a bank account has been arrested this results in the appropriate amount being transferred to the pursuer.

*Appellant*

A person making an appeal against the sheriff's decision. This might be the pursuer or the defender.

*Arrestee*

A person with whom an arrestment is lodged, and therefore subject to the arrestment.

*Arrestment on the dependence*

A court order granting until a final court decision a temporary security over goods, or funds in a bank account, held on behalf of the defender by someone else (for example, a bank).

*Arrestment to found jurisdiction*

An order to give the court jurisdiction to hear a case against a person who has goods or other assets in Scotland. This is achieved by arresting the goods or assets on the dependence of the action.

*Lay representative*

A person other than a solicitor or advocate who represents a party to a cause or application. In particular, in these Rules such a person unless employed as a lay representative must receive no fee, gain or reward (directly or indirectly) for their actions.

*Calling date*

The date on which a summary cause action will first be held in court.

*Cause*

Another word for case or claim.

*Caution (pronounced kay-shun)*

A security given to ensure that some obligation will be carried out. This will be either a sum of money, or a guarantee of payment by someone other than the parties to a case (for example, an insurance company).

*Certificate of execution of service*

The document recording that an application to, or order or decree of, the court for service of documents has been effectively served.

*Charge*

A notice to obey a decree of a court. A common type is one served on the defender by a sheriff officer on behalf of the pursuer who has won a case demanding payment of a sum of money.

*Claim*

The part of the writ or summons which sets out the legal remedy which the pursuer is seeking.

*Commission and diligence*

An order appointing a solicitor or advocate (the Commissioner) to supervise on behalf of the court the disclosure of documents relating to a case. It is combined with a diligence authorising the Commissioner to require attendance as a witness of the person alleged to be holding any particular document (the *haver*).

*Consign, or consignment*

The deposit in court, or with a third party, of money or an article in dispute.

*Continuation*

An order made by the sheriff postponing the completion of a hearing until a later date or dates.

*Contribution, Right of*

The right of one person who is legally liable to pay money to someone to claim a proportionate share from others who are also liable.

*Counterclaim*

A claim made by a defender in response to the pursuer's case and which is not necessarily a defence to that case. It is a separate but related case against the pursuer, which is dealt with at the same time as the pursuer's case.

*Damages*

Money compensation payable for a breach of contract or some other legal duty.

*Declarator of irritancy of a lease*

A decision of a court finding that a tenant has failed to observe a term of a lease, and that the landlord is therefore entitled to insist that the tenant shall leave the property.

*Decree*

An order of the court containing the decision of the case in favour of one of the parties and granting the remedy sought or disposing of the case.

*Decree of ejection*

A decree ordering someone to leave land or property which they are occupying. For example, it is used to remove tenants in arrears with their rent.

*Decree of removing*

A court order entitling someone to recover possession of heritable property and ordering a person to leave land which he is occupying. For example, it is used to remove tenants in arrears with their rent.

*Defender*

Person against whom a court action is started.

*Deliverance*

A decision or order of a court.

*Diet*

Date for a court hearing.

*Diligence*

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The collective term for the procedures used to enforce a decree of a court. These include attachment of moveable items and arrestment of wages.

*Dismissal*

An order bringing to an end the proceedings in an action. Unlike an order for *absolvitor* (see above), it is usually possible for a new action to be brought.

*Domicile*

The place where a person is normally resident or where, in the case of a company, it has its place of business or registered office.

*Execution of service*

See Certificate of execution of service

*Execution of a charge*

The service by sheriff officers of a formal notice requiring that a decree or order of a court be obeyed. See also *Charge*.

*Execution of an arrestment*

The carrying out of an order of arrestment.

*Expenses*

The costs of a court case.

*Ex proprio motu*

A decision or order of the court on the sheriff's own initiative, and not requested by a party to a claim or application

*Extract decree*

The actual decree (or *interlocutor*) is recorded in the court registers. The extract is the official document, which is proof of any order of the court, although usually it is used as proof of the final decision in the action. It is used, for example, to enforce payment of a sum awarded.

*Fund in medio*

See Multiplepoinding.

*Haver*

A person who holds documents which are required as evidence in a case (see Commission and Diligence above).

*Hearing date*

The date on which a small claim action will first be held in court.

*Heritable property*

Land and buildings.

*Incidental application*

An application that can be made during the course of a small claim or summary cause for certain orders. Examples are applications for the recovery of documents or to amend the statement of claim.

*Interlocutor*

The official record of the order or judgement of a court.

*Interrogatories*

Written questions put to someone in the course of a court case, and answered on oath.

*Intimation*

Giving notice to another party of some step in a cause.

*Jurisdiction*

The authority of a court to hear particular cases.

*Ish*

The date on which a lease terminates.

*Letter of request*

A document issued by the sheriff court requesting a foreign court to take evidence from a specified person within its jurisdiction or to serve Scottish Court documents on that person.

*Messenger at arms*

Officers of court who serve documents issued by the Court of Session.

*Minute*

A document produced in the course of a case in which a party makes an application or sets out his position on some matters.

*Minute for recall*

A form lodged with the court by one party asking the court to recall a decree.

*Motion*

An application that can be made during the course of an action for certain orders. This type of application is called an incidental application in small claim or summary cause actions (see above).

*Multiplepinding (pronounced “multiple pinding”)*

A special type of action in which the holder of property, etc. (referred to as the fund *in medio*) requires claimants upon it to appear and settle claims in court. For example, where the police come into possession of a stolen car of which two or more people claim to be owner this procedure could be used.

*Officer of court*

A sheriff officer, messenger at arms, advocate, solicitor or sheriff clerk.

*Options Hearing*

A preliminary stage in an ordinary cause action.

*Ordinary cause*

Another legal procedure for higher value cases available in the sheriff court.

*Party litigant*

A person who conducts his own case.

*Process*

The court file containing the collection of documents relating to a case.

*Productions*

Documents or articles which are used in evidence.

*Pursuer*

The person who starts a claim or cause.

*Recall of an arrestment*

A court order withdrawing an arrestment.

*Restriction of an arrestment*

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An order releasing part of the money or property arrested.

*Recall of a decree*

An order cancelling a decree which has been granted.

*Recovery of documents*

The process of obtaining documentary evidence which is not in the possession of the person seeking it (eg hospital records necessary to establish the extent of injuries received in a road accident). See also *Commission and Diligence* above.

*Remit between procedures*

A decision of the sheriff to transfer an action to another court procedure eg a summary cause to either the small claim or ordinary cause procedure.

*Respondent*

When a decision of the sheriff is appealed against, the person making the appeal is called the appellants. The other side in the appeal is called the respondent.

*Return day*

The date by which the defender must send a written reply to the court in a small claim or summary cause and, where appropriate, the date by which the pursuer must return the summons to court.

*Schedule of arrestment*

A list of items which has been arrested.

*Serve/service*

Sending a copy of the summons or other court document to the defender or another party.

*Sheriff clerk*

The court official responsible for the administration of the sheriff court.

*Sheriff officer*

The officer of court who serve sheriff court documents and enforces sheriff court orders.

*Sist of action*

The temporary suspension of a court case by court order.

*Sist as a party*

To add another person as a litigant in a case.

*Small claim*

Another legal procedure in the sheriff court for claims having a lower value than summary cause.

*Specification of documents*

A list lodged in court of documents for the recovery of which a party seeks a court order (see *Commission and Diligence*).

*Stated case*

An appeal procedure where the sheriff sets out his findings and the reasons for his decision and states the issues on which the decision of the sheriff principal is requested.

*Statement of claim*

The part of the summons in which pursuers set out details of their cases against defenders.

*Summary cause*

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Another legal procedure available in the sheriff court. It is used for certain types of claim usually having a higher value than a small claim, and a lesser value than those dealt with as ordinary actions.

*Summons*

The form which must be filled in to begin a small claim or summary cause.

*Time to pay direction*

A court order for which a defender who is an individual may apply permitting a sum owed to be paid by instalments, or by a single payment at a later date.

*Time order*

A court order that assists debtors who have defaulted on an agreement regulated by the Consumer Credit Act 1974 (c. 39), and which may be applied for during a court action.

*Warrant for diligence*

Authority to carry out one of the diligence procedures.

*Writ*

A legally significant writing. An example is an Initial Writ, which is used to begin an ordinary action in the same way that a summons is used to begin a *small claim* or a *summary cause* action.