

SCHEDULE 5

GATHERING INFORMATION

Optional procedure before executing commission and diligence

5.—(1) A participant who has obtained a commission and diligence may, before executing it, intimate on the haver an order in Form S5.5A.

(2) The haver must comply with the order in the manner and within the period set out 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 participant who obtained the order, that participant—

(a) must give written intimation of that fact in Form S5.5B to the sheriff clerk and every other participant; and

(b) must—

(i) if the document has been sent by post, send a written receipt for the document in Form S5.5C to the haver; or

(ii) if the document has been delivered by hand, give a written receipt in Form S5.5C to the person delivering the document.

(4) Where the participant who has recovered any such document does not lodge it within 14 days of receipt of it, that participant must—

(a) give written intimation to every participant that they may borrow, inspect or copy the document within 14 days after the date of that intimation; and

(b) in so doing, identify the document.

(5) Where a participant who has obtained any document wishes to lodge the document in process, that participant must—

(a) lodge the document within 14 days after receipt of it; and

(b) at the same time, send a written receipt for the document in Form S5.5C to the participant who obtained the order.

(6) Where—

(a) no participant wishes to lodge or borrow any such document, the document is to be returned to the haver by the participant who obtained the order within 14 days after the expiry of the period specified in subparagraph (4)(a); or

(b) any such document has been uplifted by another participant under subparagraph (4) and that participant does not wish to lodge it in process, the document must be returned to the haver by that participant within 21 days after the date of receipt.

(7) Any such document lodged is to be returned to the haver by the participant lodging it within 14 days after the date of the sheriff's determination.

(8) If any participant fails to return any such document as provided for in subparagraph (6) or (7), the haver may apply for an order—

(a) that the document is to be returned to the haver; and

(b) for that participant to make a payment to the have to reflect the consequences of the document not being returned.

(9) The participant holding any such document (being the participant who last issued a receipt for it) is responsible for its safekeeping during the period that the document is in his or her custody or control.

(10) If the participant who intimated the order is not satisfied that—

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- (a) full compliance has been made with the order; or
- (b) adequate reasons for non-compliance have been given, that participant may execute the commission and diligence under paragraph 4.

(11) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the sheriff may, on the application of the participant who intimated the order, direct that that participant may inspect the book and take copies of any entries falling with the specification.

(12) Where any question of confidentiality arises in relation to a book directed to be inspected under subparagraph (11), the inspection must be made, and any copies taken, at the sight of the commissioner appointed in the order granting the commission and diligence.

(13) The sheriff may 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.