

## 1983 No. 747 (S. 66)

## SHERIFF COURT, SCOTLAND

## Act of Sederunt (Ordinary Cause Rules, Sheriff Court) 1983

Made - - - - - 12th May 1983  
Coming into Operation 1st September 1983

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers competent to them in that behalf do hereby enact and declare:—

*Citation and commencement*

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause Rules, Sheriff Court) 1983 and shall come into operation on 1st September 1983.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

*Interpretation*

2.—(1) In this Act of Sederunt, unless the context otherwise requires:—

“the Act of 1907” means the Sheriff Courts (Scotland) Act 1907(b);

“summary cause” has the meaning assigned to it by section 35(1) of the Sheriff Courts (Scotland) Act 1971.

(2) Other expressions used in this Act of Sederunt to which meanings have been assigned by the Act of 1907 shall, unless the context otherwise requires, have the same meaning in this Act of Sederunt as in that Act.

*Ordinary Cause Rules*

3. For the First Schedule of the Act of 1907 there shall be substituted the Schedule to this Act of Sederunt which lastmentioned Schedule shall hereinafter be referred to as “the Ordinary Cause Rules”.

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(a) 1971 c. 58.

(b) 1907 c. 51.

*Extension of Ordinary Cause Rules to Summary Causes*

4. For paragraph 3(2) of the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976(a) there shall be substituted the following paragraph—

“(2) Rules 14, 27, 60, 84, 85, 87, 89(4), 103 to 107, 111, 128, 130(1) and 134 of the rules contained in the First Schedule to the Act of 1907 shall apply to a summary cause insofar as they are not inconsistent with the rules set out in the Schedule of this Act of Sederunt. The remaining provisions of the said First Schedule shall not apply to a summary cause”.

*Extension of Ordinary Cause Rules to Summary Applications*

5. Rules 1, 3, 4, 5(2), 10 to 12 and 14 to 19 of the Ordinary Cause Rules shall apply to a summary application in so far as they are not inconsistent with section 50 of the Act of 1907.

6. Nothing in this Act of Sederunt shall affect any action or proceedings commenced before the date of the coming into operation of this Act of Sederunt, and any such action or proceedings shall proceed according to the law and practice in force immediately before that date.

*Emslie,*  
Lord President,  
I.P.D.

Edinburgh,  
12th May 1983.

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INTRODUCTION

*Dispensing power of sheriff*

1. The sheriff may in his discretion relieve any party from the consequences of any failure to comply with the provisions of these Rules which is shown to be due to mistake, oversight or other cause, not being wilful non-observance of the same, on such terms and conditions as seem just; and in any such case the sheriff may make such order as seems just by way of extension of time, lodging or amendment of papers or otherwise so as to enable the cause to proceed as if such failure had not happened.

*Application of Rules to solicitors*

2. Where any party to the cause is represented by a solicitor, any reference in the Rules to that party shall, where appropriate, be construed as a reference to the solicitor representing that party.

INITIAL PROCEDURE

COMMENCEMENT OF CAUSE

*The initial writ*

3. All ordinary causes shall be commenced by initial writ as nearly as may be in accordance with Form A as set out in the Appendix to this Schedule.

*Signature and backing of initial writ*

4. The initial writ shall be signed by the pursuer or his solicitor and the name and address of that solicitor, if any, shall be stated upon the back of every service copy.

*Warrant of citation*

5.—(1) The warrant of citation shall be framed as nearly as may be in accordance with Form B as set out in the Appendix to this Schedule.

(2) In a summary application, where citation is necessary, the warrant of citation shall be framed as nearly as may be in accordance with Form B2 as set out in the Appendix to this Schedule.

*Application for a warrant for arrestment to found jurisdiction*

6.—(1) Application for a warrant for arrestment to found jurisdiction may be made in the crave of the initial writ.

(2) Averments to justify the granting of a warrant for arrestment to found jurisdiction shall be included in the condescendence.



## PERIOD OF NOTICE

*Period of notice after citation*

7.—(1) Subject to Rule 11(2)(a) and to paragraph (2) of this rule causes shall proceed after the following periods of notice have been given to the defender—

- (a) 14 days when the defender is resident or has a place of business within the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland;
- (b) 28 days when the defender is resident or has a place of business outwith the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland but is resident or has a place of business elsewhere in Europe;
- (c) 42 days when the defender is resident or has a place of business outside Europe.

(2) The sheriff may, on cause shown, shorten or extend the period of notice on such conditions as to the form or manner of service as the sheriff may direct, but in any case where the period of notice is reduced at least 2 days notice shall be given.

(3) Where a period of notice expires on a Saturday, Sunday, public or court holiday the period of notice shall be deemed to expire on the first following day on which the sheriff clerk's office is open for civil court business.

## CITATION AND SERVICE

*Signature of warrants*

8.—(1) Warrants for citation or for arrestment on the dependence may be signed by the sheriff or the sheriff clerk.

(2) Warrants containing an order shortening or extending the period of notice or any other order may only be signed by the sheriff.

(3) If for any reason the sheriff clerk refuses to sign a warrant, the writ may be presented to the sheriff for his consideration and signature if appropriate.

*Form of citation and certificate*

9.—(1) Citation shall be given as nearly as may be in accordance with Form C as set out in the Appendix to this Schedule which shall be prefixed to a copy of the initial writ and warrant of citation.

(2) The certificate of citation shall be as nearly as may be in accordance with Form D as set out in the Appendix to this Schedule which shall be annexed to the initial writ.

(3) When citation is by an officer of court, one witness shall be sufficient for the execution of citation.

(4) The certificate of citation shall be signed by the officer and the witness shall specify whether the citation was personal, or, if otherwise, the mode of citation and the name of any person to whom the citation was delivered.

(5) When citation is effected in terms of paragraph 2 of rule 10 the certificate shall also contain a statement of the mode of service previously attempted, the circumstances which prevented such service being effected and a statement that a copy was sent in accordance with the provisions of paragraph (3) of that rule.

*Service within Scotland by officer of court*

**10.**—(1) Any initial writ, decree, charge, warrant or other order or writ following upon such initial writ or decree may be served by an officer of court on any person:—

- (a) personally, or
- (b) by being left in the hands of an inmate of or employee at the person's dwelling place or place of business.

(2) Where an officer of court has been unsuccessful in effecting service in accordance with either sub-paragraphs (a) or (b) of paragraph (1), he may, after making diligent enquiries, serve the document in question either—

- (a) by depositing it in that person's dwelling place or place of business by means of a letterbox or by other lawful means, or
- (b) by affixing it to the door of that person's dwelling place or place of business.

(3) If service is effected under paragraph (2) the officer shall as soon as possible after such service send by ordinary post to the address at which he thinks it most likely that the person may be found a letter containing a copy of the document.

*Citation of persons whose address is unknown*

**11.**—(1) If a defender's address is unknown to the pursuer the sheriff may grant warrant to cite the defender by the publication in a newspaper circulating in the area of the defender's last known address of an advertisement as nearly as may be in accordance with Form E as set out in the Appendix to this Schedule and such citation shall have effect as if it had been served personally on the defender.

- (2) If citation requires to be effected in accordance with paragraph (1)—
  - (a) the period of notice shall be fixed by the sheriff and shall run from the date of publication; and
  - (b) a service copy initial writ shall be lodged by the pursuer with the sheriff clerk from whom it may be uplifted by the defender.

(3) If a defender has been cited in accordance with paragraph (1), and after the cause has commenced his address becomes known, the sheriff may allow the initial writ to be amended subject to such condition as to re-service, intimation, expenses, or transfer of the cause as seems just.

(4) In every case where advertisement in a newspaper is required for the purpose of citation under this rule, a copy of the newspaper containing said advertisement shall be lodged with the sheriff clerk.

*Citation of or service on persons resident outwith Scotland*

**12.**—(1) Subject to the following provisions of this rule, any initial writ or decree, or any other writ or order following upon such initial writ or decree or any charge or warrant, may be served on any person resident outwith Scotland—

- (a) whose known residence or place of business is outwith Scotland but within the United Kingdom, the Isle of Man, the Channel Islands or Republic of Ireland, either personally, or by posting a copy of the document in question in a registered or recorded delivery letter to the person at his residence or place of business; or
- (b) whose residence or place of business is outwith the United Kingdom, the Isle of Man, the Channel Islands, and the Republic of Ireland, either personally, or by posting separately in Scotland and in the country in which the person is resident or has a place of business a copy of the document in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence or place of business; but where the person resides or has a place of business outwith Europe the document posted in Scotland shall be posted by air mail.

(2) For the purposes of this rule personal service includes—

- (a) service in accordance with the rules for personal service under the domestic law of that part of the United Kingdom in which service is to be effected;
- (b) service by the British Consul or his duly authorised depute or assistant in the country of residence or place of business of the person; and
- (c) service in accordance with any Convention on service abroad of judicial documents in civil matters to which the United Kingdom and the country of residence or place of business of the person are signatories.

(3) Any document that requires to be posted in Scotland under subparagraph (b) of paragraph (1) shall be posted by a solicitor or an officer of Court.

(4) The forms for citation and certificate of citation referred to in rule 9 shall apply to citations under this rule as they apply to citations under that rule, but any such citation shall have attached, if appropriate, a translation of the citation in a language of the country of the person's residence or place of business.

(5) On the face of the envelope used for postal service under this rule to a person resident or having a place of business outwith the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland there shall be written or printed a notice, with a translation where appropriate in a language of the country of the person's residence or place of business, in the same or similar terms as that required in the case of ordinary service under rule 15(3).

*Days of charge*

**13.** Any charge following on a decree granted in an ordinary cause shall be for a period of 14 days.

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

**14.**—(1) Any person or persons carrying on a business under a trading or descriptive name, may sue or be sued in such trading or descriptive name alone, and any extract of a decree pronounced in the sheriff court, or of a 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 competently proceed, recorded in the sheriff court books against such person or persons, under such trading or descriptive name, shall be a valid warrant for diligence against such person or persons.

(2) Any initial writ or decree, or any other writ or order following upon such initial writ or decree or any charge or warrant issued in any cause to which this rule applies may be served 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, in the event of there being no place of business within that sheriffdom, service may be effected 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).

*Postal citation*

**15.**—(1) In any case in which it is competent to serve or intimate any document or to cite any person by recorded delivery, such service, intimation or citation, when made by recorded delivery, shall only be competent if it is made by recorded delivery first class service.

(2) Notwithstanding the provisions of section 4(2) of the Citation Amendment (Scotland) Act, 1882(a), in all cases of postal service the period of notice shall start to run on the day of posting.

(3) On the face of the envelope used for postal service under this rule there shall be written or printed the following notice or a notice to the like effect—

“This letter contains a citation to or intimation from (specify the Court). If delivery of the letter cannot be made at the address shown it is to be returned immediately to (give the official name and office or place of business of the Clerk of Court)”.

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

*Endorsation unnecessary*

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

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(a) 1882 c. 77.

*Re-service*

17. If it appears to the sheriff that there has been any failure or irregularity in service upon a defender, the sheriff may authorise the pursuer to re-serve the initial writ upon such conditions as seem just.

*Personal bar*

18.—(1) A party who appears may not state any objection to the regularity of the service upon himself, and his appearance shall remedy any defect in the service.

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

## TRANSFER OF CAUSES

*Transfer to another Sheriff court*

- 19.—(1) (a) Subject to paragraph (c), where a cause 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 cause to any other sheriff court which has jurisdiction over any of the defenders.
- (b) Subject to paragraph (c), where a plea of no jurisdiction is sustained the sheriff may transfer the cause to the sheriff court before which it appears to him it ought to have been brought.
- (c) The sheriff shall not transfer a cause to another sheriff court under paragraphs (a) and (b) above except on the motion of one or more of the parties and unless he considers it expedient to do so having regard to the convenience of the parties and their witnesses;
- (d) The sheriff may upon sufficient cause remit any cause to another sheriff court.
- (2) On making an order under paragraph (1) transferring a cause to another sheriff court the sheriff—
- (a) shall state his reasons for doing so in the interlocutor;
- (b) may make the order subject to such conditions as to expenses or otherwise as he thinks fit.
- (3) The sheriff court to which a cause is transferred under paragraph (1) shall accept the cause.
- (4) A transferred cause shall proceed in all respects as if it had been originally brought in the court to which it is transferred.
- (5) An interlocutor transferring a cause shall, with leave of the sheriff, be subject to review by the sheriff principal but shall not be further subject to review.

*Remit of cause to the Court of Session*

20.—(1) The sheriff clerk shall, within the period of 4 days after the sheriff has pronounced an interlocutor remitting a cause to the Court of Session, transmit the process to the deputy principal clerk of session.

(2) The sheriff clerk shall within that period send written notice of the remit to the party or parties and certify on the interlocutor sheet that he has done so, but failure to do so shall not affect the validity of the remit.

#### UNDEFENDED CAUSES

##### *Minute for granting of decree without attendance*

**21.**—(1) Subject to paragraph (2), if the defender does not lodge a notice of intention to defend or a minute under rule 34, the sheriff may on the pursuer endorsing a minute in that behalf on the initial writ at any time after the expiry of the period for lodging that notice or minute grant decree or other order in terms of the minute so endorsed without requiring the attendance of the pursuer in court.

(2) Subject to rule 72, paragraph (1) does not apply to actions of separation and aliment, adherence and aliment, or actions for the custody of children.

##### *Procedure in undefended actions of adherence and aliment, and for custody of children*

**22.**—(1) If no notice of intention to defend has been lodged in an action of adherence and aliment or an action for custody of children and the pursuer has returned the initial writ to the sheriff clerk the action shall be called in court.

(2) In an action of adherence and aliment decree may be granted without proof.

(3) In an action for custody of children decree may be granted after such inquiry as the sheriff thinks necessary.

##### *Undefended proof in actions of separation and aliment*

**23.** In actions of separation and aliment a proof shall be fixed, but it shall not be necessary for the pursuer to appear in court to enable a diet of proof to be fixed.

##### *Decree for expenses*

**24.** At the same time as granting a decree in absence or thereafter the sheriff may grant a decree for expenses.

##### *Issue of extract decree*

**25.**—(1) On the expiry of 14 days following the granting of a decree in absence the sheriff clerk may issue an extract of the decree.

(2) The sheriff may on cause shown order the extract to be issued at an earlier date.

##### *Finality of decree in absence*

**26.** Subject to section 9(7) of the Land Tenure Reform (Scotland) Act, 1974(a), a decree in absence which has not been recalled or brought under

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(a) 1974 c. 38.

review by suspension or by reduction shall become final, and be entitled to all the privileges of a degree *in foro*—

- (a) on the expiry of 6 months from its date or from the date of the charge under it, where the service of the initial writ or of the charge has been personal;
- (b) in any event, on the expiry of 20 years from its date.

*Amendment of initial writ*

27. In an undefended action the sheriff may—

- (a) allow the pursuer to amend the initial writ in any way permitted by rule 64;
- (b) order the amended initial writ to be re-served on the defender on such a period of notice as he thinks fit.

(2) The defender shall not be liable for the expense occasioned by any such amendment unless the sheriff otherwise directs.

(3) No such amendment shall have the effect of validating diligence used on the dependence of the action so as to prejudice creditors of the defender, but it shall have the effect of obviating objections to such diligence when stated by the defender himself or by any person representing him by a title, or in right of a debt contracted by him subsequent to the using of such diligence; and any diligence which was competent on the original initial writ shall be competent on the amended initial writ.

REPONING

*Defender may be reponed against decree in absence*

28. At any time before implement in full of a decree in absence, the defender may apply to be reponed by lodging with the sheriff clerk a note setting forth his proposed defence and his explanation of his failure to appear and by serving a copy of the note on the pursuer.

*Consignment and recall of decree*

29.—(1) On lodging a reponing note under rule 28, the defender shall consign the sum of £10 in the hands of the sheriff clerk.

(2) On consignment under paragraph (1) the sheriff, if satisfied with the defender's explanation, may recall the decree so far as not implemented, and the cause shall thereafter proceed in all respects as if the defender had appeared.

*Sist of diligence*

30. A reponing note, when duly lodged and served upon the pursuer shall have effect to sist diligence.

*Consigned money and expenses*

31. On the disposal of the reponing note—

- (a) the pursuer shall be entitled to uplift the consigned money unless the sheriff otherwise directs, and

(b) the sheriff may make such order as to expenses as seems just.

*Judgment to be final*

**32.** Any interlocutor or order recalling, or incidental to the recall of a decree in absence, shall be final and not subject to review.

DEFENDED CAUSES TO PROOF

INTENTION TO DEFEND

*Notice of intention to defend*

**33.** If a defender intends to state a defence he shall before the expiry of the appropriate period of notice exhibit to the sheriff clerk the service copy of the initial writ and lodge with him a notice of intention to defend as nearly as may be in terms of Form F as set out in the Appendix to this Schedule.

*Minute of intention to defend on amount of aliment only*

**34.—(1)** In a cause containing a crave for payment of aliment a defender who intends only to dispute the amount of aliment payable may, in place of lodging a notice of intention to defend, lodge a minute to that effect and intimate it to the pursuer.

(2) A minute under paragraph (1) shall—

- (a) specify the amount of aliment which the defender claims should be payable by him or the nature of the order which he claims the sheriff should make, and
- (b) contain a brief statement of facts in support of his claim, and
- (c) where practicable, be accompanied by any relevant documentary evidence in support of his claim.

(3) On the lodging of a minute under paragraph (1)—

- (a) the sheriff clerk shall enrol the cause for a hearing on the first court day occurring after the expiry of the period of notice;
- (b) the pursuer shall return the initial writ to the sheriff clerk at or before the hearing, but shall not require to lodge a process.

(4) At the hearing the sheriff may resolve the matter or continue the cause for such further procedure as he considers appropriate.

*Tabling*

**35.—(1)** Where a notice of intention to defend has been lodged, the sheriff clerk shall enrol the cause for tabling on the first court day occurring after the expiry of the appropriate period of notice.

(2) A cause which has not been tabled, and in which protestation has not been craved, shall drop from the roll, but within 3 months the sheriff may direct it to be again enrolled for tabling under such conditions as to notice, or re-service, or expenses, or otherwise as seem just.



(3) At tabling, the sheriff may, on the motion of either party, continue the cause without ordering defences to be lodged.

*Protestation*

36.—(1) On any occasion on which the cause is enrolled for tabling and not tabled, the defender or his agent, upon producing the service copy of the writ, may crave protestation for not insisting, which the sheriff may grant, and shall fix the amount of protestation money payable to the defender.

(2) Protestation shall not be extracted before the expiry of 7 clear days from the date of its granting, except where arrestments have been used, in which case it may be extracted after the expiry of 48 hours from that date.

(3) Upon protestation being extracted, the instance shall fall.

(4) Before extract, protestation may be recalled, and the sheriff may allow the pursuer to proceed with the cause upon making payment to the defender of the amount of protestation money, and upon such other conditions as the sheriff thinks fit.

THE PROCESS

*Lodging of process by pursuer*

37. In a cause in which a notice of intention to defend has been lodged, the pursuer shall at or before tabling lodge with the sheriff clerk the principal initial writ and a copy initial writ with warrant thereon certified by the pursuer, principal and duplicate interlocutor sheets, and principal and borrowing inventory of process, and the sheriff clerk shall endorse on all documents lodged in process the date of lodging.

*Custody of process*

38.—(1) The principal initial writ, the principal interlocutor sheets and borrowing inventory of process shall remain in the custody of the sheriff clerk.

(2) The sheriff may make a special order to the contrary in respect of the principal initial writ.

*Borrowing of process*

39.—(1) A process may be borrowed only by a solicitor or by his authorised clerk for whom he shall be responsible.

(2) All remedies competent to enforce the return of a borrowed process may proceed on the warrant of the court from whose custody the process was obtained, whether the borrower is or is not within its jurisdiction.

(3) A party litigant shall not borrow a process except by leave of the sheriff and subject to such conditions as the sheriff may impose but may inspect a process and obtain copies, where practicable, from the sheriff clerk.

(4) All numbers of process borrowed shall be returned to the sheriff clerk not later than 2 days before the date of the proof.

*Failure to return process*

40. (1) When a solicitor or party litigant has borrowed a process, or any part of a process, and fails to return it for any diet at which it is required, the sheriff may impose upon such solicitor or party litigant a fine not exceeding £50, which shall be payable to the sheriff clerk; but an order imposing a fine may, on cause shown, be recalled by the sheriff who granted it.

(2) Orders made under this rule shall not be subject to appeal.

*Replacement of lost documents*

41. When any part of process is lost or destroyed, a copy thereof, authenticated in such manner as the sheriff may require, may be substituted and shall, for the purposes of the action to which the process relates, be treated as having the same force and effect as the original.

*Borrowing of certified copy initial writ for purposes of arrestment and issue of precepts of arrestment*

42.—(1) The certified copy initial writ with warrant thereon may be borrowed by any party to the action and shall be sufficient warrant to arrest on the dependence if it is otherwise competent to do so.

(2) Separate precepts of arrestment may be issued by the sheriff clerk on production to him of an initial writ, containing claims for payment of money, on which a warrant of citation has been granted, or of a liquid document of debt.

DEFENCES AND ADJUSTMENT

*Defences*

43.—(1) Where defences have not been lodged at tabling, the sheriff, in the interlocutor pronounced at tabling or otherwise, shall appoint a period within which defences shall be lodged.

(2) On lodging defences the defender shall send a copy to the pursuer.

*Form of defences*

44. Defences shall be in the form of answers in paragraphs corresponding to the paragraphs of the condescence, and shall have appended a note of the defender's pleas-in-law.

*Implied admissions*

45. Every statement of fact made by one party shall be answered by the other party, and if a statement made by one party of a fact within the knowledge of the other party is not denied by that other party, the latter shall be held as admitting the fact so stated.

*Adjustment of pleadings*

46. Subject to the provisions of rules 47 and 48 all adjustments of the pleadings shall be made by parties only on the certified copy of the initial writ, the defences or answers, as the case may be, and shall be immediately intimated in writing to all other parties.

*Open record*

47.—(1) The sheriff may at any time before the closing of the record, on the application of a party to the action or *ex proprio motu*, order the pursuer to lodge in process a record of the pleadings as adjusted to the date of the order and to intimate a copy to all other parties.

(2) Any adjustments made after that date shall be made on that record and intimated to all other parties.

*Alteration of sum sued for*

48.—(1) In a cause in which all other parties have lodged defences or answers the pursuer may, prior to the closing of the record and without leave of the sheriff, alter any sum sued for by amending the crave of the initial writ, the certified copy of the initial writ and any record.

(2) The pursuer shall immediately intimate any such amendment in writing to all other parties.

*Adjustment period*

49.—(1) In the interlocutor pronounced at tabling or otherwise the sheriff shall appoint the date on which the cause shall appear on the adjustment roll.

(2) No continuation of the adjustment after the first shall be allowed except on cause shown.

(3) Cause shall not be shown under paragraph (2) by reason only that parties agree to a continuation.

(4) In considering whether cause has been shown under paragraph (2) the sheriff shall take into account any additional time which may have been available for adjustment owing to a court vacation occurring (in whole or in part) after the lodging of defences.

## THIRD PARTY PROCEDURE

*Third party notice*

50.—(1) Where in any cause, a defender claims that he has any right of contribution, relief, or indemnity against any person who is not already a party to the cause, or that a person whom the pursuer is not bound to call as a defender should be made a party to the cause along with the defender in respect that such person is either solely liable or jointly and severally liable with the defender to the pursuer in respect of the subject matter of the cause, the defender may set forth in his defences or in a separate statement of facts the grounds upon which he maintains that any such person (hereinafter called a third party) is liable to him by way of contribution, relief, or indemnity, or

should be made a party to the cause and the defences or statement of facts shall also contain appropriate pleas-in-law directed against such third party.

(2) Thereafter the defender may lodge a motion for the purpose of obtaining an order for the service of a third party notice upon such third party upon such period of notice as is referred to in rule 7, and if the motion is granted, the third party shall be a party to the cause and may lodge answers on or before a date appointed by the sheriff for the regulation of further procedure.

(3) Averments directed against a third party shall be made prior to the closing of the record, or, at the discretion of the sheriff and subject to such conditions as to the sheriff seem just, at a later stage, but in no event later than the commencement of the hearing of the cause on its merits.

(4) A third party notice shall be as nearly as may be in terms of Form G as set out in the Appendix to this Schedule and the answers by a third party shall be headed 'Answers for E.F. Third Party in the action at the instance of A.B. Pursuer against C.D. Defender'; and the following provisions of this rule shall apply to the procedure under the notice.

(5) A third party notice shall be served on the third party in any manner and on such period of notice in which an initial writ may competently be served on a defender and shall be accompanied by a copy of the initial writ and defences, or the record, if any.

(6) A copy of the third party notice with a certificate of execution thereon shall be lodged in process.

(7) The order granting leave to serve a third party notice may contain a warrant for arrestment to found jurisdiction, or for arrestment on the dependence.

(8) Averments to justify the granting of a warrant for arrestment to found jurisdiction shall be included in the defences or the separate statement of facts referred to in paragraph (1) of this rule.

(9) On the date appointed by the sheriff for the regulation of further procedure or at any time thereafter the sheriff may grant such decree, interlocutor or order as seems just.

(10) Any decree, interlocutor, or order against the third party shall take effect and be extractable in the same way as a decree, interlocutor or order against the defender.

(11) This rule also applies to a claim—

(a) by a third party; or

(b) by a pursuer in respect of a counter-claim by a defender, as it applies to a claim by a defender.

#### COUNTER-CLAIM PROCEDURE

##### *Counter-Claim*

**51.** The defender may make a counter-claim against the pursuer by lodging

in process a separate document headed “Counter-claim for the Defender” a copy of which shall be sent to the pursuer.

*Form of counter-claim*

52. The counter-claim shall contain a crave or craves in a form which if the counter-claim had been enforced by way of a separate cause would have been appropriate in that cause; it shall also contain a statement of facts setting out in numbered paragraphs the facts on which the counter-claim is founded and shall have appended a note of the pleas-in-law which are necessary to support the counter-claim.

*Warrants of counter-claim*

53.—(1) The defender may apply for warrant to use any form of diligence by way of arrestment which could be used on the dependence of a separate cause brought to enforce the matter of the counter claim.

(2) Such application shall be made by appending to the crave of the counter-claim the words “warrant for arrestment on the dependence applied for”, and shall be granted by the sheriff clerk who receives the counter-claim adding the words “Grants warrant as craved”, and adhibiting his signature together with the date below those words.

(3) Any such warrant shall have the like effect as it would have in an initial writ.

*Disposal of counter-claim*

54. The sheriff may—

- (a) deal with the counter-claim as if it had been stated in a substantive cause;
- (b) regulate procedure as he thinks fit; and
- (c) grant decree for the counter-claim in whole or in part, or for the difference between it and the sum claimed.

*Abandonment where counter-claim*

55.—(1) A pursuer shall not be prevented from abandoning a cause by reason only of a counter-claim by the defender.

(2) The abandoning of any cause by the pursuer shall not effect a counter-claim made in respect of that cause; and the counter-claim shall continue as a separate cause.

(3) Any expenses payable by the pursuer as a condition of, or in consequence of abandoning the cause shall not include the expenses of the counter-claim.

(4) A defender who has counter-claimed may abandon his counter-claim by lodging in process a minute to that effect, and thereafter the sheriff may, on payment by the defender of the expenses incurred by the pursuer in connection with the counter-claim, dismiss the counter-claim.

(5) If the defender fails, within 14 days of the date of taxation, to pay those expenses, the pursuer shall be entitled to decree of absolvitor with expenses in the counter-claim.

*Counter-claim in action for custody, access or maintenance*

**56.** In any cause in which custody of, access to, or maintenance for, a child is sought the defender may make a claim of any kind which a pursuer may make in such a cause; and rules 51 to 55 shall apply to any such claim as they apply to a counter-claim.

INCIDENTAL PROCEDURE

*Motions*

**57.** Any motion endorsed as unopposed may be granted by the sheriff in chambers without hearing the parties.

*Abandonment of cause*

**58.—(1)** A pursuer may at any stage of a cause before an interlocutor granting absolvitor or dismissing the cause has been pronounced offer to abandon the cause by lodging in process a minute to that effect and thereafter the sheriff may, on payment to the defender of his expenses, dismiss the cause.

(2) If the pursuer fails, within 14 days of the date of taxation, to pay the defender's expenses, the defender shall be entitled to decree of absolvitor, with expenses.

*Decree by default*

**59.—(1)** In a defended cause if any production or part of process has not been lodged or order implemented within the time required by any enactment or ordered by the sheriff or if one party fails to appear or be represented at any diet, the sheriff may grant decree as craved, or decree of absolvitor, or may dismiss the cause, with expenses; but the sheriff may upon cause shown prorogate the time for lodging any production or part of process or implementing any order.

(2) If none of the parties appears the sheriff may dismiss the cause.

*Transfer of cause on death of party*

**60.—(1)** Where any depending cause cannot proceed owing to the death of any party and that party's representatives do not sist themselves in his place, any other party may lodge a minute craving transfer of the cause against those representatives.

(2) The sheriff may on the lodging of any such minute, grant warrant for serving a copy of the initial writ upon those representatives, and if he does so, shall at the same time allow them to lodge a minute of objections to such transference within such time as may be specified in the interlocutor, and shall order intimation of his interlocutor to be made to any other parties to the cause.

(3) The sheriff may, after considering any objections to the minute, pronounce an interlocutor transferring the cause against their representatives.

*Effect of absence of interlocutors*

**61.** A cause shall not be held to have fallen asleep by reason only that no interlocutor has been pronounced therein within a year and a day of the date of the last interlocutor.

CLOSING OF RECORD TO PROOF

*Closing of the record*

**62.—**(1) When the pleadings have been adjusted the sheriff shall close the record and make such further order as he thinks fit.

(2) Not later than 14 days after the closing of the record the pursuer shall lodge in process a certified copy of the closed record.

*Preliminary pleas*

**63.—**(1) At the time of the closing of the record the parties shall state the preliminary pleas, if any, on which they insist and the sheriff shall fix a date for a debate on any such plea that is insisted in except where, upon a motion by the parties to reserve their pleas, he allows a proof before answer.

(2) The sheriff shall repel any such plea that is not insisted in.

*Amendment of pleadings: powers of the sheriff*

**64.—**(1) In any defended cause the sheriff may at any time before final judgment—

- (a) allow any amendment of the initial writ or other writ which may be necessary for the purpose of determining in the existing cause the real question in controversy between the parties, notwithstanding that in consequence of such amendment a different remedy from that originally craved is thereby sought, or, after the closing of the record, that the sum sued for is increased or restricted;
- (b) allow any amendment which may be necessary to correct or supplement the designation of any party to the cause, or to enable any party who has sued or has been sued in his own right to sue or be sued in a representative capacity, or to enable any party who has sued or who has been sued in a representative capacity to sue or be sued in his own right or in a different representative capacity, or to add the name of an additional pursuer or of a person whose concurrence is necessary, or where the cause has been commenced in the name of the wrong person as pursuer or where it is doubtful whether it has been commenced in the name of the right person, to allow any other person to be sisted as pursuer in substitution for, or in addition to, the original pursuer;
- (c) in any case in which it appears that all parties having an interest have not been called, or that the cause has been directed against the wrong person, allow any amendment inserting in the initial writ or writ an additional or substitute defender and containing averments directed against said

defender and to order the record as so amended to be served on such additional or substitute defender along with a notice in terms of Form H as set out in the Appendix to this Schedule specifying the date by which defences or answers must be lodged; and thereafter a copy of the said notice shall be lodged in process with a certificate of execution thereon and the cause as so amended shall proceed in every respect as if such defender had originally been made a party to the cause;

(d) allow any amendment of the condescendence, defences, answers or pleas-in-law which may be necessary for determining in the existing cause the real question in controversy between the parties.

(2) In allowing an amendment under paragraph (1), the sheriff may attach such conditions as seem just, and shall find the party making the amendment liable in the expenses thereby occasioned unless it is just and equitable that the expenses occasioned by the amendment should be otherwise dealt with.

(3) No amendment allowed under paragraph (1) shall prejudice the rights of creditors of the defender by giving validity to diligence used on the dependence of the cause; but no objections to such diligence shall have effect when stated by the defender himself or by any person representing him by a title, or in right of a debt contracted by him, subsequent to the execution of such diligence.

#### *Renouncing of probation*

**65.** If at any time on or after closing the record the parties wish to renounce probation they may do so by lodging with the sheriff clerk a joint minute to that effect with or without a statement of admitted facts and productions, and on the lodging of the joint minute the sheriff may order the cause to be debated.

#### *Ordering of proof*

**66.** If proof is necessary, the sheriff shall fix a date for taking the proof, and may limit the mode of proof.

#### *Reference to oath*

**67.—(1)** Where any party desires to refer any matter to his opponent's oath he shall lodge with the sheriff clerk a minute to that effect.

(2) If the party to whose oath reference has been made fails to appear at the diet for taking his deposition the sheriff may hold him as confessed and grant decree accordingly.

#### *Objection to documents*

**68.—(1)** When a deed or writing is founded on by any party in a cause, all objections to the deed or writing may be stated and maintained by way of exception, without reducing it.

(2) The sheriff may, where an objection is stated under paragraph (1) and where an action of reduction would be competent, order the objector to find caution, or to make consignation as he shall direct.



*Remit to person of skill*

**69.**—(1) Where all compearing parties to the cause concur the sheriff may remit to any person of skill or other person to report on any matter of fact and the report of such person shall be final and conclusive with respect to the matter of the remit.

(2) Before the sheriff so remits, the parties shall lodge in process a joint minute setting out the matters which are to be the subject of the remit.

(3) The expense of the execution of the remit shall in the first instance be paid by the parties equally unless the sheriff otherwise directs.

(4) In undefended causes the sheriff may on the motion of the pursuer remit to a man of skill or other person.

## PROOF

## EVIDENCE

*Evidence to lie in retentis*

**70.** Evidence in danger of being lost may be taken to lie *in retentis* and, if satisfied that it is desirable so to do, the sheriff may, upon the motion of any party at any time, either take such evidence himself, or grant authority to a commissioner to take it.

*Evidence taken on commission*

**71.** The evidence of any witness or haver resident beyond the jurisdiction of the court, or who although resident within the jurisdiction resides at some place remote from the court, or who is by reason of illness, age or infirmity, or other sufficient cause, unable to attend the diet of proof may be taken by commission in like manner as evidence to lie *in retentis*.

*Affidavit evidence*

**72.**—(1) The provisions of this rule—

- (a) apply to all parts of actions of separation and aliment which proceed as undefended;
- (b) do not apply to any such action where it appears to the sheriff that the defender is a person who is suffering from mental disorder within the meaning of the Mental Health (Scotland) Act 1960(a).

(2) Evidence submitted in the form of affidavits shall, subject to the provisions of this rule, be admissible in place of parole evidence.

(3) For the purpose of this rule—

- (a) “affidavit” includes affirmation and statutory or other declaration;

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(a) 1960 c. 61.

- (b) an affidavit shall be treated as admissible if it is duly emitted before a notary public or any other competent authority.
- (4) Evidence submitted in the form of a written statement bearing to be that of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence.
- (5) Where it is intended to submit evidence only by means of affidavits the sheriff, at any time after the expiry of the period within which a notice of intention to defend or a minute under rule 34 must be lodged, the pursuer having lodged the necessary evidence on affidavit and having endorsed a minute on the initial writ, may grant decree or other order in terms of that minute, without requiring the attendance of the pursuer in court.
- (6) Where custody or aliment of children is also craved the action shall call in court.

*Recording of evidence*

73.—(1) In every defended cause the evidence shall be recorded by a shorthand writer, approved by the sheriff, unless the parties shall by agreement and with the consent of the sheriff dispense with the recording of such evidence. The responsibility for instructing a shorthand writer for a proof shall lie with the pursuer.

(2) Evidence adduced before a commissioner may be recorded by a shorthand writer or clerk approved by the commissioner. The responsibility for instructing a shorthand writer shall lie with the party moving for the commission.

(3) Where evidence is recorded by a shorthand writer or clerk the sheriff or commissioner shall administer the oath *de fidei administratione* to the shorthand writer or clerk who shall record the evidence by question and answer. The extended notes of evidence certified by such shorthand writer shall be the notes of the oral evidence in the case.

(4) It shall be unnecessary to record evidence in an undefended proof.

(5) If the correctness of the notes of evidence or of a deposition is questioned, the sheriff may satisfy himself in regard thereto by the examination of witnesses or otherwise, and may amend the record of evidence or a deposition.

(6) When a shorthand writer is so employed to record evidence, he shall in the first instance be paid, as regards commissions by the party moving for the commission, and as regards proofs by the parties equally. The solicitors of parties shall be personally liable for the shorthand writer's fees and the sheriff may make an order directing payment to be made.

WITNESSES AND HAVERS

*Citation*

74.—(1) A copy of an interlocutor certified by the sheriff clerk allowing a proof or fixing a diet for the trial of any cause or for the examination of

witnesses or havers shall be sufficient warrant for citation of witnesses or havers.

(2) If any witness or haver duly cited on a period of notice of at least 7 days and after having been paid his travelling expenses if the same shall have been demanded, fails to attend a diet, either before the sheriff or before his commissioner, such witness or haver may be ordained by the sheriff to forfeit and pay a penalty not exceeding £250, unless a reasonable excuse be offered and sustained, and the sheriff may grant decree for said penalty in favour of the party on whose behalf said witness or haver was cited.

*Form of citation*

75.—(1) Witnesses and havers may be cited as nearly as may be in terms of Form I as set out in the Appendix to this Schedule and the certificate of citation shall be as nearly as may be in terms of Form J as set out in the Appendix to this Schedule.

(2) A solicitor who cites a witness or haver shall be personally liable for his fees and expenses.

(3) In the event of a solicitor who has cited a witness or haver intimating to him that his citation is cancelled, the solicitor shall advise him that said cancellation is not to affect any other citation which he may have received from another party in that cause.

*Second diligence against witness*

76.—(1) The sheriff may grant second diligence to compel the attendance of a witness or haver under pain of arrest and imprisonment until caution can be found as the sheriff may require for his due attendance.

(2) The warrant for a second diligence shall be effective in any sheriffdom without endorsement and the expenses thereof may be decerned for against the witness or haver.

*Warrant to arrest*

77. Where any witness or haver fails to answer a citation after having been duly cited the sheriff may, upon production of a relevant certificate of citation, grant warrant for the apprehension of the witness or haver and for bringing him to the court, and the expenses thereof may be decerned for against the witness or haver.

PRODUCTIONS

*Production and recovery of documents*

78.—(1) Each party shall, along with his pleadings, or at latest before the closing of the record, if required by any other party in the cause or by the sheriff, lodge any documents founded upon in the pleadings, so far as the same are within his custody or power.

(2) Where such documents are not produced by any party to the cause or are in the hands of third parties, the sheriff may, on the motion of any party, grant

commission and diligence for their recovery and may on that account delay closing the record.

(3) At any time after tabling, the sheriff, on the motion of either party, may grant commission and diligence for the recovery of such documents contained in a specification as he shall deem relevant to the cause.

*Lodging productions for proofs*

79. In all causes in which a proof has been allowed, all documents, plans, maps, models and other productions which are intended to be used or put in evidence at the proof, shall be lodged along with an inventory with the sheriff clerk on or before the fourteenth day prior to the day appointed for the proof, and notice of the lodging thereof shall at the same time be sent to the other party or parties; and no other production shall be used or put in evidence at the proof unless by consent of parties or by permission of the sheriff presiding thereat, on cause shown to his satisfaction, and on such terms as to expenses or otherwise as seems just.

*Ordering of production of documents by sheriff*

80. The sheriff may order production of documents at any stage of the cause, and the sheriff may allow a party, at any time before judgment, to produce any document which he has failed to produce timeously, on such conditions as to payment of expenses and allowing further proof as to the sheriff shall seem just.

*Optional procedure before executing commission and diligence*

81.—(1) Any party who has obtained a commission and diligence for the recovery of documents may, at any time, before executing the same against another party or other parties to the cause, or against any haver, serve upon such party, or parties, or haver, an order with certificate attached in terms of Form K as set out in the Appendix to this Schedule.

(2) Such order shall be served by registered or recorded delivery letter, and may be addressed to the care of the known solicitor or solicitors for the party or parties, or for the haver, from whom the documents are sought to be recovered.

(3) Such order shall be obtempered by such party, or parties, or by such haver, in the manner and within the time specified therein.

(4) When the order, certificate in terms thereof and inventoried documents (if any) are received by the sheriff clerk, official intimation shall be given by him forthwith to the solicitor or solicitors of the party or parties to the cause that the order has been served and obtempered; and it shall not be competent for any party, other than the party who served the order, to borrow any of the documents until after the expiry of 7 days from the date of such official intimation.

(5) If the party who served the order is not satisfied that full production has been made under the specification, or that adequate reasons for non-production have been given, he may execute the commission and diligence in normal form, notwithstanding his adoption in the first instance of the foregoing procedure by order.

(6) In the event of the production under such order as aforesaid of extracts from books whether such extracts are certified or not, the sheriff may, on cause shown, order that the party who served the order shall be at liberty to inspect and take copies of any entries in any books falling under the specification, subject, in the event of any question of confidentiality arising, to the inspection being made, and the copies being taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence; and the sheriff may, on cause shown, order the production of any books (not being bankers' books or books of public record) falling under a specification, notwithstanding the production of certified extracts therefrom.

#### *Confidentiality*

**82.** In any cause in which, either under the optional procedure provided in rule 81 or in the execution of a commission and diligence in normal form, confidentiality is claimed for any of the documents produced, such documents shall be enclosed in a separate sealed packet, which shall not be opened or put in process except by authority of the sheriff obtained on the application of the party serving the order, or executing the commission and diligence, after opportunity has been given to the party, parties or haver, making production, to be heard.

#### *Warrant for production of original documents from public records*

**83.—(1)** Where any party to a cause desires to obtain from the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland production of the originals of any register or deed under his custody, he shall apply by motion to the sheriff before whom the cause depends, after 7 days' notice of such application given in writing to the Keeper in charge of the originals.

(2) Upon such application the sheriff may by interlocutor, certify that it is necessary for the ends of justice that the application should be granted, and the party may make application by letter (enclosing a copy of the interlocutor duly certified by the sheriff clerk or one of his deputies) addressed to the principal clerk of session, for an order from the Lords of Council and Session authorising the Keeper to exhibit the original of any register or deeds to the sheriff, and that in the hands of an officer to be selected by the said Keeper.

(3) The principal clerk of session shall submit the same to a Lord Ordinary in Chambers, who, if satisfied, shall grant a warrant on behalf of the Lords of Council and Session. A certified copy of said warrant shall be served upon the Keeper.

(4) The expense attending the transmission and exhibition of such original registers or deeds shall be defrayed in the first instance by the party or parties on whose application they are exhibited.

#### *Orders for inspection*

**84.—(1)** Any application to the sheriff for an order for the inspection, photographing, preservation, custody or detention of documents or other property (including, where appropriate, land) or for the production, recovery or the taking of samples thereof or the carrying out of any experiment thereon or therewith made in any civil proceedings which have been commenced before

that sheriff shall be made by minute craving that the sheriff should grant such an order and specifying the order sought.

- (2) Upon such minute being lodged, the sheriff shall forthwith appoint—
  - (a) the application to be heard at a diet to be fixed by him, and
  - (b) appoint intimation to other parties to the proceedings and to such other persons as appear to him to have an interest relevant to the application.

- (3) After hearing parties, the sheriff may either grant or refuse the order sought, in whole or in part, or as amended, and may order the applicant to find such caution for any loss, damage or expenses which may be incurred as a result of the application as to the sheriff seems just.

- (4) Any application to the sheriff for such an order as is referred to in paragraph (1), made where proceedings have not been commenced, by any person who appears to the sheriff to be likely to be a party to or minuter in proceedings which are likely to be brought, shall be made by initial writ served upon all persons who are likely to be parties to such proceedings when commenced; and such application shall be and shall be dealt with as a summary application, provided that the sheriff may make an order for such intimation to such other persons as appear to him to have an interest relevant to the application, and may order the applicant to find such caution for any loss, damage or expense which may be incurred as a result of the application as to the sheriff seems just.

- (5) Any party who has obtained an order under this rule shall serve by registered or recorded delivery letter a certified copy of the interlocutor granting such order upon:—

- (a) (i) in the case of an order made under paragraph (3), any other party or parties to the cause;  
(ii) in the case of an order made under paragraph (4), any person upon whom service has been made; and
- (b) such other persons to whom the sheriff has appointed intimation of the application to be made;

but it shall not be necessary to serve such certified copy on any person who was present or represented when the application was heard; and such order shall be obtempered by the party or parties to whom it is directed in the manner and within the time specified therein.

#### PROCEDURE AT PROOF

##### *Proof to be taken continuously*

**85.** The proof shall be taken so far as possible continuously, but the sheriff may adjourn the diet from time to time.

##### *Objections*

**86.—**(1) All objections to the admissibility of oral or documentary evidence or to the production of documents, the submissions of parties in relation thereto and the decision of the sheriff or commissioner thereon shall be recorded by the shorthand writer and be extended with the notes of evidence; provided that the

sheriff or commissioner may also, if he considers it necessary or desirable to do so, dictate to the shorthand writer a short note of the objection and decision.

(2) The sheriff or commissioner if he considers an objection of sufficient importance may direct that the evidence to which the objection relates should be recorded separately from the remainder of the evidence or report of proceedings.

(3) Where the recording of evidence has been dispensed with in terms of rule 73, the sheriff, if called upon to do so, shall—

- (i) in the case of objections to the admissibility of evidence on the ground of confidentiality or to producing a document on any ground, record in a note the terms of such objections and his decision thereon; and
- (ii) in all other cases record, in the note to his interlocutor disposing of the merits of the cause the terms of any objections and his decision thereon.

*Incidental appeal against rulings on confidentiality of evidence and production of documents*

**87.**—(1) Where a party to the cause or other person objects to the admissibility of oral or documentary evidence on the ground of confidentiality or to producing a document on any ground, any party or person may, if dissatisfied with the ruling of the sheriff respecting the objection, express immediately his formal dissatisfaction and, with leave of the sheriff, appeal to the sheriff principal, who shall dispose of the appeal with the least possible delay; but otherwise it shall not be competent during a proof to submit to review any decision of the sheriff as to the admissibility of evidence or the production of documents.

(2) The incidental appeal referred to in paragraph (1) shall not remove the cause from the sheriff who may proceed with the cause as regards points not necessarily dependent upon the ruling appealed against.

*Parties to be heard at close of proof*

**88.** At the close of the proof, or at an adjourned diet if for any reason the sheriff shall have seen fit to postpone the hearing, the sheriff shall hear parties and thereafter shall pronounce judgment with the least possible delay.

PROCEDURE AFTER JUDGMENT

JUDGMENT

*Judgment*

**89.**—(1) The sheriff shall append to all interlocutors, except those of a formal nature, a note setting out the grounds upon which he has proceeded and in his final interlocutor on the merits he shall set out his findings in fact and in law separately.

(2) Where an interlocutor with note appended thereto is pronounced by the sheriff otherwise than in the presence of the parties, the sheriff clerk shall

forthwith provide the parties with a copy of such interlocutor and note free of charge.

(3) The sheriff may produce or sign any interlocutor when furth of his sheriffdom, but the date of every interlocutor shall be deemed to be the date upon which it is entered in the books of the court.

(4) At any time before extract, or before the transmission of a process in which an appeal has been taken the sheriff may correct any clerical or incidental error in his interlocutor or note.

#### EXTRACT

##### *Extract*

**90.**—(1) Subject to the provisions of paragraph (3) hereof, any decree, interlocutor or order pronounced in a defended cause may be extracted at any time at which it is not possible for any party to mark or pursue an appeal or apply for leave to appeal.

(2) Where, following the pronouncing of any decree, interlocutor or other order the sheriff has reserved any question of expenses, extract may be issued only after the expiry of 14 days from the date of the interlocutor disposing of such expenses, unless the sheriff directs otherwise.

(3) The sheriff on cause shown may grant a motion to allow extract to be applied for and issued earlier than is provided for in paragraphs (1) and (2) provided the motion is made either in the presence of parties or the sheriff is satisfied that proper intimation of the terms of the motion has been made in writing to all other parties.

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

#### APPEAL

##### *Time limit for appeal*

**91.** Any appealable interlocutor may be appealed within 14 days of the date of that interlocutor if not sooner extracted following a motion for early extract.

##### *Application for leave to appeal and appeal therefrom*

**92.**—(1) Application for leave to appeal against an interlocutor of a sheriff shall only be competent if made within 7 days of the date of the interlocutor against which it is desired to appeal, but such application shall not be competent if the interlocutor has been extracted following a motion for early extract.

(2) Where leave to appeal has been granted an appeal shall only be competent if made within 7 days of the granting of leave.

##### *Form of appeal and giving of notice to parties*

**93.**—(1) An appeal shall be taken by note of appeal which shall be written by the appellants on the interlocutor sheet, or other written record containing



the interlocutor appealed against, or on a separate sheet lodged with the sheriff clerk; and such note of appeal shall be as nearly as may be in the following terms:—

“The (pursuer, applicant, claimant, defender, respondent or other party) appeals to the sheriff principal/or/to the Court of Session”.

and such note of appeal shall be signed by the appellant, and shall bear the date on which it is signed.

(2) Where the appeal is an appeal to the Court of Session the note of appeal shall specify the name and address of the solicitors in Edinburgh who will be acting for the appellant in the appeal.

(3) On an appeal being taken to the sheriff principal the sheriff clerk shall transmit the process within 4 days to the sheriff principal, and on an appeal to the Court of Session he shall transmit the process within 4 days to the deputy principal clerk of session.

(4) Within the period of 4 days the sheriff clerk shall send written notice of the appeal to the other party or parties and certify on the interlocutor sheet that he has done so; but failure to give such notice shall not invalidate the appeal.

*Reclaiming petition or oral hearing may be ordered or dispensed with*

94. The sheriff principal may order a reclaiming petition and answers, or may hear parties orally or may, on the motion of all parties and if to the sheriff principal it seems just, dispose of the appeal without ordering either a reclaiming petition and answers or an oral hearing.

*Interim possession may be regulated pending appeal*

95. Notwithstanding an appeal, the sheriff or sheriff principal from whose decision appeal has been taken shall have power to regulate all matters relating to interim possession, to make any order for the preservation of any property to which the action relates or for its sale if perishable, or for the preservation of evidence, or to make in his discretion any interim order which a due regard to the interests of the parties may require. Such orders shall not be subject to review except by the Appellate Court at the hearing of the appeal.

*Abandonment of appeal*

96. After an appeal to the sheriff principal has been noted the appellant shall not be entitled to abandon it unless of consent of all parties, or by leave of the sheriff principal.

EXPENSES

*Decree for expenses may be extracted in solicitor's name*

97. Expenses allowed in any cause, whether in absence or *in foro*, unless modified at a fixed amount, shall be taxed before decree is granted for them, and the sheriff may allow a decree for expenses to be extracted in the name of the solicitor who conducted the cause.

*Objection to auditor's report*

**98.**—(1) Where an account of expenses is lodged for taxation, the account and process shall be transmitted by the sheriff clerk to the auditor of court, and the auditor shall assign a diet of taxation not earlier than 7 days from the date he receives the account and intimate that diet forthwith to the party who lodged the account.

(2) The party who lodged the account of expenses shall then, forthwith, send a copy thereof and intimate the date, time and place of the diet of taxation to each of the other parties and when the account has been taxed the auditor shall re-transmit the process with the account and his report to the sheriff clerk.

(3) Where the auditor has reserved consideration of the account at the date of the taxation he shall inform the parties who attended the taxation of his decision.

(4) A party may lodge a note of objections to an account as taxed only where he attended the diet of taxation, and the note of objections shall be lodged within 7 days from the date of the taxation of the account, and the sheriff shall dispose of such objection in a summary manner, with or without answers.

(5) If no note of objections is lodged within said period the sheriff may grant decree for the expenses as taxed.

## PARTICULAR PROCEDURES

## SEQUESTRATION FOR RENT

*Actions craving payment of rent*

**99.** In actions for sequestration and sale in respect of non-payment of rent, for recovery, or in security of rent, whether brought before or after the term of payment, payment of rent may be craved and decree for payment of such rent or part thereof when due and payable, may be pronounced and extracted in common form.

*Warrant to inventory and secure*

**100.**—(1) In the first deliverance on an initial writ for sequestration for rent the sheriff may sequester the effects of the tenant, and grant warrant to inventory and secure them.

(2) All warrants to sequester, inventory, sell, eject or relet shall include authority to open shut and lockfast places for the purpose of carrying such warrant into execution.

*Sale of effects*

**101.**—(1) The sheriff may order the sequestered effects to be sold at the sight of an officer of court or other named person.

(2) When a sale follows it shall be reported within 14 days and the pursuer shall lodge with the sheriff clerk the roup rolls or certified copies thereof and a state of debt.

(3) In the interlocutor approving the report of sale, or by separate interlocutor, the sheriff may grant decree against the defender for any balance remaining due.

*Care of effects*

**102.** The sheriff may at any stage appoint a fit person to take charge of the sequestrated effects, or may require the tenant to find caution that they shall be made available.

REMOVING

*Action of removing where fixed term of removal*

**103.**—(1) Subject to section 24 of the Agricultural Holdings (Scotland) Act 1949, (a) an action of removing may be raised at any time, provided the tenant has bound himself to remove by writing, dated and signed within 12 months of the term of removal, or, where there is more than one ish, of the ish first in date to remove.

(2) Subject to the said section 24, when the tenant has not so bound himself an action or removing may be raised at any time, but—

- (a) in the case of a lease of lands exceeding 2 acres in extent for 3 years and upwards, an interval of not less than one year nor more than 2 years shall elapse between the date of notice of removal and the term of removal first in date;
- (b) in the case of a lease of lands exceeding 2 acres in extent, whether written or verbal, held from year to year under tacit relocation, or for any other period less than 3 years, an interval of not less than 6 months shall elapse between the date of notice of removal and the term of removal first in date; and
- (c) in the case of houses let with or without land attached not exceeding 2 acres in extent, as also of land not exceeding 2 acres in extent without houses, as also of mills, fishings, shootings, and all other heritable subjects excepting land exceeding 2 acres in extent, and let for a year or more, 40 days at least shall elapse between the date of notice of removal and the term of removal first in date.

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

(4) In actions of declarator of irritancy and removing by a superior against a vassal, the pursuer shall call as parties the last entered vassal and such heritable creditors and holders of postponed ground burdens as are disclosed by a search for 20 years prior to the raising of the action and the expense of the search shall form part of the pursuer's expenses of process.

*Form of notice of removal*

**104.** Notices under sections 34, 35 and 36 of the said Act of 1949 shall be as

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(a) 1949 c. 75.

nearly as may be in terms of Form L as set out in the Appendix to this Schedule, and a letter of removal may be in terms of Form M as set out in the Appendix to this Schedule.

*Form of notice under section 37*

**105.** Notices under section 37 of the said Act of 1949 shall be as nearly as may be in terms of Form N as set out in the Appendix to this Schedule, and such form may be used also for notices to the proprietor by or on behalf of the tenant.

*Removal notices*

**106.** Removal notices under sections 34, 35, 36, 37 and 38 of the said Act of 1949 may be given by a messenger-at-arms or sheriff officer, or by registered letter signed by the person entitled to give such notice, or by the law agent or factor of such person, posted at any post office within the United Kingdom in time to admit of its being delivered at the address thereon on or prior to the last date upon which by law such notice must be given, addressed to the person entitled to receive such notice, and bearing the particular address of such person at the time if the same be known, or, if the same be not known, then to the last known address of such person.

*Evidence of notice to remove*

**107.**—(1) A certificate of notice under rule 104 dated and endorsed upon the lease or extract, or upon the letter of removal, and signed by the sheriff officer, messenger-at-arms, or by the person giving the notice, or his law agent, or factor, or an acknowledgement of notice endorsed on the lease or extract of letter of removal by the party in possession or his agent shall be sufficient evidence that notice has been given.

(2) Where there is no lease, a certificate endorsed upon a copy of the notice or letter, certified to be correct, by the person, sheriff officer, messenger-at-arms, law agent, or factor sending the same, which certificate shall be signed by such party sending the notice or letter, shall also be sufficient evidence that notice has been given.

(3) A certificate of notice under rule 105 dated and endorsed upon a copy of the notice or letter signed by the party sending the notice, shall be sufficient evidence that such notice has been given.

SUMMARY SUSPENSION

*Summary application for suspension of charge*

**108.** Where a charge has been given on a decree of court granted by the sheriff or a decree of registration proceeding upon a bond, bill, contract, or other form of obligation registered in any sheriff court books, or in the Books of Council and Session, or any others competent or on letters of horning following on such decree, for payment of any sum of money the person so charged may apply in the sheriff court having jurisdiction over him for suspension of such charge and diligence.

*Sist of diligence*

**109.** On sufficient caution being found in the hands of the sheriff clerk for the sum charged for with interest thereon, and expenses, and a further sum to be fixed by the sheriff in respect of expenses to be incurred in the suspension process, the sheriff may sist diligence, order intimation and answers, and proceed to dispose of the cause in a summary manner.

*Objections*

**110.** If objections are taken to the competency or regularity of suspension proceedings, the judgment of the sheriff, on such objections, may be appealed to the sheriff principal whose judgement thereon shall be final.

## ARRESTMENT

*Service of schedule of arrestment*

**111.** If a schedule of arrestment has not been personally served upon an arrestee, the arrestment shall only have effect if a copy of the schedule is also sent in a registered or recorded delivery letter to the last known place of residence of the arrestee, or, if such place of residence is unknown, 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 officer shall in his execution certify that this has been done and specify the address in question.

*Report of arrestment*

**112.**—(1) An arrestment on the dependence of a cause used prior to service shall fall unless the cause shall have been served within 20 days from the date of arrestment and

- (a) in the case of defended causes, has been tabled within 20 days of the first ordinary court day occurring subsequent to the expiry of the period of notice, or
- (b) in the case of undefended causes, decree in absence has been taken within 20 days of the expiry of the period of notice.

(2) when such an arrestment has been executed the party using it or his agent shall forthwith report the execution to the sheriff clerk.

## MULTIPLEPOINDING

*Action of multiplepoinding*

**113.** An action of multiplepoinding may be raised by any party holding, or having an interest in or claim on, the fund *in medio*.

*Service of initial writ*

**114.** The pursuer shall serve the initial writ on all persons so far as known to

him having an interest in the fund *in medio*, including the holder of the fund where the pursuer is not the holder.

*Order of advertisement*

**115.** The sheriff may make an order for advertisement of the action in such newspapers as he considers necessary.

*Condescence on the fund*

**116.** If the pursuer is the holder of the fund *in medio* he shall condescend in detail on the said fund in the condescence of the initial writ.

*Lodging of notice of appearance*

**117.** If any party intends to lodge defences to the competency of the action, objections to the condescence of the fund *in medio* or a claim on the fund *in medio*, he shall, before expiry of the appropriate period of notice lodge a notice of appearance, which shall be as nearly as possible in terms of Form O as set out in the Appendix to this Schedule, and shall specify therein the purpose of his intended appearance.

*Lodging of process*

**118.** Where a notice of appearance has been lodged, the cause shall table, and the pursuer shall lodge a process in accordance with rule 37.

*Lodging of defences, objections and claims where the holder is the pursuer*

**119.**—(1) Where the holder of the fund *in medio* is the pursuer, the sheriff at tabling shall appoint a period within which any defences, objections or claims shall be lodged, and appoint a date on which the cause shall appear on the procedure roll.

(2) Defences, objections and claims shall be lodged with the sheriff clerk in a single document under separate headings.

(3) Each claimant shall lodge with his claim any documents founded on in his claim, so far as the same are within his custody or power.

*Condescence on the fund by holder who is not pursuer*

**120.** Where the holder of the fund *in medio* is not the pursuer, the sheriff, at tabling shall appoint a period within which he is to lodge in process a detailed condescence of the fund in his hands together with a list of all persons, so far as known to him, having an interest in the said fund, and shall appoint a date on which the cause shall appear on the procedure roll; and the procedure for the lodging of defences, objections and claims specified in rule 119 shall be followed.

*Disposal of defences*

**121.**—(1) At the hearing on the procedure roll, where defences have been lodged, the sheriff may order the initial writ and defences to be adjusted in accordance with rule 122 and thereafter shall close the record thereon and regulate further procedure.

(2) Unless the sheriff otherwise directs, defences shall be disposed of before any further procedure in the action.

*Objections to fund in medio*

**122.**—(1) Where objections to the fund *in medio* have been lodged the sheriff may, after disposal of any defences, order the condescence of the fund and objections to be adjusted and thereafter shall close the record thereon and regulate further procedure.

(2) If no objections to the fund *in medio* have been lodged, or if objections have been lodged and disposed of, the sheriff, without order for intimation to any party, may on the motion of the holder of the fund approve the condescence on the fund and find the holder liable only in once and single payment.

*Consignation of the fund*

**123.**—(1) At any time after the consignation of the fund *in medio* has been approved, the sheriff may order it to be consigned or deposited in the hands of the sheriff clerk, or may order the whole or any part of the fund to be sold and the proceeds of sale to be consigned as aforesaid.

(2) After such consignation or deposit, it shall be competent for the holder of the fund *in medio* to apply for his exoneration and discharge.

*Expenses*

**124.** The sheriff may allow the holder of the fund *in medio*, on his exoneration and discharge, his expenses out of the said fund as a first charge thereon.

*Further service or advertisement*

**125.** The sheriff may, on the motion of any party or *ex proprio motu*, at any time order further advertisement or service on any person.

*Ranking of claims*

**126.**—(1) After disposal of any defences, and after approval on the condescence of the fund *in medio*, the sheriff, where there is no competition

on the fund, may rank and prefer the claimants and grant decree in terms of said ranking.

(2) Where there is competition the sheriff may order claims to be adjusted in accordance with rule 122 and thereafter shall close the record thereon and regulate further procedure.

*Remit to Reporter*

**127.**—(1) Where several claims have been lodged the sheriff may remit to a Reporter to prepare a scheme of division and report.

(2) The expenses of such remit, when approved by the sheriff, shall be made a charge upon the fund to be deducted before division.

DISPOSAL OF MONEY PAYABLE TO PERSONS UNDER LEGAL DISABILITY

*Disposal of money payable to persons under legal disability*

**128.**—(1) Where in any action of damages by or on behalf of a person under legal disability, arising out of injury sustained by such person, or out of the death of some other person in respect of whose death the person under legal disability is entitled to damages, a sum of money becomes payable to such person, such sum shall unless otherwise ordered, be paid into court and shall be invested, applied, or otherwise dealt with and administered by the court for the benefit of the person entitled thereto, and the receipt of the sheriff clerk shall be a sufficient discharge in respect of the amount paid in.

(2) The sheriff clerk of any sheriff court is also authorised at the request of any competent court to accept custody of any sum of money paid into such court in any action of damages by or for behoof of a person under legal disability provided always that such person is then resident within the jurisdiction of such sheriff court and such sum shall be invested or otherwise dealt with as in this rule.

(3) Where any money is paid into court under this rule it shall thereafter be paid out by the sheriff clerk or otherwise applied for the benefit of the person entitled thereto after such intimation and service and such enquiry as the sheriff may direct.

(4) On payment into court under this rule of money which has become payable to a person under legal disability, the sheriff clerk shall:—

- (a) issue to the person making the payment a receipt in or as nearly as may be in terms of Form P as set out in the Appendix to this Schedule to which receipt there shall be added a form in terms of Form Q as set out in the Appendix to this Schedule;
- (b) transmit forthwith to the Secretary of State a copy of the said receipt, having appended thereto the additional particulars specified in Form R as set out in the Appendix to this Schedule and the person making the payment shall forthwith complete and transmit to the Secretary of State Form Q intimating the payment into court.

(5) Any sum which in terms of this rule is ordered to be invested, shall be invested in any manner in which trustees are authorised to invest by virtue of



the Trustee Investments Act 1961(a) and no such sum shall be invested otherwise than in accordance with this rule.

## MISCELLANEOUS

*Recall or variation of decrees for aliment and of decrees regarding the custody of and access to children*

**129.**—(1) Applications for the recall or variation of any Sheriff Court decree for payment of aliment, whether pronounced in favour of a spouse, a parent, or any other person, or pronounced in respect of a legitimate or illegitimate child, and applications for the recall or variation of any decree regulating the custody of or access to legitimate or illegitimate children, shall be made by minute lodged in the original process in which decree was pronounced.

(2) The sheriff shall order the minute to be served on the opposite party or parties and appoint answers to be lodged within a specified time, and shall thereafter, without closing the record, and after such proof or other procedure as to the sheriff seems necessary, dispose of the application.

*Intimation following certain allegations*

**130.**—(1) In any action in which adultery is averred as a ground of action or defence, where the name of the person with whom adultery is alleged to have been committed is disclosed in the action, and such person is not a party to the action, the sheriff shall not allow proof unless the action has been intimated to such person or the sheriff is satisfied that the address of such person is unknown.

(2) An order for such intimation may be contained in the original warrant of citation, or intimation may be appointed to be made at a later stage, and such person may apply by minute craving to be sisted as a party and averring articulate answers to the allegations made against him or her: provided that the requirement of intimation under this rule shall not apply where the pursuer alleges rape upon or incest with a named person by the defender.

(3) In an action in which the pursuer alleges sodomy or any homosexual relationship between the defender and a named person, the pursuer shall immediately after tabling enrol a motion for intimation to that person, and the sheriff at the hearing of the motion, may make such order for intimation or for dispensing with intimation to that person as seems just.

(4) Where the sheriff makes an order dispensing with intimation under paragraph (3) he may also make an order that the name of that person be deleted from the condescendence in the initial writ.

*Notices in actions of separation and aliment*

**131.** Where the facts set out in section 1(2)(d) (two years' non-cohabitation and the defender's consent to decree) of the Divorce (Scotland) Act, 1976,(b) are relied on in an action of separation and aliment, a notice as nearly as may

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(a) 1961 c. 62.

(b) 1976 c. 39.

be in terms of Form S as set out in the Appendix to this Schedule shall be sent with the copy of the initial writ served on the defender, together with a notice as nearly as may be in terms of Form T as set out in the Appendix to this Schedule.

*Consent to grant of decree*

**132.**—(1) Where in an action of separation and aliment in which the facts set out in section 1(2)(d) of the Divorce (Scotland) Act, 1976,<sup>(a)</sup> (two years non-cohabitation and the defender's consent to decree) are relied on, the defender wishes to indicate to the court that he consents to the grant of a decree, he shall do so by giving notice in writing to that effect to the sheriff clerk at the sheriff court referred to in the initial writ who shall, on receipt of such notice, lodge it in process.

(2) For the purposes of paragraph (1) a notice of consent in the form set out in Form T containing a statement that the defender consents to the grant of a decree shall be treated as notice under that paragraph if it is signed by the defender; and the evidence of one witness shall be sufficient for establishing that the signature on the notice of consent bearing to be that of the defender is in fact that of the defender.

(3) Where in an action of separation and aliment the initial writ contains an averment for the purposes of the said section 1(2)(d) that the defender consents to the grant of a decree, he may give notice in writing to the court that he has not consented to a decree being granted or that he withdraws any consent which he has already given.

(4) In a case where the defender gives notice under paragraph (3) the sheriff clerk shall intimate its terms to the pursuer.

(5) On receiving intimation under paragraph (4) of a notice given under paragraph (3) the pursuer shall if none of the other facts mentioned in section 1(2) of the Divorce (Scotland) Act, 1976, are averred in the initial writ, lodge a motion for the action to be sisted, and the sheriff may grant that motion.

(6) If such a motion is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action.

APPOINTMENT OF CURATOR *AD LITEM*

*Special application for appointment of a curator ad litem*

**133.**—(1) In an action of separation and aliment where it appears to the sheriff that the defender is suffering from mental disorder within the meaning of the Mental Health (Scotland) Act, 1960,<sup>(b)</sup> the sheriff shall:—

- (a) appoint a curator *ad litem* to the defender; and
- (b) in an action of separation and aliment under section 1(2)(d) of the Divorce (Scotland) Act, 1976, make an order informing the Mental

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<sup>(a)</sup> 1976 c. 39.

<sup>(b)</sup> 1960 c. 61.

Welfare Commission for Scotland of the ground of the action and requesting them to provide a report indicating whether in their opinion the defender is capable of deciding whether or not to give consent to the granting of decree.

(2) The pursuer shall within 7 days of the making of an order under head (a) of paragraph (1) appointing a curator *ad litem* to the defender, send to the curator a certified copy initial writ and defences, if any.

(3) The curator *ad litem* may, within 14 days of the Commission providing the report under head (b) of paragraph (1), or in any other case in which no such report is requested, within 21 days of his appointment under head (a) of that paragraph lodge:—

- (i) a notice of appearance;
- (ii) defences to the action;
- (iii) a minute adopting defences already lodged; or
- (iv) a minute stating that he does not intend to lodge defences;

and may appear in the action at any time to protect the interests of the defender.

#### EUROPEAN COURT

##### *European Court*

**134.**—(1) Interpretation:

In this Rule—

- (a) any expression defined in Schedule 1 to the European Communities Act, 1972,<sup>(a)</sup> has the meaning there given to it;
- (b) “The European Court” means the Court of Justice of the European Communities;
- (c) “reference” means a reference to the European Court for a preliminary ruling under Article 177 of the European Economic Community Treaty, Article 150 of the European Atomic Energy Community Treaty or Article 41 of the European Coal and Steel Community Treaty;
- (d) “appeal” shall include an application for leave to appeal.

(2) A reference may be made by the sheriff *ex proprio motu* or on the motion of any party to the proceedings in the sheriff court.

(3) A reference shall be made in the form of a request for a preliminary ruling of the European Court as nearly as may be in terms of Form U as set out in the Appendix to this Schedule.

- (4)(a) When the sheriff decides that a reference be made, he shall continue the cause *simpliciter* for the purpose and within 4 weeks thereafter draft a reference.
- (b) On the reference being drafted, the sheriff clerk shall forthwith send a copy to each of the parties.

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(a) 1972 c. 68.

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- (c) Within 4 weeks from the date when copies of the draft have been sent to parties, each party may lodge in the hands of the sheriff clerk and send to each of the other parties in the proceedings a note of any adjustments he desires to have made in the draft reference.
  - (d) Within 14 days after the latest date on which any such note may be lodged the sheriff, after considering any such adjustments, shall make and sign the reference.
  - (e) The sheriff clerk shall forthwith intimate the making of the reference to the parties in the proceedings.
- (5) On a reference being made the proceedings shall, unless the sheriff when making such a reference otherwise orders be sisted until the European Court has given a preliminary ruling on the question or questions referred to it, provided that the sheriff shall have power to recall such sist for the purpose of making any interim order which a due regard to the interests of the parties may require.
- (6) A copy of the reference certified by the sheriff clerk shall be transmitted by the sheriff clerk to the Registrar of the European Court, but unless the sheriff otherwise directs, such copy shall not be sent to the Registrar so long as an appeal or further appeal against the making of the reference is pending, and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal.

## APPENDIX

## FORMS

rule 3

## FORM A

## INITIAL WRIT

SHERIFFDOM OF

AT

A.B. (design him; if he sues in any special capacity set that forth), Pursuer,

## AGAINST

C.D. (design him; if sued in any special capacity set that forth), Defender.

The Pursuer craves the Court (here set forth the specific decree, warrant or order asked).

Condescendence,

(State in numbered paragraphs the facts which form the ground of action).

Pleas-in-Law

(State in numbered sentences)

(To be signed) A.B., Pursuer;

or

X.Y. (add designation and business address)  
Solicitor for Pursuer.

rule 5(1)

## FORM B

## WARRANT OF CITATION

(Place and date) Grants warrant to cite the defender by serving a copy of the writ and warrant upon a period of notice of    days, and appoints him, if he intends to defend, to lodge a notice of intention to defend with the Sheriff Clerk at    within the said period of notice after such service under certification of being held as confessed. (Meantime grants interim inderdict, or warrant to arrest on the dependence, or sequesters and grants warrant to inventory; or otherwise, as the case may be and to arrest to found jurisdiction.)

rule 5(2)

## FORM B2

## WARRANT OF CITATION SUMMARY APPLICATION

[Place and date] Grants warrant to cite the defender ( or respondent) by serving a copy of the writ and warrant upon a period of notice of    days, and appoints him to answer within the Sheriff Court House at (in Room No, or in Chambers, or as the case may be), on the    day of    at    o'clock    noon, under certification of being held as confessed. [Where necessary add (meantime sequesters and grants warrant to inventory and secure); or (grants warrant to arrest in the dependence); or (otherwise as the case may be)].

rule 9

## FORM C

## CITATION

A.B. Pursuer against C.D. Defender                      Court Ref No

(Place and date.) C.D., defender. You are hereby served with this copy writ and warrant, and required to answer thereto, conform to the said warrant.

IF YOU WISH TO DEFEND THIS ACTION you must lodge a notice of intention to defend with the Sheriff Clerk at    within    days after this date and at the same time present this copy initial writ.

IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

(To be signed)

P.Q., Sheriff Officer,  
or

X.Y. (add designation and business address).  
Solicitor for Pursuer

FORM D

rule 9(2)

CERTIFICATE OF CITATION

(Place and date) I, \_\_\_\_\_ hereby certify that upon the  
day of \_\_\_\_\_ I duly cited C.D., the defender, to answer to the  
foregoing writ. This I did by (set forth mode of service, if by officer and not by post, add  
in presence of L.M. (design him), witness, hereto with me subscribing).

(To be signed)

P.Q., Sheriff Officer,  
L.M., Witness;

or

X.Y. (add designation and business address).  
Solicitor for Pursuer

FORM E

rule 11

ADVERTISEMENT

Court Ref No

An action has been raised in \_\_\_\_\_ Sheriff Court by A.B. pursuer  
calling as a defender C.D. whose last known address was \_\_\_\_\_

If the said C.D. wishes to defend the action he should immediately contact the Sheriff  
Clerk (address) \_\_\_\_\_ Tel No. \_\_\_\_\_

X.Y. (add designation and business address)  
Solicitor for Pursuer

or

P.Q., Sheriff Officer

FORM F

rule 33

NOTICE OF INTENTION TO DEFEND

(Place and date)—C.D. (design him) Defender, intends to defend the action against him  
(and others) at the instance of A.B. (design him).

C.D. Defender

or

X.Y. (add address)  
Defender's Solicitor

rule 50(4)

FORM G

rule 50(4)

## THIRD PARTY NOTICE

Third Party Notice in the Cause between

A.B. Pursuer  
and

C.D. Defender

E.F. Third Party

to E.F.

This Notice is served upon you by the above named C.D. by virtue of an order granted by Sheriff \_\_\_\_\_ in the action in which the above-named A.B. is the pursuer and C.D. the defender. In the action the pursuer claims against defender £ \_\_\_\_\_ in respect of (or otherwise as the case may be) as more fully appears in the copy initial writ and defences (or copy record in the action) enclosed herewith.

The defender denies any liability but maintains that if there is any liability he shares that liability with you, as more fully appears from his defences lodged in the above action and enclosed herewith.

or

(otherwise as the case may be)

And take notice that if you wish to resist either the claim of the pursuer against the defender, or the claim of the defender against you, you must lodge answers in the action not later than \_\_\_\_\_ being the date appointed by the Court for the regulation of further procedure and must appear or be represented in court on that date, otherwise the Court may pronounce such decree against you as it thinks fit.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
(Signed) \_\_\_\_\_ (Solicitor for the (Defender)).

rule 64(1)

FORM H

rule 64(1)

## NOTICE TO ADDITIONAL DEFENDER

To (designation and address)

Court Ref No

Take notice that in the action in which A.B. is the Pursuer and C.D. is the Defender, in copies of the (initial writ and defences) (closed record) which are herewith enclosed, your name has, by order of the Court dated \_\_\_\_\_, been added/substituted as a Defender to the said action; and the action, originally directed against the said C.D. is directed against you.

IF YOU WISH TO DEFEND THIS ACTION you must lodge defences thereto with the Sheriff Clerk at \_\_\_\_\_ within \_\_\_\_\_ days from the date of service hereof.

IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the Court may regard you as admitting the claim made against you and the Pursuer may proceed and obtain decree against you in your absence.

(Date)

(Signed) P.Q., Sheriff Officer;

or

X.Y. (add designation and business address)  
Solicitor for Pursuer (or Defender)

FORM I

rule 75(1)

CITATION

K.L (design him), you are required to attend at Sheriff Court on 19 at as a witness for the in the action at the instance of A.B. (design him), against C.D. (design him) (and to bring with you (specify documents)). If you fail to attend without reasonable excuse having demanded and been paid your travelling expenses you may be ordered to pay a penalty not exceeding £250 and warrant may be granted for your arrest.

(Date)

(Signed) P.Q., Sheriff Officer;

or

X.Y. (add designation and business address)  
Solicitor for Pursuer (or defender)

Note:

Within certain specified limits claims for necessary outlays and loss of earnings will be met. Claims should be made to the person who has cited you to attend court and proof of any loss of earnings should be given to that person. If you wish your travelling expenses to be paid prior to your attendance you should apply to the person who has cited you.

FORM J

rule 75(1)

CERTIFICATE OF CITATION

I certify that on 19 I duly cited K.L. (design him) to attend at Sheriff Court on 19 at as a witness for the in the action at the instance of A.B. (design him) against E.F. (design him) (and I required him to bring with him (specify documents)). This I did (set forth mode of citation).

(Date)

(Signed) P.Q., Sheriff Officer;

or

X.Y. (add designation and business address)  
Solicitor for Pursuer (or Defender)



rule 81(1)

FORM K

NOTICE IN OPTIONAL PROCEDURE FOR COMMISSION AND DILIGENCE

Order by the Sheriff Court at .....

In the cause (reference No.)

in which

A.B. (design) is Pursuer

and

C.D. (design) is Defender

To (name and designation of party or parties or haver, from whom the documents are sought to be recovered)

Take notice that you are hereby required to produce to the sheriff clerk at within 7 days of the service upon you of this order—

- (1) this order itself which must be produced intact;
- (2) a certificate signed and completed in terms of the form appended hereto; and
- (3) all documents in your possession falling within the specification enclosed herewith, together with a list or inventory of such documents signed by you as relative to this order and your certificate.

Production may be made either by lodging the above at the said office of the sheriff clerk, or by registered or recorded delivery letter or registered postal packet enclosing the same, and addressed to the said sheriff clerk at said office.

(Signature and business address of the solicitor of the party in whose favour commission and diligence has been granted)

(Date)

Note: If you claim confidentiality for any of the documents produced by you, such documents must nevertheless be produced, but may be placed in a special sealed enclosure by themselves, marked "confidential".

CERTIFICATE

I hereby certify with reference to the order of the sheriff court at in the cause (reference No.) and the relative specification of documents, served upon me and marked respectively X.Y.—

(1) that the documents which are produced and which are enumerated in the inventory signed by me and marked Z, are the whole documents in my possession falling under the specification

or

that I have no documents in my possession falling within the specification.

(2) that, to the best of my knowledge and belief, there are in existence other documents falling within the specification, but not in my possession, namely (describe them by reference to one or more of the descriptions of documents in the specification), which were last seen by me on or about (date), at (place), in the hands of (name and address of the person)

or

that I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification.

(Signed)

FORM L

rule 104

NOTICE OF REMOVAL

To (name, designation, and address of party in possession).

You are required to remove from (describe subjects) at the term of (or if different terms, state them and the subjects to which they apply), in terms of lease (describe it) or (in terms of your letter of removal of date ) or (otherwise as case may be).

FORM M

rule 104

LETTER OF REMOVAL

To (name and designation of addressee).

(Place and date) I am to remove from (state subjects by usual name of short description sufficient for identification) at the term of

K.L. (add designation and address).

If not holograph to be attested thus—

M.N. (add designation and address), witness.

FORM N

rule 105

NOTICE OF REMOVAL UNDER S.37 of 1949 ACT

To K.L. (designation and address).

You are required to remove from ( ) that portion of ground (describe it); or the mill of (describe it); or the shootings of the lands and estate of (describe them); or (other subjects to which this notice is applicable), at the term of Whitsunday (insert year) (or Martinmas, as the case may be, inserting after the year the words, being the 15th day of May, or the 11th day of November, or the 28th day of May, or the 28th day of November, as the case may be).

rule 117

## FORM O

## NOTICE OF APPEARANCE

A.B. Pursuer against C.D., E.F., and G.H. Defenders

Court Ref No.

(Place and date)—C.D. (design him) defender, intends to appear in the above action and lodge \*defences to the competency of the action

\*objections to the condescence of the fund *in medio*  
\*a claim on the fund *in medio*.

(Signed)

C.D., Defender

or

X.Y. (add designation and business address)  
Solicitor for Defender

\*delete as appropriate.

rule 128(4)

## FORM P

## RECEIPT

In the Sheriff Court of \_\_\_\_\_ at \_\_\_\_\_

Receipt for a Payment into Court

In the cause, matter or proceeding (state names of parties or other appropriate description)

(Place and date)

A.B. (design him) \_\_\_\_\_ has this day paid into Court  
the sum of £ \_\_\_\_\_ being a payment into Court in terms of Rule 141 of  
of money which in an action of damages, has become payable  
to a person under legal disability.

(Note) If the payment is made under Rule 141(2) add "the custody of which money has been accepted at the request of (name of Court making request)."

(Signed)

Sheriff Clerk

N.B. The person paying the money into Court is required to complete and transmit the subjoined Form Q to the Secretary of State, forthwith.

## TO BE PERFORATED

rule 128(4)

## FORM Q

## LETTER INTIMATING PAYMENT

(Address)

(Date)

To

The Secretary of State

Sir,

I/We paid into the Sheriff Court at \_\_\_\_\_ on  
19 \_\_\_\_\_, the sum of \_\_\_\_\_ in the (State name of  
cause, matter or \_\_\_\_\_ proceeding).

Yours faithfully

(Signature)

FORM R

rule 128(4)

## ADDITIONAL PARTICULARS FOR RECEIPT

The above-mentioned payment into Court was:—

- (a) Lodged on Deposit Receipt No \_\_\_\_\_ with the (state name of Bank) pending the Orders of the Court.
- (b) Deposited in the National Savings Bank, Account No \_\_\_\_\_
- (c) (Otherwise as the case may be, stating similar particulars).

Name and address of Solicitor (or Insurance Company) representing the person who made the payment into Court:—

(Date)

(Signed)

Sheriff Clerk

FORM S

rule 131

Form of Notice to defender where it is stated he consents to the granting of decree of separation.

TAKE NOTICE that the copy initial writ served on you together with this Notice states that you consent to the grant of decree of separation—

1. If you do so consent the consequences to you are that—

- (a) provided the pursuer establishes the fact that there has been no cohabitation between the parties to the marriage at any time during a continuous period of two years after the date of the marriage and immediately preceding the bringing of this action and that you consent, a decree of separation will be granted;
- (b) on the grant of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist; a husband will continue to have a legal obligation to support his wife and children;
- (c) apart from these consequences there may be others applicable to you depending upon your particular circumstances.

2. If you do consent to the grant of decree you may apply to the Court in this action—

- (a) for payment by the pursuer to you of aliment; and
- (b) for an order providing for access to or the custody, maintenance and education of any child of the marriage, or any child accepted as such, who is under 16 years of age.

3. In order to make such an application to the Court you require to lodge a notice of appearance in this action. If you wish to make such an application you should consult a solicitor.

4. If after considering the foregoing, you wish to consent to decree, you should complete and sign the attached Form of Notice of Consent and send it to the Sheriff Clerk at the Sheriff Court referred to in the initial writ within 14 days of the date of this Notice.

5. If after consenting you wish to withdraw your consent you must immediately inform the Sheriff Clerk at the Sheriff Court referred to in the initial writ in writing that you withdraw your consent to decree being granted against you in the action at the instance of (insert name and address of your husband or wife as the case may be).

(Date)

(Signed)

(Signature of Pursuer or his Agent)

rule 131

FORM T

Form of Notice of Consent in actions of separation under section 1(2)(d) of the Divorce (Scotland), Act, 1976.

I (full name and address of the defender to be inserted by the pursuer or the pursuer's solicitor before sending Notice) have received a copy of the initial writ in the action against me at the instance of (full name and address of pursuer to be inserted by him or his solicitor before sending Notice).

I understand that it states that I consent to the grant of decree in this action.

I have considered the consequences to me mentioned in the Notice sent together with this Notice.

I consent to the grant of decree in this action.

(Dated)

(Signed)

(Signed)

Defender

Witness

rule 134(3)

FORM U

REQUEST FOR PRELIMINARY RULING OF THE COURT OF JUSTICE  
OF THE EUROPEAN COMMUNITIES.

(Here set out a statement of the case for the European Court, giving brief particulars of the case and issues between the parties, and relevant facts found by the Court, any relevant rules and provisions of Scots Law, and the relevant Treaty provisions, acts, instruments or rules of Community Law giving rise to the reference.)

The preliminary ruling of the Court of Justice of the European Communities is accordingly sought on the following questions—1, 2, etc. (Insert the questions on which the ruling is sought).

Dated the

day of

19 .)

## EXPLANATORY NOTE

*(This Note is not part of the Act of Sederunt.)*

This Act of Sederunt makes new provisions for rules of procedure in proceedings in the sheriff courts in Scotland by substituting for the schedule to the Sheriff Court (Scotland) Act 1907 which contains the existing rules of procedure in ordinary causes a new schedule re-enacting those rules with amendments and additions, and by extending the application of certain of those rules to summary causes, and also to summary applications.

SI 1983/747  
ISBN 0-11-036747-2



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