
STATUTORY INSTRUMENTS

1999 No. 929 (S. 65)

SHERIFF COURT, SCOTLAND

**Act of Sederunt (Summary Applications, Statutory
Applications and Appeals etc. Rules) 1999**

Made - - - - *19th March 1999*

Coming into force - - *1st July 1999*

The Lords of Council and Session, under and by virtue of the powers conferred on them by Schedule 1, paragraphs 24(1), 28D and 28(2), Schedule 2, paragraph 7 and Schedule 3, paragraph 13(3) to the Betting Gaming and Lotteries Act 1963(1), Schedule 2, paragraphs 33(1), 34(1), 45 and 47, and Schedule 9, paragraph 15 to the Gaming Act 1968(2), section 32 of the Sheriff Courts (Scotland) Act 1971(3), sections 66(5A) and 75 of the Sex Discrimination Act 1975(4), section 39(9) of the Licensing (Scotland) Act 1976(5), Schedule 3, paragraph 12 to the Lotteries and Amusements Act 1976(6), sections 136, 139, 146, 147, 152, 153, 182(3) and 185 of the Representation of the People Act 1983(7), sections 114(3), 204(3) and 231(3) of the Copyright, Designs and Patents Act 1988(8), section 19(3) of the Trade Marks Act 1994(9), section 46 of the Drug Trafficking Act 1994(10), Regulation 5(3) of the Olympics Association Right (Infringement Proceedings) Regulations 1995(11), and sections 31(5) and 48 of, and Schedule 1, paragraph 11 to, the Proceeds of Crime (Scotland) Act 1995(12) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

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- (1) 1963 c. 2; paragraph 28D of Schedule 1 was inserted by S.I. 1997/947.
 - (2) 1968 c. 65.
 - (3) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4) and the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).
 - (4) 1975 c. 65; subsection (5A) of section 66 was inserted by the Race Relations Act 1976 (c. 74), Schedule 4, paragraph 5(2) and section 75 was amended by the Industrial Tribunals Act 1996 (c. 17), Schedule 1, paragraph 3.
 - (5) 1976 c. 66; section 39 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 11.
 - (6) 1976 c. 32.
 - (7) 1983 c. 2; section 136 was amended by the Representation of the People Act 1985 (c. 50), Schedule 4, paragraph 48. Section 185 contains a definition of “prescribed” which is relevant to the exercise of the statutory powers under which these rules are made.
 - (8) 1988 c. 48; sections 114, 204 and 231 were amended by the Trade Marks Act 1994 (c. 26), Schedule 4, paragraph 8(2).
 - (9) 1994 c. 26.
 - (10) 1994 c. 37.
 - (11) S.I. 1995/3325.
 - (12) 1995 c. 43.

CHAPTER 1

GENERAL

Citation and commencement

1.1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 and shall come into force on 1st July 1999.

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

Interpretation

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

“Ordinary Cause Rules” means the First Schedule to the Sheriff Courts (Scotland) Act 1907⁽¹³⁾;

“sheriff clerk” includes sheriff clerk depute; and

“summary application” has the meaning given by section 3(p) of the Sheriff Courts (Scotland) Act 1907.

(2) Unless the context otherwise requires, any reference in this Act of Sederunt to a specified Chapter, Part or rule shall be construed as a reference to the Chapter, Part or rule bearing that number in this Act of Sederunt, and a reference to a specified paragraph, sub-paragraph or head shall be construed as a reference to the paragraph, sub-paragraph or head so numbered or lettered in the provision in which that reference occurs.

(3) Any reference in this Act of Sederunt to a numbered Form shall, unless the context otherwise requires, be construed as a reference to the Form so numbered in Schedule 1 to this Act of Sederunt and includes a form substantially to the same effect with such variation as circumstances may require.

Revocation

1.3 The Acts of Sederunt mentioned in column (1) of Schedule 2 to this Act of Sederunt are revoked to the extent specified in column (3) of that Schedule.

Application

1.4 Unless otherwise provided in this Act of Sederunt or in any other enactment, any application or appeal to the sheriff shall be by way of summary application and the provisions of Chapter 2 of this Act of Sederunt shall apply accordingly.

CHAPTER 2

SUMMARY APPLICATION RULES

PART I

INTERPRETATION

Interpretation

2.1 In this Chapter, unless the context otherwise requires—

(13) 1907 c. 51; the First Schedule was substituted by S.I. 1993/1956.

“decree” includes any judgment, deliverance, interlocutor, act, order, finding or authority which may be extracted;

“defender” means any person other than the pursuer who is a party to a summary application; and

“pursuer” means any person making a summary application.

PART II

GENERAL RULES

Application

2.2 This Part applies to summary applications.

Relief from failure to comply with rules

2.3.—(1) The sheriff may relieve a party from the consequences of failure to comply with a provision in this Part which is shown to be due to mistake, oversight or other excusable cause, on such conditions as he thinks fit.

(2) Where the sheriff relieves a party from the consequences of a failure to comply with a provision in this Part of these Rules under paragraph (1), he may make such order as he thinks fit to enable the summary application to proceed as if the failure to comply with the provision had not occurred.

The initial writ

2.4.—(1) Unless otherwise prescribed by any other enactment, a summary application shall be commenced by initial writ in Form 1.

(2) The initial writ shall be written, typed or printed on A4 size paper of durable quality and shall not be backed or folded.

(3) Where the pursuer has reason to believe that an agreement exists prorogating jurisdiction over the subject-matter of the summary application to another court, the initial writ shall contain details of that agreement.

(4) Where the pursuer has reason to believe that proceedings are pending before another court involving the same cause of action and between the same parties as those named in the instance of the initial writ, the initial writ shall contain details of those proceedings.

(5) An article of condescendence shall be included in the initial writ averring—

(a) the ground of jurisdiction; and

(b) the facts upon which the ground of jurisdiction is based.

(6) Where the residence, registered office or place of business, as the case may be, of the defender is not known and cannot reasonably be ascertained, the pursuer shall set out in the instance of the initial writ that the whereabouts of the defender are not known and aver in the condescendence what steps have been taken to ascertain his present whereabouts.

(7) The initial writ shall be signed by the pursuer or his solicitor (if any) and the name and address of that solicitor shall be stated on the back of every service copy of that writ.

(8) The initial writ shall include averments about those persons who appear to the pursuer to have an interest in the application and in respect of whom a warrant for citation is sought.

Order for intimation to interested persons by sheriff

2.5 The sheriff may make an order for intimation to any person who appears to him to have an interest in the summary application.

Time limits

2.6.—(1) This rule applies to a summary application where the time within which the application may be made is not otherwise prescribed.

(2) An application to which this rule applies shall be lodged with the sheriff clerk within 21 days after the date on which the decision, order, scheme, determination, refusal or other act complained of was intimated to the pursuer.

(3) On special cause shown, the sheriff may hear an application to which this rule applies notwithstanding that it was not lodged within the period prescribed in paragraph (2).

Warrants, forms and certificate of citation

2.7.—(1) Subject to paragraph (2), a warrant for citation, intimation or arrestment on the dependence may be signed by the sheriff or sheriff clerk.

(2) A warrant containing a period of notice shorter than the period of notice to be given to a defender under rule 3.6(1)(a) or (b), as the case may be, of the Ordinary Cause Rules or any other warrant which the sheriff clerk may not sign, shall be signed by the sheriff.

(3) Where the sheriff clerk refuses to sign a warrant which he may sign, the party presenting the summary application may apply to the sheriff for the warrant.

(4) Where citation is necessary—

(a) the warrant of citation shall, subject to paragraph (5), be in Form 2; and

(b) citation shall, subject to paragraph (7) and rule 2.13 (service where address of person is not known), be in Form 3.

(5) Where a time to pay direction under the Debtors (Scotland) Act 1987(**14**) may be applied for by the defender, the warrant of citation shall be in Form 4.

(6) Where a warrant of citation in accordance with Form 4 is appropriate, there shall be served on the defender (with the initial writ and warrant) a notice in Form 5.

(7) Where a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be in Form 6 which shall be attached to a copy of the initial writ and warrant of citation.

(8) Where citation is necessary, the certificate of citation shall be in Form 7 which shall be attached to the initial writ.

(9) Where citation is by a sheriff officer, one witness shall be sufficient for the execution of citation.

(10) Where citation is by a sheriff officer, the certificate of citation shall be signed by the sheriff officer and the witness and shall state—

(a) the method of citation; and

(b) where the method of citation was other than personal or postal citation, the full name and designation of any person to whom the citation was delivered.

(11) Where citation is executed under paragraph (3) of rule 2.11 (depositing or affixing by sheriff officer), the certificate shall include a statement—

- (a) of the method of service previously attempted;
- (b) of the circumstances which prevented such service being executed; and
- (c) that a copy of the document was sent in accordance with the provisions of paragraph (4) of that rule.

Orders against which caveats may be lodged

2.8 A person may lodge a caveat against an interim order (other than an order under section 1 of the Administration of Justice (Scotland) Act 1972 (orders for inspection of documents and other property, etc.))(15) sought before service of the initial writ.

Form, lodging and renewal of caveats

2.9.—(1) A caveat shall be in Form 8 and shall be lodged with the sheriff clerk.

(2) A caveat shall remain in force for a period of one year from the date on which it was lodged and may be renewed on its expiry for a further period of one year and yearly thereafter.

(3) Where a caveat has been lodged and has not expired, no order in respect of which the caveat was lodged may be pronounced unless the sheriff is satisfied that all reasonable steps have been taken to afford the person who lodged the caveat an opportunity of being heard; and the sheriff may continue the hearing on such an order until he is satisfied that such steps have been taken.

Postal service or intimation

2.10.—(1) In any summary application in which service or intimation of any document or citation of any person may be by recorded delivery, such service, intimation or citation shall be by the first class recorded delivery service.

(2) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882 (time from which period of notice reckoned)(16), where service or intimation is by post, any period of notice contained in the warrant of citation shall run from the beginning of the day after the date of posting.

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

“This envelope contains a citation to or intimation from (*specify the court*). If delivery cannot be made at the address shown it is to be returned immediately to:— The Sheriff Clerk (*insert address of sheriff clerk’s office*).”.

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

Service within Scotland by sheriff officer

2.11.—(1) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served by a sheriff officer on any person shall be served—

- (a) personally; or
- (b) by being left in the hands of a resident at the person’s dwelling place or an employee at his place of business.

(15) 1972 c. 59; section 1 was amended by the Law Reform (Miscellaneous) (Provisions) (Scotland) Act 1985 (c. 73), section 19 and Schedule 2, paragraph 15.

(16) 1882 c. 77.

(2) Where service is executed under paragraph (1)(b), the certificate of citation or service shall contain the full name and designation of any person in whose hands the initial writ, decree, charge, warrant or other order or writ, as the case may be, was left.

(3) Where a sheriff officer has been unsuccessful in executing service in accordance with paragraph (1), he may, after making diligent enquiries, serve the document in question by—

- (a) depositing it in that person's dwelling place or place of business; or
- (b) affixing it to the door of that person's dwelling place or place of business.

(4) Subject to rule 2.18 (service of schedule of arrestment), where service is executed under paragraph (3), the sheriff officer shall, as soon as possible after such service, send a letter containing a copy of the document by ordinary first class post to the address at which he thinks it most likely that the person on whom service has been executed may be found.

Service on persons furth of Scotland

2.12.—(1) Subject to the following provisions of this rule, an initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served on a person furth of Scotland shall be served—

- (a) at a known residence or place of business in England, Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—
 - (i) in accordance with the rules for personal service under the domestic law of the place in which service is to be executed; or
 - (ii) by posting in Scotland a copy of the document in question in a registered letter addressed to the person at his residence or place of business;
- (b) in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965⁽¹⁷⁾ or the Convention in Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982⁽¹⁸⁾—
 - (i) by a method prescribed by the internal law of the country where service is to be executed for the service of documents in domestic actions upon persons who are within its territory;
 - (ii) by or through the central, or other appropriate, authority in the country where service is to be executed at the request of the Secretary of State for Foreign and Commonwealth Affairs;
 - (iii) by or through a British Consular Office in the country where service is to be executed at the request of the Secretary of State for Foreign and Commonwealth Affairs;
 - (iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered letter addressed to the person at his residence; or
 - (v) where the law of the country in which service is to be executed permits, service by an *huissier*, other judicial officer or competent official of the country where service is to be executed; or
- (c) in a country with which the United Kingdom has a convention on the service of writs in that country other than the conventions mentioned in sub-paragraph (b), by one of the methods approved in the relevant convention.

⁽¹⁷⁾ Cmnd. 3986 (1969).

⁽¹⁸⁾ 1982 c. 27; Schedule 1 was substituted by S.I. 1990/2591. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1 and Schedule 1.

(2) Any document which requires to be posted in Scotland for the purposes of this rule shall be posted by a solicitor or a sheriff officer, and on the face of the envelope there shall be written or printed the notice set out in rule 2.10(3).

(3) In the case of service by a method referred to in paragraph (1)(b)(ii) and (iii), the pursuer shall—

- (a) send a copy of the writ and warrant of service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and
- (b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.

(4) In the case of service by a method referred to in paragraph (1)(b)(v), the pursuer or the sheriff officer shall—

- (a) send a copy of the writ and warrant for service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the official in the country in which service is to be executed; and
- (b) lodge in process a certificate of the official who executed service stating that it has been, and the manner in which it was, served.

(5) Where service is executed, in accordance with paragraph (1)(a)(i) or (1)(b)(i) other than on another party in the United Kingdom, the Isle of Man or the Channel Islands, the party executing service shall lodge a certificate by a person who is conversant with the law of the country concerned and who practises or has practised law in that country or is a duly accredited representative of the Government of that country, stating that the method of service employed is in accordance with the law of the place where service was executed.

(6) Every writ, document, citation or notice on the face of the envelope mentioned in rule 2.10(3) shall be accompanied by a translation in an official language of the country in which service is to be executed unless English is an official language of that country.

(7) A translation referred to in paragraph (6) shall be certified as correct by the person making it and the certificate shall—

- (a) include his full name, address and qualifications; and
- (b) be lodged with the execution of citation or service.

Service where address of person is not known

2.13.—(1) Where the address of a person to be cited or served with a document is not known and cannot reasonably be ascertained, the sheriff shall grant warrant for citation or service upon that person by—

- (a) the publication of an advertisement in Form 9 in a specified newspaper circulating in the area of the last known address of that person; or
- (b) displaying on the walls of court a copy of the instance and crave of the initial writ, the warrant of citation and a notice in Form 10;

and any period of notice contained in the warrant of citation shall run from the date of publication of the advertisement or display on the walls of court, as the case may be.

(2) Where service requires to be executed under paragraph (1), the pursuer shall lodge a service copy of the initial writ and a copy of any warrant of citation with the sheriff clerk from whom they may be uplifted by the person for whom they are intended.

(3) Where a person has been cited or served in accordance with paragraph (1) and, after the summary application has commenced, his address becomes known, the sheriff may allow the initial writ to be amended subject to such conditions as to re-service, intimation, expenses or transfer of the summary application as he thinks fit.

(4) Where advertisement in a newspaper is required for the purpose of citation or service under this rule, a copy of the newspaper containing the advertisement shall be lodged with the sheriff clerk by the pursuer.

(5) Where display on the walls of court is required under paragraph (1)(b), the pursuer shall supply to the sheriff clerk for that purpose a certified copy of the instance and crave of the initial writ and any warrant of citation.

Persons carrying on business under trading or descriptive name

2.14.—(1) A person carrying on a business under a trading or descriptive name may be designed in the instance of the initial writ by such trading or descriptive name alone, and an extract of a—

- (a) decree pronounced in the sheriff court; or
- (b) 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 proceed, recorded in the sheriff court books,

against such person under such trading or descriptive name, shall be a valid warrant for diligence against such person.

(2) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree in a summary application in which a person carrying on business under a trading or descriptive name is designed in the instance of the initial writ by that name shall be served—

- (a) 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
- (b) where there is no place of business within that sheriffdom, 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).

Endorsation unnecessary

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

Re-service

2.16 Where it appears to the sheriff that there has been any failure or irregularity in citation or service on a person, he may order the pursuer to re-serve the initial writ on such conditions as the sheriff thinks fit.

No objection to regularity of citation, service or intimation

2.17.—(1) A person who appears in a summary application shall not be entitled to state any objection to the regularity of the execution of citation, service or intimation on him, and his appearance shall remedy any defect in such citation, service or intimation.

(2) Nothing in paragraph (1) shall preclude a party from pleading that the court has no jurisdiction.

Service of schedule of arrestment

2.18 If a schedule of arrestment has not been personally served on an arrestee, the arrestment shall have effect only if a copy of the schedule is also sent by registered post or the first class recorded delivery service to—

- (a) the last known place of residence of the arrestee; or
- (b) if such a place of residence is not known, 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 sheriff officer shall, on the certificate of execution, certify that this has been done and specify the address to which the copy of the schedule was sent.

Arrestment on dependence before service

2.19.—(1) An arrestment on the dependence of a summary application used before service shall cease to have effect if the initial writ is not served within 20 days from the date of arrestment and either—

- (a) in the case where the pursuer is entitled to minute for decree in absence on the expiry of a period of notice contained in the warrant of citation, decree in absence has not been pronounced within 20 days after the expiry of the period of notice; or
- (b) in the case where the pursuer is not entitled to minute for decree in absence prior to the first hearing of the summary application, there is no appearance by the pursuer at the first hearing and the summary application drops from the roll.

(2) After such an arrestment has been executed, the party who executed it shall forthwith report the execution to the sheriff clerk.

Movement of arrested property

2.20.—(1) Any person having an interest may apply by motion for a warrant authorising the movement of a vessel or cargo which is the subject of an arrestment to found jurisdiction or on the dependence of a summary application.

(2) Where the court grants a warrant sought under paragraph (1), it may make such further order as it thinks fit to give effect to that warrant.

Transfer to another sheriff court

2.21.—(1) The sheriff may, on cause shown, remit a summary application to another sheriff court.

(2) Subject to paragraph (4), where a summary application 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 summary application to any other sheriff court which has jurisdiction over any of the defenders.

(3) Subject to paragraph (4), where a plea of no jurisdiction is sustained, the sheriff may transfer the summary application to the sheriff court before which it appears to him the summary application ought to have been brought.

(4) The sheriff shall not transfer a summary application to another sheriff court under paragraph (2) or (3) except—

- (a) on the motion of a party; and
- (b) where he considers it expedient to do so having regard to the convenience of the parties and their witnesses.

- (5) On making an order under paragraph (1), (2) or (3), the sheriff—
- (a) shall state his reasons for doing so in the interlocutor; and
 - (b) may make the order on such conditions as to expenses or otherwise as he thinks fit.
- (6) The court to which a summary application is transferred under paragraph (1), (2) or (3) shall accept the summary application.
- (7) A transferred summary application shall proceed in all respects as if it had been originally brought in the court to which it is transferred.
- (8) An interlocutor transferring a summary application may, with leave of the sheriff, be appealed to the sheriff principal but shall not be subject to appeal to the Court of Session.

Applications for time to pay directions

2.22.—(1) This rule applies to a summary application in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.

- (2) A defender may apply for a time to pay direction and, where appropriate, for recall or restriction of an arrestment—
- (a) by appearing and making the appropriate motion at a diet fixed for hearing of the summary application;
 - (b) except where the warrant of citation contains a shorter period of notice than the period of notice to be given to a defender under rule 3.6(1)(a) or (b), as the case may be, of the Ordinary Cause Rules, by completing and returning the appropriate portion of Form 5 to the sheriff clerk at least seven days before the first diet fixed for hearing of the summary application or the expiry of the period of notice or otherwise, as the case may be in the warrant of citation; or
 - (c) by application to the court at any stage before final decree.
- (3) The sheriff may determine an application under paragraph (2)(b) or (c) without the defender having to appear.

Remuneration of assessors

2.23 Where an assessor is appointed by the sheriff to assist him in determining the summary application, the remuneration to be paid to such assessor shall be part of the expenses of the application.

Deposits for expenses

2.24 Where, under any enactment, the sheriff requires the pursuer to deposit a sum of money to cover the expenses of an appeal under the enactment, such sum shall, subject to the provisions of that enactment, not exceed an amount which is twenty-five times the amount of the fee payable at that time in respect of lodging the initial writ.

When decrees extractable

- 2.25.**—(1) Subject to the following paragraphs—
- (a) subject to sub-paragraph (c), a decree in absence may be extracted after the expiry of 14 days from the date of decree;
 - (b) subject to sub-paragraph (c), any decree pronounced in a defended summary application may be extracted at any time after whichever is the later of the following—

- (i) the expiry of the period within which an application for leave to appeal may be made and no such application has been made;
 - (ii) the date on which leave to appeal has been refused and there is no right of appeal from such refusal;
 - (iii) the expiry of the period within which an appeal may be marked and no appeal has been marked; or
 - (iv) the date on which an appeal has been finally disposed of; and
- (c) where the sheriff has, in pronouncing decree, reserved any question of expenses, extract of that decree may be issued only after the expiry of 14 days from the date of the interlocutor disposing of the question of expenses unless the sheriff otherwise directs.
- (2) The sheriff may, on cause shown, grant a motion to allow extract to be applied for and issued earlier than a date referred to in paragraph (1).
- (3) In relation to a decree referred to in paragraph (1)(b) or (c), paragraph (2) shall not apply unless—
- (a) the motion under that paragraph is made in the presence of the parties; or
 - (b) the sheriff is satisfied that proper intimation of the motion has been made in writing to every party not present at the hearing of the motion.
- (4) Nothing in this rule shall affect the power of the sheriff to supersede extract.

Form of extract decree

2.26 The extract of a decree shall be in Form 11.

Form of warrant for execution

2.27 An extract of a decree on which execution may proceed shall include a warrant for execution in the following terms:—

“This extract is warrant for all lawful execution hereon.”.

Date of decree in extract

2.28.—(1) Where the sheriff principal has adhered to the decision of the sheriff following an appeal, the date to be inserted in the extract decree as the date of decree shall be the date of the decision of the sheriff principal.

(2) Where a decree has more than one date it shall not be necessary to specify in an extract what was done on each date.

Decrees in absence where defender furth of Scotland

2.29.—(1) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the initial writ in sufficient time to arrange for his defence or that all necessary steps have been taken to that end, and for the purposes of this paragraph—

- (a) the question whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982(19);

(19) 1982 c. 27; sections 41 and 42 were amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2, paragraphs 16 and 17 respectively.

- (b) the question whether a person is domiciled in another Contracting State shall be determined in accordance with Article 52 of the Convention in Schedule 1 or 3C to that Act(20), as the case may be; and
- (c) the term “Contracting State” has the meaning assigned in section 1 of that Act(21).

(2) Where an initial writ has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of Article 15 of the Convention have been complied with.

Motion procedure

2.30 Except where the sheriff otherwise directs, any motion relating to a summary application shall be made in accordance with, and regulated by, Chapter 15 of the Ordinary Cause Rules.

Power of sheriff to make orders

2.31 The sheriff may make such order as he thinks fit for the progress of a summary application in so far as it is not inconsistent with section 50 of the Sheriff Courts (Scotland) Act 1907.

CHAPTER 3

RULES ON APPLICATIONS UNDER SPECIFIC STATUTES

PART I

ADMINISTRATION OF JUSTICE (SCOTLAND) ACT 1972

Interpretation and application

- 3.1.1.**—(1) In this Part, “the Act” means the Administration of Justice (Scotland) Act 1972(22).
 (2) This Part applies to applications under section 1(1) of the Act.

Applications under section 1(1) of the Act

3.1.2 An application for an order under section 1(1) of the Act (orders for inspection of documents and other property, etc.) shall be made by summary application where the proceedings in respect of which the application is made have not been commenced.

PART II

BETTING AND GAMING APPEALS

Interpretation

- 3.2.1** In this Part—
 “the 1963 Act” means the Betting Gaming and Lotteries Act 1963(23);
 “the 1968 Act” means the Gaming Act 1968(24); and

(20) Schedule 1 was substituted by S.I. 1990/2591. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1 and Schedule 1.

(21) Section 1 was amended by S.I. 1990/2591 and by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 2.

(22) 1972 c. 59.

(23) 1963 c. 2.

(24) 1968 c. 65.

“the 1976 Act” means the Lotteries and Amusements Act 1976⁽²⁵⁾.

Appeals under Part I of the 1963 Act

3.2.2.—(1) This rule applies to—

- (a) appeals under paragraph 24(1) of Schedule 1 to the 1963 Act against the decision of a licensing board refusing to grant or renew a bookmaker’s permit, betting agency permit or betting office licence;
- (b) appeals under paragraph 28(2) of Schedule 1 to the 1963 Act against a decision of a licensing board ordering that a bookmaker’s permit be forfeited or cancelled;
- (c) appeals under paragraph 28D of Schedule 1 to the 1963 Act⁽²⁶⁾ against the decision of a licensing board ordering that a betting office licence be forfeited and cancelled;
- (d) appeals under paragraph 7 of Schedule 2 to the 1963 Act against the decision of a registering authority to refuse to register that appellant as a pools promoter, or to revoke his registration as a pools promoter; and
- (e) appeals under paragraph 13(3) of Schedule 3 to the 1963 Act against the decision of a licensing authority to revoke a track betting licence.

(2) The appellant shall serve a copy of the initial writ on—

- (a) the clerk to the licensing board, registering authority or licensing authority, as the case may be;
- (b) all parties who appeared at the hearing before the licensing board, registering authority or licensing authority, as the case may be; and
- (c) in the case of an appeal against the forfeiture and cancellation of a bookmaker’s permit or of a betting office licence, the applicant for forfeiture and cancellation.

(3) The clerk to the licensing board, registering authority or licensing authority, as the case may be shall, within 7 days after the date of service on him of a copy of the initial writ, send a written statement setting out the reasons for the decision of the licensing board, registering authority or licensing authority, as the case may be to—

- (a) the sheriff clerk; and
- (b) each of the persons on whom service of a copy initial writ is required to be made in terms of paragraph (2).

Appeals by applicants under Part II of the 1968 Act

3.2.3.—(1) This rule applies to—

- (a) appeals under paragraph 33(1) of Schedule 2 to the 1968 Act against the decision of a licensing board refusing to grant or renew a licence for gaming to take place on premises or imposing restrictions on such a licence; and
- (b) appeals under paragraph 45 of that Schedule against the decision of a licensing board cancelling such a licence.

(2) The appellant shall serve a copy of the initial writ on—

- (a) the clerk to the licensing board;
- (b) all parties who appeared at the hearing before the licensing board;
- (c) the Gaming Board;

⁽²⁵⁾ 1976 c. 32.

⁽²⁶⁾ Paragraph 28D of Schedule 1 was inserted by S.I. 1997/947.

- (d) the appropriate collector of duty; and
- (e) the appropriate officer of police.

(3) The clerk to the licensing board shall within 7 days after the date of service on him of a copy of the initial writ, send a written statement setting out the reasons for the decision of the licensing board to—

- (a) the sheriff clerk; and
- (b) each of the persons on whom service of a copy initial writ is required to be made in terms of paragraph (2).

Appeals by the Gaming Board under Part II of the 1968 Act

3.2.4.—(1) This rule applies to—

- (a) appeals under paragraph 34(1) of Schedule 2 to the 1968 Act against the decision of a licensing board to grant or renew a licence for gaming to take place on premises, with or without imposing restrictions; and
- (b) appeals under paragraph 47(1) of that Schedule against the decision of a licensing board refusing to cancel such a licence.

(2) Where a licensing board, after hearing any objections or representations made by or on behalf of the Gaming Board or any other person—

- (a) grants or renews a licence for gaming to take place on premises, with or without imposing restrictions; or
- (b) refuses an application for the cancellation of such a licence,

the clerk to the licensing board shall forthwith give notice of the decision of the licensing board to the Gaming Board.

(3) The appellant shall serve a copy of the initial writ on—

- (a) the clerk to the licensing board;
- (b) the applicant;
- (c) all parties who appeared at the hearing before the licensing board;
- (d) the Gaming Board;
- (e) the appropriate collector of duty; and
- (f) the appropriate officer of police.

(4) The clerk to the licensing board shall within 7 days after the date of service on him of a copy of the initial writ, send a written statement setting out the reasons for the decision of the licensing board to—

- (a) the sheriff clerk; and
- (b) each of the persons on whom service of a copy initial writ is required to be made in terms of paragraph (3).

Appeals under Part III of the 1968 Act and Part III of the 1976 Act

3.2.5.—(1) This rule applies to—

- (a) appeals under paragraph 15 of Schedule 9 to the 1968 Act against the decision of the appropriate authority refusing to grant or renew a permit for the provision of machines for amusement purposes on premises, or to grant such a permit subject to a condition; and

- (b) appeals under paragraph 12 of Schedule 3 to the 1976 Act against the decision of the appropriate authority refusing to grant or renew a permit for the provision of amusements with prizes or to grant or renew such a permit subject to a condition.
- (2) The appellant shall serve a copy of the initial writ on—
 - (a) the clerk to the authority;
 - (b) the applicant;
 - (c) all parties who appeared at the hearing before the authority;
 - (d) the Gaming Board;
 - (e) the appropriate collector of duty; and
 - (f) the appropriate officer of police.

PART III

COAL MINING SUBSIDENCE ACT 1991

Interpretation and application

- 3.3.1.**—(1) In this Part—
- “the Act” means the Coal Mining Subsidence Act 1991⁽²⁷⁾;
 - “agreement or consent” means the agreement or consent referred to in section 41 of the Act⁽²⁸⁾;
 - “person” means a person referred to in section 41 of the Act;
 - “any person with responsibility for subsidence affecting any land” has the meaning given in section 43 of the Coal Industry Act 1994⁽²⁹⁾.
- (2) This Part applies to proceedings under section 41 of the Act.

Applications under section 41 of the Act

- 3.3.2.**—(1) An application under section 41 of the Act (disputes about withholding of agreement or consent) shall specify—
- (a) the person with whom any person with responsibility for subsidence affecting any land has reached agreement and from whom any person with responsibility for subsidence affecting any land obtained consent; and
 - (b) the steps which have been taken to obtain the agreement or consent of the person who is withholding such agreement or consent.
- (2) An application under section 41 of the Act made in relation to the exercise of a power under section 5(3) or (5) of the Act, shall, when lodged with the sheriff clerk, be accompanied by the notice of proposed remedial action under section 4(2) of the Act.

⁽²⁷⁾ 1991 c. 45.

⁽²⁸⁾ Section 41 was amended by the Coal Industry Act 1994 (c. 21), Schedule 6, paragraph 7.

⁽²⁹⁾ 1994 c. 21.

PART IV

CONVEYANCING AND FEUDAL REFORM (SCOTLAND) ACT 1970

Application

3.4.1.—(1) In this Part, “the Act” means the Conveyancing and Feudal Reform (Scotland) Act 1970(30).

(2) This Part applies to applications and counter applications under Part II of the Act.

Disposal of applications under Part II of the Act

3.4.2 An interlocutor of the sheriff disposing of an application or counter application under Part II of the Act shall be final and not subject to appeal except as to a question of title or as to any other remedy granted.

PART V

COPYRIGHT, DESIGNS AND TRADE MARKS

Interpretation

3.5.1 In this Part—

“the 1988 Act” means the Copyright, Designs and Patents Act 1988(31);

“the 1994 Act” means the Trade Marks Act 1994(32); and

“the 1995 Regulations” means the Olympics Association Right (Infringement Proceedings) Regulations 1995(33).

Orders for delivery up, forfeiture, destruction or other disposal

3.5.2 An application to the sheriff made under sections 99, 114, 195, 204, 230, 231 or 298 of the 1988 Act(34), under sections 16 or 19 of the 1994 Act or under Regulation 3 or 5 of the 1995 Regulations, shall be made—

(a) by motion or incidental application, as the case may be, where proceedings have been commenced; or

(b) by summary application where no proceedings have been commenced.

Service of notice on interested persons

3.5.3 Where an application has been made under section 114, 204, 231 or 298 of the 1988 Act, section 19 of the 1994 Act or Regulation 5 of the 1995 Regulations—

(a) the application shall—

(30) 1970 c. 35; relevant amendments are contained in the Redemption of Standard Securities (Scotland) Act 1971 (c. 45), section 1, the Land Tenure Reform (Scotland) Act 1974 (c. 38), section 11(6), the Land Registration (Scotland) Act 1979 (c. 33), Schedule 2, paragraph 4, the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59), section 20, S.I. 1986/843, S.I. 1990/661, the Agricultural Holdings (Scotland) Act 1991 (c. 55), Schedule 11, paragraph 32 and the Requirements of Writing (Scotland) Act 1995 (c. 7), Schedule 4, paragraphs 44, 45 and 46.

(31) 1988 c. 48.

(32) 1994 c. 26.

(33) S.I. 1995/3325.

(34) Section 195 was amended by S.I. 1996/2967. Sections 114, 204 and 231 were amended by the Trade Marks Act 1994, (c.26), Schedule 4, paragraph 8(2).

- (i) specify the name and address of any person known or believed by the applicant to have an interest in the subject matter of the application; or
 - (ii) state that to the best of the applicant's knowledge and belief no other person has such an interest; and
- (b) the sheriff shall order that there be intimated to any person who has such an interest, a copy of the pleadings and any motion, incidental application or summary application, as the case may be.

Procedure where leave of court required

3.5.4.—(1) Where leave of the court is required under the 1988 Act before the action may proceed, the pursuer shall lodge along with the initial writ or summons a motion or incidental application, as the case may be, stating the grounds upon which leave is sought.

(2) The sheriff may hear the pursuer on the motion or incidental application and may grant or refuse it or make such other order in relation to it as he considers appropriate prior to determination.

(3) Where such motion or incidental application is granted, a copy of the sheriff's interlocutor shall be served upon the defender along with the warrant of citation.

PART VI

DRUG TRAFFICKING ACT 1994

Interpretation and application

3.6.1.—(1) In this Part, "the Act" means the Drug Trafficking Act 1994(35).

(2) This Part applies to applications under Part II of the Act.

Determination of applications for continued detention of cash

3.6.2.—(1) On the lodging of an application for an order under section 42(2) of the Act (order for continued detention of seized cash), the sheriff shall proceed to determine the application.

(2) A further application for the continued detention of cash under section 42(3) of the Act shall be made by minute in the original process and shall be proceeded with in accordance with paragraph (3).

(3) On the lodging of a further application in accordance with paragraph (2), the sheriff shall—

- (a) fix a date for determination of the application; and
- (b) order service of the application together with notice of such date for determination on any persons whom he considers may be affected.

Determination of application for release of cash

3.6.3.—(1) An application under section 42(6) of the Act (release of detained cash) shall be made—

- (a) prior to the making of an application for an order under section 42(2) of the Act, by summary application; or
- (b) subsequent to the making of such an application, by minute in the original process.

(2) On the lodging of an application in accordance with paragraph (1), the sheriff shall—

- (a) fix a date for a hearing; and

- (b) order service of the application together with notice of such hearing on the Procurator Fiscal and any other person whom he considers may be affected by the granting of such an application.

Determination of application for forfeiture of cash

- 3.6.4.**—(1) An application under section 43 of the Act (forfeiture of detained cash) shall be made—
- (a) prior to the making of an application for an order under section 42(2) of the Act, by summary application; or
 - (b) subsequent to the making of such an application, by minute in the original process.
- (2) On the lodging of an application in accordance with paragraph (1), the sheriff shall—
- (a) fix a date for a hearing; and
 - (b) order service of the application together with notice of such hearing on any person whom he considers may be affected by the granting of such an application.

Service

- 3.6.5** Service of any document under this Part shall be made by such method as the sheriff directs.

Sist of party

3.6.6 Where any person is affected by the detention of cash under the Act, he may, before the conclusion of any hearing, apply by motion for leave to be sisted as a party to any proceedings under this Part.

PART VII

LICENSING (SCOTLAND) ACT 1976

Interpretation and application

- 3.7.1.**—(1) In this Part, “the Act” means the Licensing (Scotland) Act 1976⁽³⁶⁾.
- (2) This Part applies to appeals under section 39 of the Act⁽³⁷⁾.

Service

- 3.7.2** The appellant shall serve a copy of the initial writ on—
- (a) the clerk to the licensing board and the chief constable;
 - (b) if he was the applicant at the hearing before the licensing board, upon all parties who appeared at the hearing; and
 - (c) if he was an objector at the hearing, upon the applicant.

Statement of reasons of licensing board

3.7.3.—(1) Where the appellant has received from the licensing board a statement of reasons for its decision, he shall lodge a copy thereof with the sheriff clerk along with the initial writ.

⁽³⁶⁾ 1976 c. 66.

⁽³⁷⁾ Section 39 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 11.

(2) The sheriff may, at any time prior to pronouncing a final interlocutor, require the licensing board to state the ground of refusal of an application and to give their reasons for finding such ground to be established.

PART VIII

MENTAL HEALTH (SCOTLAND) ACT 1984

Interpretation and application

3.8.1.—(1) In this Part, “the Act” means the Mental Health (Scotland) Act 1984⁽³⁸⁾.

(2) This Part applies to—

- (a) applications for admission submitted to a sheriff under section 21 of the Act⁽³⁹⁾;
- (b) guardianship applications submitted to a sheriff under section 40 of the Act⁽⁴⁰⁾; and
- (c) community care applications submitted under section 35A of the Act⁽⁴¹⁾.

Appointment of hearing

3.8.2.—(1) On an application being submitted, the sheriff shall appoint a hearing subject, in the case of an application for admission, to section 21(3A) of the Act⁽⁴²⁾.

(2) The sheriff may, where he considers it appropriate in all the circumstances, appoint that the hearing of an application shall take place in a hospital or other place.

Service of application

3.8.3.—(1) The sheriff clerk shall serve or cause to be served on the patient a copy of the application, with the exception of any medical recommendation, together with a notice in Form 12.

(2) Where the patient is not a resident patient in a hospital, the notice and copy application shall be served on him personally by sheriff officer.

(3) Where the patient is a resident patient in a hospital, the notice and copy application shall be served together with a notice in Form 13 on his responsible medical officer—

- (a) by first class recorded delivery service; or
- (b) personally by sheriff officer.

(4) Where the patient is already the subject of a guardianship order, the notice and copy application (including any medical recommendations) shall, in addition to any other service required by this rule, be served on the guardian—

- (a) by first class recorded delivery service; or
- (b) personally by a sheriff officer.

Duties of responsible medical officer

3.8.4.—(1) On receipt of a notice in Form 13 the responsible medical officer shall, subject to rule 3.8.5(1)—

- (a) deliver the notice in Form 12 to the patient; and

⁽³⁸⁾ 1984 c. 36.

⁽³⁹⁾ Section 21 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 51(2), and by the Mental Health (Detention) (Scotland) Act 1991 (c. 47), section 2.

⁽⁴⁰⁾ Section 40 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 51(2).

⁽⁴¹⁾ Section 35A was inserted by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 4.

⁽⁴²⁾ Subsection (3A) of section 21 was inserted by the Mental Health (Detention) (Scotland) Act 1991 (c. 47), section 2.

- (b) as soon as practicable thereafter, complete and return to the court a certificate of such delivery in Form 14.
- (2) Where, in the opinion of the responsible medical officer, it would be prejudicial to the patient's health or treatment if the patient were to be present during the proceedings—
 - (a) in an application to which rule 3.8.3(3) applies, the responsible medical officer shall set forth his reasons for his opinion in the certificate in Form 14; and
 - (b) in any other case, the responsible medical officer or the special medical officer, as the case may be, shall set forth his reasons for his opinion in writing and send them to the sheriff clerk.

Appointment of curator *ad litem*

- 3.8.5.**—(1) Where two medical certificates are produced stating that it would be prejudicial to the health or treatment of the patient if personal service were effected in terms of rule 3.8.3(2) or 3.8.4(1) the sheriff—
- (a) may dispense with such service; and
 - (b) if he does so, shall appoint a curator *ad litem* to receive the application and represent the interest of that patient.
- (2) The sheriff may appoint a curator *ad litem* to represent the interests of the patient where he is satisfied that—
- (a) the patient should be excluded from the whole or any part of the proceedings under section 113(2) of the Act; or
 - (b) in any other case, it is in all the circumstances appropriate to do so.
- (3) The sheriff clerk shall serve the application on the curator *ad litem* by handing, or sending by first class recorded delivery service, to him a copy of the application and of the order appointing him as the curator.

Appointment of solicitor by court

3.8.6 Where the patient has indicated that he wishes to be represented at the hearing but has not nominated a representative, the sheriff may appoint a solicitor to take instructions from the patient.

Intimation to representatives

3.8.7 Where in any proceedings under the Act, the sheriff clerk is aware that the patient is represented by any person and that representative would not otherwise receive intimation of any diet, a copy of the notice served on the patient shall be intimated to the representative by the sheriff clerk by first class recorded delivery service.

Service by sheriff officer

- 3.8.8.**—(1) Where a copy of an application and any notice has been served personally by sheriff officer, he shall prepare and return to the court an execution of such service setting forth in detail the manner and circumstances of such service.
- (2) Where a sheriff officer has been unable to effect personal service under this Part, he shall report to the court the reason why service was not effected.

Variation of conditions of community care order

3.8.9.—(1) Where, after consulting the persons referred to in subsections (1) and (2) of section 35D of the Act (variation of conditions of community care order)(**43**), an application is made by the special medical officer for the variation of a community care order under that section, the special medical officer shall—

- (a) complete Form 22 in Schedule 2 to the Mental Health (Prescribed Forms) (Scotland) Regulations 1996(**44**); and
- (b) lodge that form with the sheriff clerk, together with a certified copy of the community care order to which the application for variation relates.

Hearing

3.8.10.—(1) Any hearing to determine an application under rule 3.8.9 shall take place within 28 days after receipt by the sheriff clerk of Form 22 and the community care order referred to in that rule.

(2) Intimation of the date of the hearing referred to in paragraph (1) shall be given by the sheriff clerk by first class recorded delivery service to such persons as the sheriff may direct; and any intimation of such date to the patient shall be made personally by sheriff officer.

Appeal against community care order

3.8.11 An application by way of appeal for the revocation of a community care order under section 35F of the Act(**45**) shall be in Form 15.

PART IX

PROCEEDS OF CRIME (SCOTLAND) ACT 1995

Interpretation and application

3.9.1.—(1) In this Part—

“the Act” means the Proceeds of Crime (Scotland) Act 1995(**46**); and

“administrator” means the person appointed under paragraph 1(1) of Schedule 1 to the Act.

(2) This Part applies to proceedings under sections 28, 29, 30, 31 and 33 of, and paragraphs 1, 2, 4, 6 and 12 of Schedule 1 to, the Act.

Service of restraint orders

3.9.2 Where the sheriff pronounces an interlocutor making a restraint order under section 28(1) of the Act (application for restraint order), the prosecutor shall serve a copy of that interlocutor on every person named in the interlocutor as restrained by the order.

Recall or variation of restraint orders

3.9.3.—(1) An application to the sheriff under any of the following provisions of the Act shall be made by note in the process containing the interlocutor making the restraint order to which the application relates—

- (a) section 29(4) or (5) (recall of restraint orders in relation to realisable property);

(43) Section 35D was inserted by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 4.

(44) S.I. 1996/743.

(45) Section 35F was inserted by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 4.

(46) 1995 c. 43.

- (b) section 30(3) or (4) (recall of restraint orders in relation to forfeitable property);
- (c) section 31(1) (variation or recall of restraint order).

(2) In respect of an application by note under paragraph (1)(c) by a person having an interest for an order for variation or recall under section 31(1)(b) of the Act—

- (a) the note shall be lodged in process within 21 days after service of the restraint order on that person or within such other period as the sheriff thinks fit; and
- (b) the period of notice for lodging answers to the note shall be 14 days or such other period as the sheriff thinks fit.

Applications for interdict

3.9.4.—(1) An application to the sheriff under section 28(8) of the Act (interdict) may be made—

- (a) in the application made under section 28(1) of the Act; or
- (b) if made after a restraint order has been made, by note in the process of the application for that order.

(2) An application under section 28(8) of the Act by note under paragraph (1)(b) shall not be intimated, served or advertised before that application is granted.

Applications in relation to arrestment

3.9.5.—(1) An application to the sheriff under section 33(1) of the Act (arrestment of property affected by restraint order) by the prosecutor for warrant for arrestment may be made—

- (a) in the application made under section 28(1) of the Act; or
- (b) if made after a restraint order has been applied for, by note in the process of the application for that order.

(2) An application to the sheriff under section 33(2) of the Act, to loose, restrict or recall an arrestment shall be made by note in the process of the application for the restraint order.

(3) An application to the sheriff under section 33(4) of the Act (recall or restriction of arrestment) shall be made by note in the process containing the interlocutor making the restraint order to which the application relates.

Appeals to the Court of Session

3.9.6.—(1) This rule applies to appeals against an interlocutor of the sheriff refusing, varying or recalling or refusing to vary or recall a restraint order.

(2) An appeal to which this rule applies shall be marked within 14 days after the date of the interlocutor concerned.

(3) An appeal to which this rule applies shall be marked by writing a note of appeal on the interlocutor sheet, or other written record containing the interlocutor appealed against, or on a separate sheet lodged with the sheriff clerk, in the following terms:— “The applicant appeals to the Court of Session.”.

(4) A note of appeal to which this rule applies shall—

- (a) be signed by the appellant;
- (b) bear the date on which it is signed; and
- (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal.

(5) The sheriff clerk shall transmit the process within 4 days after the appeal is marked to the Deputy Principal Clerk of Session.

(6) Within the period specified in paragraph (5), the sheriff clerk shall—

- (a) send written notice of the appeal to every other party; and
- (b) certify on the interlocutor sheet that he has done so.

(7) Failure of the sheriff clerk to comply with paragraph (6) shall not invalidate the appeal.

Applications for appointment of administrators

3.9.7.—(1) An application to the sheriff under paragraph 1 of Schedule 1 to the Act (appointment of administrators) shall be made—

- (a) where made after a restraint order has been made, by note in the process of the application for that order; or
- (b) in any other case, by summary application.

(2) The notification to be made by the sheriff clerk under paragraph 1(3)(a) of Schedule 1 to the Act shall be made by intimation of a copy of the interlocutor to the person required to give possession of property to an administrator.

Incidental applications in an administration

3.9.8.—(1) An application to the sheriff under any of the following provisions of Schedule 1 to the Act shall be made by note in the process of the application for appointment of the administrator—

- (a) paragraph 1(1) with respect to an application after appointment of an administrator to require a person to give property to him;
- (b) paragraph 1(4) (making or altering a requirement or removal of administrator);
- (c) paragraph 1(5) (appointment of new administrator on death, resignation or removal of administrator);
- (d) paragraph 2(1)(n) (directions as to functions of administrator);
- (e) paragraph 4 (directions for application of proceeds).

(2) An application to the sheriff under any of the following provisions of Schedule 1 to the Act shall be made in the application for appointment of an administrator under paragraph 1(1) of that Schedule or, if made after the application has been made, by note in the process—

- (a) paragraph 2(1)(o) (special powers of administrator);
- (b) paragraph 2(3) (vesting of property in administrator);
- (c) paragraph 12 (order to facilitate the realisation of property).

Requirements where order to facilitate realisation of property considered

3.9.9 Where the sheriff considers making an order under paragraph 12 of Schedule 1 to the Act (order to facilitate the realisation of property)—

- (a) the sheriff shall fix a date for a hearing in the first instance; and
- (b) the applicant or noter, as the case may be, shall serve a notice in Form 16 on any person who has an interest in the property.

Documents for Accountant of Court

3.9.10.—(1) A person who has lodged any document in the process of an application for the appointment of an administrator shall forthwith send a copy of that document to the Accountant of Court.

(2) The sheriff clerk shall transmit to the Accountant of Court any part of the process as the Accountant of Court may request in relation to an administration which is in dependence before the sheriff unless such part of the process is, at the time of request, required by the sheriff.

Procedure for fixing and finding caution

3.9.11 Rules 9 to 12 of the Act of Sederunt (Judicial Factors Rules) 1992 (fixing and finding caution in judicial factories)⁽⁴⁷⁾ shall, with the necessary modifications, apply to the fixing and finding of caution by an administrator under this Part as they apply to the fixing and finding of caution by a judicial factor.

Administrator's title to act

3.9.12 An administrator appointed under this Part shall not be entitled to act until he has obtained a copy of the interlocutor appointing him.

Duties of administrator

3.9.13.—(1) The administrator shall, as soon as possible, but within three months after the date of his appointment, lodge with the Accountant of Court—

- (a) an inventory of the property in respect of which he has been appointed;
- (b) all vouchers, securities, and other documents which are in his possession; and
- (c) a statement of that property which he has in his possession or intends to realise.

(2) An administrator shall maintain accounts of his intromissions with the property in his charge and shall, subject to paragraph (3)—

- (a) within six months after the date of his appointment; and
- (b) at six monthly intervals after the first account during the subsistence of his appointment,

lodge with the Accountant of Court an account of his intromissions in such form, with such supporting vouchers and other documents, as the Accountant of Court may require.

(3) The Accountant of Court may waive the lodging of an account where the administrator certifies that there have been no intromissions during a particular accounting period.

State of funds and scheme of division

3.9.14.—(1) The administrator shall—

- (a) where there are funds available for division, prepare a state of funds after application of sums in accordance with paragraph 4(2) of Schedule 1 to the Act, and a scheme of division amongst those who held property which has been realised under the Act and lodge them and all relevant documents with the Accountant of Court; or
- (b) where there are no funds available for division, prepare a state of funds only and lodge it with the Accountant of Court, and give to the Accountant of Court such explanations as he shall require.

(2) The Accountant of Court shall—

(47) S.I. 1992/272.

- (a) make a written report on the state of funds and any scheme of division including such observations as he considers appropriate for consideration by the sheriff; and
 - (b) return the state of funds and any scheme of division to the administrator with his report.
- (3) The administrator shall, on receiving the report of the Accountant of Court—
- (a) lodge in process the report, the state of funds and any scheme of division;
 - (b) intimate a copy of it to the prosecutor; and
 - (c) intimate to each person who held property which has been realised under the Act a notice stating—
 - (i) that the state of funds and scheme of division or the state of funds only, as the case may be, and the report of the Accountant of Court, have been lodged in process; and
 - (ii) the amount for which that person has been ranked, and whether he is to be paid in full, or by a dividend, and the amount of it, or that no funds are available for payment.

Objections to scheme of division

3.9.15.—(1) A person wishing to be heard by the sheriff in relation to the distribution of property under paragraph 4(3) of Schedule 1 to the Act shall lodge a note of objection in the process to which the scheme of division relates within 21 days of the date of the notice intimated under rule 3.9.14(3) (c).

(2) After the period for lodging a note of objection has expired and no note of objection has been lodged, the administrator may apply by motion for approval of the scheme of division and state of funds, or the state of funds only, as the case may be.

(3) After the period for lodging a note of objection has expired and a note of objection has been lodged, the sheriff shall dispose of such objection after hearing any objector and the administrator and making such inquiry as he thinks fit.

(4) If any objection is sustained to any extent, the necessary alterations shall be made to the state of funds and any scheme of division and shall be approved by the sheriff.

Application for discharge of administrator

3.9.16.—(1) Where the scheme of division is approved by the sheriff and the administrator has paid, delivered or conveyed to the persons entitled the sums or receipts allocated to them in the scheme, the administrator may apply for his discharge.

(2) An application to the sheriff for discharge of the administrator shall be made by note in the process of the application under paragraph 1(1) of Schedule 1 to the Act.

Appeals against determination of outlays and remuneration

3.9.17 An appeal to the sheriff under paragraph 6(2) of Schedule 1 to the Act (appeal against a determination by the Accountant of Court) shall be made by note in the process of the application in which the administrator was appointed.

PART X

RATING (DISABLED PERSONS) ACT 1978

Interpretation and application

3.10.1.—(1) In this Part, “the Act” means the Rating (Disabled Persons) Act 1978(48).

(2) This Part applies to appeals under section 6(5) or 6(5A) of the Act⁽⁴⁹⁾.

Appeals under section 6(5) or 6(5A) of the Act

3.10.2 Any appeal under this Part shall be lodged within 42 days of the date on which the application to the rating authority is refused by the authority.

PART XI

REPRESENTATION OF THE PEOPLE ACT 1983

Interpretation and application

3.11.1.—(1) In this Part—

“sheriff clerk” means, except in rule 3.11.2, the sheriff clerk of the sheriff court district where the trial of the election petition is to take place;

“the Act” means the Representation of the People Act 1983⁽⁵⁰⁾.

(2) This Part applies to election petitions under the Act.

Initiation of proceedings

3.11.2.—(1) The election petition shall be lodged with the sheriff clerk of a sheriff court district within which the election questioned has taken place.

(2) The sheriff clerk shall without delay transmit it to the sheriff principal who shall forthwith appoint—

- (a) the time and place for trial of the petition;
- (b) the amount of the security to be given by the petitioner; and
- (c) if he thinks fit, answers to be lodged within a specified time after service.

(3) Service in terms of section 136(3) of the Act (security for costs)⁽⁵¹⁾ shall be effected—

- (a) personally within—
 - (i) 5 days; or
 - (ii) such other period as the sheriff principal may appoint, of the giving of security; or
- (b) by first class recorded delivery post within—
 - (i) 5 days; or
 - (ii) such other period as the sheriff principal may appoint, of the giving of security.

Security for expenses by bond of caution

3.11.3.—(1) If the security proposed is in whole or in part by bond of caution, it shall be given by lodging with the sheriff clerk a bond for the amount specified by the sheriff principal.

(2) Such bond shall—

- (a) recite the nature of the petition; and

⁽⁴⁹⁾ Section 6 was amended by the Rating and Valuation (Amendment) (Scotland) Act 1984 (c. 31) (“the 1984 Act”), section 5. Section 6(5A) was inserted by the 1984 Act, section 5(2).

⁽⁵⁰⁾ 1983 c. 2.

⁽⁵¹⁾ Section 136 was amended by the Representation of the People Act 1985 (c. 50), Schedule 4, paragraph 48.

- (b) bind and oblige the cautioner and the petitioner jointly and severally, and their respective heirs, executors and successors whomsoever, that the petitioner shall make payment of all costs, charges and expenses that may be payable by him to any person by virtue of any order or decree pronounced in the petition.

(3) The sufficiency of the cautioner must be attested to the satisfaction of the sheriff clerk, as in the case of judicial bonds of caution.

Objections to bond of caution

3.11.4.—(1) Objections to a bond of caution shall be lodged with the sheriff clerk within 14 days of service in terms of section 136(3) of the Act.

(2) Objections shall be heard and disposed of by the sheriff clerk.

(3) If any objection is allowed, it may be removed by a deposit of such sum of money as the sheriff clerk shall determine, made in the manner provided in rule 3.11.5 and within 5 days after the date of the sheriff clerk's determination.

Security by deposit

3.11.5.—(1) Security tendered in whole or in part by deposit of money shall be made in such bank as the sheriff clerk may select.

(2) The deposit receipt shall be—

- (a) taken in joint name of the petitioner and the sheriff clerk;
- (b) handed to the sheriff clerk; and
- (c) held by the sheriff clerk subject to the orders of the court in the petition.

Amendment of pleadings

3.11.6.—(1) Subject to paragraph (2), the sheriff principal shall have power at any stage to allow the petition and any answers to be amended upon such condition as to expenses or otherwise as he shall think fit.

(2) No amendment altering the ground upon which the election was questioned in the petition as presented shall be competent, except to the extent sanctioned by section 129(6) of the Act (time for presentation or amendment of petition questioning local election).

Notice of date and place of trial

3.11.7.—(1) The sheriff clerk shall, as soon as he receives intimation of the time and place fixed for trial—

- (a) display a notice thereof on the walls of his principal office; and
- (b) send by first class post one copy of such notice to—
 - (i) the petitioner;
 - (ii) the respondent;
 - (iii) the Lord Advocate; and
 - (iv) the returning officer.

(2) The returning officer on receipt of notice from the sheriff clerk shall forthwith publish the time and place fixed for trial in the area for which the election questioned was held.

(3) Subject to paragraph (4), display of a notice in accordance with paragraph (1)(a) shall be deemed to be notice in the prescribed manner within the meaning of section 139(1) of the Act (trial

of petition) and such notice shall not be vitiated by any miscarriage of or relating to all or any copies sent by post.

(4) At any time before the trial it shall be competent for any party interested to bring any miscarriage of notice sent by post before the sheriff principal, who shall deal therewith as he may consider fit.

Clerk of court

3.11.8 The sheriff clerk shall attend and act as clerk of court at the trial of the petition.

Shorthand writer's charges

3.11.9 The shorthand writer's charges, as approved by the sheriff principal, shall be paid in the first instance by the petitioner.

Appeals

3.11.10 The application to state a special case referred to in section 146(1) of the Act (special case for determination of the Court of Session) shall be made by minute in the petition proceedings.

List of votes objected to and of objections

3.11.11.—(1) When a petitioner claims the seat for an unsuccessful candidate, alleging that such candidate had a majority of lawful votes, he and the respondent shall, 5 days before the day fixed for the trial, respectively deliver to the sheriff clerk, and send by first class post to the other party and the Lord Advocate, a list of the votes intended to be objected to, and of the objections to each such vote.

(2) The sheriff clerk shall allow inspection of such list to all parties concerned.

(3) No evidence shall be allowed to be given against any vote or in support of any objection not specified in such list, except by leave of the sheriff principal granted upon such terms as to the amendment of the list, postponement of the trial, and payment of expenses as to him may seem fit.

Petition against undue return

3.11.12.—(1) When on the trial of a petition complaining of an undue return and claiming the office for some person, the respondent intends to give evidence to prove that that person was not duly elected, such respondent shall, 5 days before the day appointed for the trial, deliver to the sheriff clerk, and send by first class post to the petitioner and the Lord Advocate, a list of the objections to the election upon which he intends to rely.

(2) No evidence shall be allowed to be given by a respondent in support of any objection to the election not specified in such list except by leave of the sheriff principal granted upon such terms as to the amendment of the list, postponement of the trial, and payment of expenses as to him may seem fit.

Prescribed officer

3.11.13 The sheriff clerk shall be the prescribed officer for the purposes of sections 143(1) (expenses of witnesses) and 155(2) (neglect or refusal to pay costs) of the Act.

Leave to abandon

3.11.14.—(1) Application for leave to withdraw a petition in terms of section 147(1) of the Act (withdrawal of petition), shall be made by minute in Form 17 and shall be preceded by written notice of the intention to make it, sent by first class post to—

- (a) the respondent;
- (b) the Lord Advocate; and
- (c) the returning officer.

(2) The returning officer shall forthwith publish the fact of his having received such notice in the area for which the election questioned was held.

(3) The sheriff principal, upon the application being laid before him, shall by interlocutor, fix the time, not being earlier than 8 days after the date of the interlocutor, and place for hearing it.

(4) The petitioner shall, at least 6 days before the day fixed for the hearing, publish in a newspaper circulating in the district named in the interlocutor a notice in Form 18.

Death of petitioner

3.11.15.—(1) In the event of the death of the sole petitioner, or of the last survivor of several petitioners, the sheriff clerk shall forthwith, upon the fact being brought to his knowledge, insert in a newspaper circulating in the district a notice in Form 19.

(2) The time within which any person who might have been a petitioner in respect of the election may apply to the court by minute in the petition proceedings to be substituted as a petitioner shall be 21 days from the date of publication of such notice.

Notice by respondent that he does not oppose petition

3.11.16.—(1) Notice that a respondent does not intend to oppose a petition shall be given by leaving a written notice to that effect at the office of the sheriff clerk at least 6 days (exclusive of the day of leaving such notice) before the day fixed for the trial.

(2) On such notice being left with the sheriff clerk, or on its being brought to his knowledge that a respondent other than a returning officer has died, resigned, or otherwise ceased to hold the office to which the petition relates, the sheriff clerk shall forthwith—

- (a) advertise the fact once in a newspaper circulating in the district; and
- (b) send intimation thereof by first class post to—
 - (i) the petitioner;
 - (ii) the Lord Advocate; and
 - (iii) the returning officer, who shall publish the fact in the district.

(3) The advertisement to be made by the sheriff clerk shall state the last day on which, under this Part, application to be admitted as a respondent to oppose the petition can be made.

Application to be admitted as respondent

3.11.17 Application to be admitted as a respondent to oppose a petition on the occurrence of any of the events mentioned in section 153(1) of the Act (withdrawal and substitution of respondents before trial) must be made by minute in the petition proceedings within 10 days after the date of publication of the advertisement mentioned in rule 3.11.16, unless the sheriff principal on cause shown sees fit to extend the time.

Public notice of trial not proceeding

3.11.18.—(1) This rule applies where after the notice of trial has been published the sheriff clerk receives notice of—

- (a) the petitioner's intention to apply for leave to withdraw;

- (b) the respondent's intention not to oppose;
- (c) the abatement of the petition by death; or
- (d) the occurrence of any of the events mentioned in section 153(1) of the Act.

(2) Where this rule applies the sheriff clerk shall forthwith give notice by advertisement inserted once in a newspaper circulating in the district, that the trial will not proceed on the day fixed.

Notice to a party's agent sufficient

3.11.19 Where a party to proceedings under this Part is represented by a solicitor any reference to such party shall, where appropriate, be construed as a reference to the solicitor representing that party and a notice sent to his solicitor shall be held to be notice to the party.

Cost of publication

3.11.20 Where under this Part the returning officer or the sheriff clerk requires to have published a notice or advertisement, the cost shall be paid in the first instance by the petitioner or in the case of a notice under rule 3.11.15 from the estate of the sole or last surviving petitioner and shall form part of the general expenses of the petition.

Expenses

3.11.21 The expenses of petitions and other proceedings under the Act shall be taxed by the auditor of the sheriff court.

PART XII

REQUESTS OR APPLICATIONS UNDER THE MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

Interpretation

3.12.1 In this Part, "the Model Law" means the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration as set out in Schedule 7 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(52).

Application

3.12.2.—(1) Subject to sub-paragraph (2), any request or application which may be made to the sheriff under the Model Law shall be made by summary application.

(2) Where proceedings involving the same arbitration and the same parties are already pending before the sheriff under this Part, a further application or request may be made by note in the same process.

(3) The sheriff shall order service of such summary application or note to be made on such persons as he considers appropriate.

Recognition and enforcement of awards

3.12.3.—(1) There shall be lodged along with an application under Article 35 of the Model Law—

- (a) the original arbitration agreement or certified copy thereof;
- (b) the duly authenticated original award or certified copy thereof; and

- (c) where appropriate, a duly certified translation in English of the agreement and award.
- (2) An application under this paragraph shall specify whether to the knowledge of the applicant—
 - (a) the arbitral award has been recognised, or is being enforced, in any other jurisdiction; and
 - (b) an application for setting aside or suspension of the arbitral award has been made to a court of the country in which or under whose law the award was made.
- (3) Where the sheriff is satisfied that an arbitral award should be recognised and enforced, he shall so order and shall instruct the sheriff clerk to register the award in the Books of the Sheriff Court for execution.

PART XIII

SEX DISCRIMINATION ACT 1975

Interpretation

3.13.1 In this Part—

“the Act” means the Sex Discrimination Act 1975(**53**); and

“the Commission” means the Equal Opportunities Commission established under section 53 of the Act.

Application

3.13.2 This Part shall apply to the following proceedings under the Act:—

- (a) an application by the Commission under section 59(4) for an order requiring a person to comply with a notice served on him under section 59(1);
- (b) an appeal by a person under section 68(1) against a requirement of a non-discrimination notice served on him under section 67;
- (c) an application by the Commission under section 71(1) for an order restraining a person from doing any of the acts referred to in that section;
- (d) an application by the Commission under section 72(2) for a decision whether an alleged contravention of section 38, 39 or 40 has occurred;
- (e) an application by the Commission under section 72(4) for an order restraining a person from doing any of the acts referred to in that section; and
- (f) an application by a person under section 77(5)(**54**) for an order removing or modifying any term of a contract made unenforceable by section 77(2).

Taxation of Commission expenses

3.13.3 The expenses incurred by the Commission within the meaning and for the purposes of section 75(3) of the Act(**55**) shall be taxed by the auditor of the sheriff court in which the proceedings under the Act were taken or would have been taken but for any compromise or settlement, as if they were outlays incurred by a solicitor on behalf of the applicant.

(53) 1975 c. 65.

(54) Section 77 was amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), Schedule 6, paragraph 1 and by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), sections 8, 9, 10, 15 and Schedule 1, paragraph 2.

(55) Section 75 was amended by the Industrial Tribunals Act 1996 (c. 17), Schedule 1, paragraph 3.

Proceedings under section 66 of the Act

3.13.4.—(1) In a cause in which a breach of statutory duty under section 66(1) of the Act (proceedings for act of discrimination)**(56)** is averred, the sheriff may, of his own motion or on the motion of any party, appoint an assessor.

(2) An assessor appointed under paragraph (1) shall be a person who the sheriff considers has special qualifications to be of assistance in determining a cause referred to in that paragraph.

(3) In a cause referred to in paragraph (1), the pursuer shall send a copy of the initial writ by post by first class recorded delivery service to the Commission.

Edinburgh
19th March 1999

Rodger of Earlsferry
Lord President, I.P.D

(56) Section 66 was amended by [S.I. 1996/438](#).

SCHEDULE 1

Rule 1.2(3)

FORMS

FORM 1 Form of initial writ

Rule 2.4(1)

SUMMARY APPLICATION UNDER *(title & section of statute or statutory instrument)*

INITIAL WRIT

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.] *(design and state any special capacity in which the pursuer is suing)* Pursuer

against

[C.D.] *(design and state any special capacity in which the defender is being sued)* Defender

The Pursuer craves the court *(here state the specific decree, warrant or order sought)*

CONDESCENDENCE

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

PLEAS-IN-LAW

(State in numbered sentences)

Signed

[A.B.], Pursuer

or [X.Y.], solicitor for the Pursuer

(state designation and business address)

FORM 2 Form of warrant of citation

Status: This is the original version (as it was originally made).

Rule 2.7(4)(a)

(Insert place and date). Grants warrant to cite the defender (insert name and address) by serving upon him [or her] a copy of the writ and warrant [on a period of notice of (insert period of notice) days], [and ordains him [or her] to answer within the Sheriff Court House (insert place of sheriff court) [in Room No. , or in Chambers, or otherwise, as the case may be], on the day of at o'clock noon] [or otherwise, as the case may be] [and grants warrant to arrest on the dependence].

Signed
Sheriff [or sheriff clerk]

FORM 3 Form of citation for summary application

Rule 2.7(4)(a)

CITATION FOR SUMMARY APPLICATION

SHERIFFDOM OF (insert name of sheriffdom)

AT (insert place of sheriff court)

[A.B.], (insert designation and address) Pursuer

against

[C.D.], (insert designation and address) Defender

Court ref. no.

(Insert place and date). You [C.D.] are hereby served with this copy writ and warrant, and are required to answer it.

IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens' Advice Bureau or other advice agency.

PLEASE NOTE THAT 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.

Signed
[P.Q.], Sheriff Officer,
or [X.Y.] (add designation and business address)
Solicitor for the Pursuer

FORM 4 Form of warrant of citation where time to pay direction may be applied for

Rule 2.7(5)

(Insert place and date). Grants warrant to cite the defender *(insert name and address)* by serving a copy of the writ and warrant, together with Form 5, [on a period of notice of *(insert period of notice)* days] and ordains him [or her] if he [or she]—

- (a) intends to defend the action or make any claim [to answer within the Sheriff Court House *(insert place and address of sheriff court)* [in Room No. , or in Chambers, or otherwise, as the case may be], on the day of at o'clock noon] [or otherwise, as the case may be]; or
- (b) admits the claim and intends to apply for a time to pay direction (and where appropriate apply for recall or restriction of an arrestment) [either to appear at that diet and make such application or] to lodge the appropriate part of Form 5 duly completed with the sheriff clerk at *(insert place of sheriff court)* at least seven days before [the diet or the expiry of the period of notice or otherwise, as the case may be] [and grants warrant to arrest on the dependence].

Signed
Sheriff [or sheriff clerk]

FORM 5 Form of notice to be served on defender in summary application where time to pay direction may be applied for

Status: This is the original version (as it was originally made).

Rule 2.7(6) and 2.22(2)(b)

ACTION IN SUMMARY APPLICATION BY

_____	_____
_____	_____
_____	_____
_____	_____

PURSUER DEFENDER

AT SHERIFF COURT

(including address)

_____	_____
COURT REF. NO	[DATE OF FIRST HEARING]
_____	_____
_____	[EXPIRY OF PERIOD OF NOTICE]

THIS SECTION MUST BE COMPLETED BY THE PURSUER BEFORE SERVICE

The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a “time to pay direction” which is an order permitting you to pay any sum of money you are ordered to pay to the pursuer (which may include interest and court expenses) either by way of instalments or deferred lump sum. A deferred lump sum means that you must pay all the amount at one time within a period specified by the court.

When making a time to pay direction the court may recall or restrict an arrestment made on your property by the pursuer in connection with the action or debt (for example your bank account may have been frozen).

HOW TO APPLY FOR A TIME TO PAY DIRECTION WHERE YOU ADMIT THE CLAIM AND YOU DO NOT WANT TO DEFEND THE ACTION.

What must I do?

You must complete box 1 of Section A below giving details of the offer you are making to pay the claim and details of your income and outgoings. You must sign your name against the word “signature” in box 1 below. If you wish to apply to have an arrestment recalled or restricted you should also sign box 2 below.

After completing the form it should be returned to the Sheriff Court at least seven days before the date of the first hearing or expiry of the period of notice or otherwise, as the case may be, in the warrant of citation. The address of the court is shown in Section B below.

You should retain the copy initial writ and any other pages that have been served on you as you may need them at a later stage.

For further information or in the event of any difficulty you may contact the local sheriff clerk’s office, any solicitor, Citizen’s Advice Bureau or other advice agency.

What happens if my offer to pay is accepted?

If your application for time to pay is accepted by the pursuer, the court will make an order for payment against you. A copy of the order (called an extract decree) will be served on you by the pursuer's solicitor telling you when instalment payments should start or deferred payment is to be made.

What happens if my offer to pay is rejected?

If your application for time to pay is objected to by the pursuer, the Sheriff Clerk will advise you in writing.

You may attend the first hearing and give reasons to the sheriff why your application for time to pay should be granted. You will be expected to address the Sheriff directly, giving reasons why your application should be granted. Before coming to court you should prepare what you are going to say. You should bring any papers that you will be referring to with you.

If you do not attend, your application will still be considered by the Sheriff.

You will find the first hearing date in the warrant of citation attached to the initial writ.

Status: This is the original version (as it was originally made).

SECTION A

ADMIT THE CLAIM AND APPLY FOR TIME TO PAY

BOX 1

APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION

UNDER THE DEBTORS (SCOTLAND) ACT 1987

(payment by instalments or deferred lump sum)

My outgoings are	£	fort- weekly	nightly	My monthly income is	£	fort- weekly	nightly	monthly	My capital assets are:-
Rent/Mortgage	£			Wage/Pensions	£				Value of house -
Heating	£			Social Security	£				(minus mortgage)
Food	£			Other (specify)	£				Amount in Bank
HP	£				£				Amount in Building
Other (specify)	£				£				Society
	£				£				Shares
	£				£				Other (specify)
Total	£			Total	£				

if necessary attach a separate sheet

DEPENDENTS - CHILDREN - How Many _____ Others - How Many _____

I am a defender in the action by the pursuer named in Section B. I admit the claim and make application

(1) To pay by instalments of £ _____ each week/fortnight/month*

or

(2) To pay the sum ordered in one payment within _____ weeks/months*

SIGNATURE _____ * DELETE AS APPROPRIATE

Status: This is the original version (as it was originally made).

BOX 2

APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT

I wish to apply for the recall/restriction of the arrestment being served on _____ (insert the date the arrestment was made) of which the details are as follows:-

SIGNATURE _____

SECTION B

This section must be completed before service

SHERIFF COURT
(including address)

Court Ref No: _____

First
Hearing Date _____

COURT STAMP
(OFFICIAL USE
ONLY)

PURSUER'S FULL NAME AND ADDRESS

DEFENDER'S FULL NAME AND ADDRESS

FORM 6 Form of citation where time to pay direction may be applied for in summary application

Status: This is the original version (as it was originally made).

Rule 2.7(7)

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)* Pursuer

against

[C.D.], *(insert designation and address)* Defender

Court ref. no.

(Insert place and date). You [C.D.], are hereby served with this copy writ and warrant, together with Form 5 (application for time to pay direction in summary application).

Form 5 is served on you because it is considered that you may be entitled to apply for a time to pay direction [and for the recall or restriction of an arrestment used on the dependence of the action or in security of the debt referred to in the copy writ]. See Form 5 for further details.

IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION, you must complete Form 5 and return it to the sheriff clerk at the above address at least 7 days before the hearing or the expiry of the period of notice or otherwise, as the case may be, in the warrant of citation.

IF YOU ADMIT THE CLAIM AND WISH TO AVOID A COURT ORDER BEING MADE AGAINST YOU, the whole sum claimed including interest and any expenses due should be paid to the pursuer or his solicitor by the court date.

IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens' Advice Bureau, or other advice agency.

PLEASE NOTE THAT 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.

Signed

[P.Q.], Sheriff Officer,

or [X.Y.] *(add designation and business address)*

Solicitor for the Pursuer

FORM 7 Form of certificate of citation

Status: This is the original version (as it was originally made).

Rule 2.7(8)

(Insert place and date). I, _____ hereby certify that upon the _____ day of _____ I duly cited [C.D.], Defender, to answer to the foregoing writ. This I did by *(state method of service; [if by officer and not by post, add: in presence of [L.M.], (insert designation), witness hereto with me subscribing;] and where service executed by post state whether by registered post or the first class recorded delivery service).*

(In actions in which a time to pay direction may be applied for, state whether Form 4 and Form 5 were sent in accordance with rule 2.7(5) and (6).)

Signed

[P.Q.], Sheriff Officer

[L.M.], witness

or [X.Y.] *(add designation and business address)*

Solicitor for the Pursuer

FORM 8 Form of caveat

Status: This is the original version (as it was originally made).

Rule 2.9(1)

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

CAVEAT for [A.B.] *(insert designation and address*)*

Should any application be made for *(here specify the nature of the application(s) to which this caveat is to apply)* prior to service of the initial writ, it is requested that intimation be made to the caveator before any order is pronounced.

Date *(insert date)*

Signed

[A.B.]

or [X.Y.] Solicitor for [A.B.] *(add designation and business address)*

Caveator's telephone and fax number *(insert where caveat is not lodged by solicitor)*

Solicitor *(insert name and address, telephone and fax number and reference)*

Out of hours contacts:

1. *(insert name and telephone number)*

2. *(insert name and telephone number)*

*State whether the caveat is lodged in an individual capacity, or a specified representative capacity (eg as trustee of a named trust) or both. Where appropriate, state also the nature of the caveator's interest (eg shareholder, debenture holder).

FORM 9 Form of advertisement

Rule 2.13(1)(a)

NOTICE TO [C.D.]

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 *(insert last known address of defender)*.

If [C.D.] wishes to defend the action he *[or she]* should immediately contact the sheriff clerk *(insert address)* from whom the service copy initial writ may be obtained. If he *[or she]* fails to do so decree may pass against him *[or her]* [when the case calls in court on *(date)* or on the expiry of the period of notice or otherwise, as the case may be in the warrant of citation].

Signed

[X.Y.], *(add designation and business address)*

Solicitor for the Pursuer

or [P.Q.] *(add business address)*

FORM 10 Form of notice for walls of court

Rule 2.13(1)(b)

NOTICE TO [C.D.]

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 *(insert last known address of defender)*.

If [C.D.] wishes to defend the action he *[or she]* should immediately contact the sheriff clerk at *(insert address)* from whom the service copy initial writ may be obtained. If he *[or she]* fails to do so decree may pass against him *[or her]* [when the case calls in court on *(date)* or on the expiry of the period of notice or otherwise, as the case may be in the warrant of citation].

Date *(insert date)*

Signed

Sheriff clerk (depute)

Telephone no. *(insert telephone number of sheriff clerk's office)*

FORM 11 Form of extract decree

Rule 3.8.3(1)

To *[name and address of patient]*

Attached to this notice is a copy of--

* an application to the managers of *[name of hospital]* for your admission to that hospital in accordance with section 21 of the Mental Health (Scotland) Act 1984.

* an application to the sheriff at *[name of Sheriff Court]* for a Community Care Order in accordance with section 35A of the Mental Health (Scotland) Act 1984.

* an application to the *[name of local authority]* for your reception into guardianship in accordance with Section 40 of the Mental Health (Scotland) Act 1984.

The hearing will be held at *[place]* on *[date]* at *[time]*.

You may appear personally at the hearing of this application unless the court decides otherwise on medical recommendations.

In any event, if you are unable or do not wish to appear personally you may request any person to appear on your behalf.

If you do not appear personally or by representative, the sheriff will consider the application in the absence of you or your representative.

[Signed]
Sheriff Clerk

[Place and date]

* *delete as appropriate*

FORM 13FORM OF NOTICE TO RESPONSIBLE MEDICAL OFFICER

Status: This is the original version (as it was originally made).

Rule 3.8.3(3)

To [name and address of responsible medical officer]

In accordance with the Mental Health (Scotland) Act 1984, a copy of the application and notice of hearing is sent with this notice.

1. You are requested to deliver it personally to [name of patient] and to explain the contents of it to him.
2. You are also required to arrange if the patient so wishes, for the attendance of [name of patient] at the hearing at [place of hearing] on [date] so that he may appear and be heard in person.
3. You are further requested to complete and return to me in the enclosed envelope the certificate appended hereto before the date of the hearing.
4. If in your opinion it would be prejudicial to the patient's health or treatment for him to appear and be heard personally you may so recommend in writing, with reasons on the certificate.

[Signed]

Sheriff Clerk

[Place and date]

FORM 14FORM OF CERTIFICATE OF DELIVERY BY RESPONSIBLE MEDICAL OFFICER

Rule 3.8.4(1)(b) and 3.8.4(2)(a)

I, [name and designation], certify that—

1. I have on the day of personally delivered to [name of patient] a copy of the application and the intimation of the hearing; and have explained the contents or purport to him [or her].
2. The patient does [not] wish to attend the hearing.
3. The patient does [not] wish to be represented at the hearing [and has nominated [name and address of representative] to represent him].
4. I shall arrange for the attendance of the patient at the hearing [or in my view it would be prejudicial to the patient's health or treatment for him [or her] to appear and be heard in person for the following reasons [give reasons]].

[Signature and designation]

[Address and date]

FORM 15 FORM OF APPEAL FOR REVOCATION OF A COMMUNITY CARE ORDER
UNDER SECTION 35F OF THE MENTAL HEALTH (SCOTLAND) ACT 1984

Rule 3.8.11

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert name of Sheriff Court)*

I, *[insert name and address of applicant]*,

appeal to the sheriff for revocation of a community care order made on *[insert date of order]*
on the following grounds:-

[State grounds on which appeal is to proceed]

The community care order was renewed under section 35C(5) of the Mental Health (Scotland)
Act 1984 on *[insert date of renewal]* and is still in force.

The special medical officer specified in the community care order is *[insert name and address
of special medical officer]*.

[Signed]

Applicant

[or Solicitor for Applicant]

[Insert designation and address]

FORM 16 FORM OF NOTICE TO PERSON WITH INTEREST IN PROPERTY SUBJECT TO
AN APPLICATION FOR AN ORDER UNDER PARAGRAPH 12 OF SCHEDULE 1 TO THE
PROCEEDS OF CRIME (SCOTLAND) ACT 1995

Status: This is the original version (as it was originally made).

Rule 3.9.9(b)

IN THE SHERIFF COURT

in the

PETITION [*or* NOTE]

of

[A.B.] (*name and address*)

for an order under paragraph 12 of Schedule 1 to the
Proceeds of Crime (Scotland) Act 1995

in respect of the estates of [C.D.] (*name and address*)

Court Ref. No.

Date: (*date of posting or other method of service*)

To: (name and address of person on whom notice is to be served)

This Notice—

- (a) gives you warning that an application has been made to the sheriff court for an order which may affect your interest in property; and
- (b) informs you that you have an opportunity to appear and make representations to the court before the application is determined.

TAKE NOTICE

1. That on (*date*) in the sheriff court at (*place*) a confiscation order was made under section 1 of the Proceeds of Crime (Scotland) Act 1995 in respect of [C.D.] (*name and address*).
2. That on (*date*) the administrator appointed under paragraph 1(1)(a) of Schedule 1 to the Proceeds of Crime (Scotland) Act 1995 on (*date*) was empowered to realise property belonging to [C.D.].

or

2. That on (*date*) the administrator was appointed under paragraph 1(1)(b) of Schedule 1 to the Proceeds of Crime (Scotland) Act 1995 on (*date*) to realise property belonging to [C.D.].
3. That application has been made by petition [*or* note] for an order under paragraph 12 of Schedule 1 to the Proceeds of Crime (Scotland) Act 1995 (*here set out briefly the nature of the order sought*). A copy of the petition [*or* note] is attached.
4. That you have the right to appear before the court in person or by counsel or other person having a right of audience and make such representations as you may have in respect of the order applied for. The court has fixed (*insert day and date fixed for hearing the application*), at (*insert time and place fixed for hearing*) as the time when you should appear to do this.
5. That if you do not appear or are not represented on the above date, the order applied for may be made in your absence.

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE, you should consult a Solicitor, Citizen's Advice Bureau or other local advice agency or adviser immediately.

(Signed)

Sheriff Officer

[or Solicitor [or Agent] for petitioner

[or noter]]

(Address)

FORM 17Representation of the People Act 1983

Rule 3.11.14(1)

In the petition questioning the election for the _____ of _____, in which
is petitioner and _____ is respondent.

The petitioner desires to withdraw his petition on the following grounds [*state grounds*], and craves that a diet may be appointed for hearing his application. He has, in compliance, with rule 3.11.14 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999, given the written notice of his intention to present this application to the respondent, to the Lord Advocate, and to the returning officer.

[To be signed by the petitioner or his solicitor.]

FORM 18Representation of the People Act 1983

Rule 3.11.14(4)

In the petition questioning the election for the _____ of _____, in which
is the petitioner and _____ is respondent.

Notice is hereby given that the above petitioner has applied for leave to withdraw his petition, and that the sheriff principal has, by interlocutor dated the _____ day of _____, assigned the _____ day of _____ at _____ o'clock _____ noon within the _____ as a diet for hearing the application.

Notice is further given that under the Act any person who might have been a petitioner in respect of the said election may at the above diet apply to the sheriff principal to be substituted as a petitioner.

[To be signed by the petitioner or his solicitor.]

FORM 19Representation of the People Act 1983

Status: This is the original version (as it was originally made).

Rule 3.11.15(1)

In the petition questioning the election for the _____ of _____, in which _____ was the petitioner [or last surviving petitioner] and _____ is the respondent.

Notice is hereby given that the above petition stands abated by the death of the petitioner [or last surviving petitioner], and that any person who might have been a petitioner in respect of the said election and who desires to be substituted as a petitioner must, within 21 days from this date, lodge with the undersigned sheriff clerk of [name sheriff court district], a minute craving to be so substituted.

Date (insert date)

[To be signed by the sheriff clerk.]

SCHEDULE 2

Rule 1.3

REVOCATIONS

(1) <i>Act of Sederunt</i>	(2) <i>Reference</i>	(3) <i>Extent of Revocation</i>
Codifying Act of Sederunt 1913	SR & O 1913/638	Book L, Chapter X (proceedings under the Representation of the People Act 1983)
Codifying Act of Sederunt 1913	SR & O 1913/638	Book L, Chapter XI (appeals to the Court under the Pilotage Act 1913)
Act of Sederunt Regulating Appeals under the Pharmacy and Poisons Act 1933	SR & O 1935/1313	The whole Act of Sederunt
Act of Sederunt (Betting, Gaming and Lotteries Act Appeals) 1965	1965/1168	The whole Act of Sederunt
Act of Sederunt (Housing Appeals) 1966	1966/845	The whole Act of Sederunt
Act of Sederunt (Sheriff Court Procedure under Part IV of the Housing (Scotland) Act 1969) 1970	1970/1508	The whole Act of Sederunt
Act of Sederunt (Proceedings under Sex Discrimination Act 1975) 1976	1976/374	The whole Act of Sederunt

<i>(1)</i> <i>Act of Sederunt</i>	<i>(2)</i> <i>Reference</i>	<i>(3)</i> <i>Extent of Revocation</i>
Act of Sederunt (Proceedings under Sex Discrimination Act 1975) No 2 1976	1976/1851	The whole Act of Sederunt
Act of Sederunt (Proceedings under Sex Discrimination Act 1975) 1977	1977/973	The whole Act of Sederunt
Act of Sederunt (Appeals under the Licensing (Scotland) Act 1976) 1977	1977/1622	The whole Act of Sederunt
Act of Sederunt (Betting and Gaming Appeals) 1978	1978/229	The whole Act of Sederunt
Act of Sederunt (Appeals under the Rating (Disabled Persons) Act 1978) 1979	1979/446	The whole Act of Sederunt
Act of Sederunt (Copyright, Designs and Patents) 1990	1990/380	The whole Act of Sederunt
Act of Sederunt (Proceedings in the Sheriff Court under the Model Law on International Commercial Arbitration) 1991	1991/2214	The whole Act of Sederunt
Act of Sederunt (Coal Mining Subsidence Act 1991) 1992	1992/798	The whole Act of Sederunt
Act of Sederunt (Applications under Part III of the Criminal Justice (International Co-operation) Act 1990) 1992	1992/1077	The whole Act of Sederunt
Act of Sederunt (Sheriff Court Summary Application Rules) 1993	1993/3240	The whole Act of Sederunt
Act of Sederunt (Mental Health Rules) 1996	1996/2149	The whole Act of Sederunt
Act of Sederunt (Proceeds of Crime Rules) 1996	1996/2446	The whole Act of Sederunt

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt consolidates with minor and drafting amendments rules of the Sheriff Court relating to statutory applications and appeals. It also incorporates the Sheriff Court Summary Application Rules. Rules replaced by the consolidated rules are revoked in Schedule 2.

Chapter 1 contains general rules in relation to citation, commencement, interpretation, revocation and application.

Chapter 2 contains those rules in relation to summary applications, previously provided for in the Act of Sederunt (Sheriff Court Summary Application Rules) 1993.

Part I contains rules as to interpretation.

Part II contains general rules in relation to summary applications.

Chapter 3 contains specific provision in relation to applications, proceedings and appeals under certain enactments which are to be dealt with as summary applications.

Part I contains specific provision in relation to applications under section 1(1) of the Administration of Justice (Scotland) Act 1972.

Part II contains specific provision for appeals under the Betting Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976.

Part III contains specific provision in relation to applications under section 41 of the Coal Mining Subsidence Act 1991.

Part IV contains specific provision in relation to applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970.

Part V contains specific provision in relation to proceedings under the Trade Marks Act 1938, the Copyright, Designs and Patents Act 1988 and the Olympics Association Right (Infringement Proceedings) Regulations 1995.

Part VI contains specific provision in relation to applications under Part II of the Drug Trafficking Act 1994.

Part VII contains specific provision for appeals under section 39 of the Licensing (Scotland) Act 1976.

Part VIII contains specific provision in relation to applications under sections 21, 40 and 35A of the Mental Health (Scotland) Act 1984.

Part IX contains specific provision in relation to proceedings under sections 28, 29, 30, 31 and 33 of, and paragraphs 1, 2, 4, 6 and 12 of Schedule 1 to, the Proceeds of Crime (Scotland) Act 1994.

Part X contains specific provision for appeals under sections 6(5) and 6(5A) of the Rating (Disabled Persons) Act 1978.

Part XI contains specific provision in relation to election petitions under the Representation of the People Act 1983.

Part XII contains specific provision in relation to requests or applications under the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration as set out in Schedule 7 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Part XIII contains specific provision in relation to proceedings under the Sex Discrimination Act 1975.