
STATUTORY INSTRUMENTS

1999 No. 929

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

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(1).
(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(2);
“the 1968 Act” means the Gaming Act 1968(3); and
“the 1976 Act” means the Lotteries and Amusements Act 1976(4).

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;

(1) 1972 c. 59.
(2) 1963 c. 2.
(3) 1968 c. 65.
(4) 1976 c. 32.

- (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⁽⁵⁾ 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;
 - (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).

(5) Paragraph 28D of Schedule 1 was inserted by [S.I. 1997/947](#).

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(6);

“agreement or consent” means the agreement or consent referred to in section 41 of the Act(7);

“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(8).

(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.

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(9).

(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.

(6) 1991 c. 45.

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

(8) 1994 c. 21.

(9) 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.

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⁽¹⁰⁾;

“the 1994 Act” means the Trade Marks Act 1994⁽¹¹⁾; and

“the 1995 Regulations” means the Olympics Association Right (Infringement Proceedings) Regulations 1995⁽¹²⁾.

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⁽¹³⁾, 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—
 - (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.

(10) 1988 c. 48.

(11) 1994 c. 26.

(12) S.I. 1995/3325.

(13) 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).

PART VI
DRUG TRAFFICKING ACT 1994

Interpretation and application

- 3.6.1.**—(1) In this Part, “the Act” means the Drug Trafficking Act 1994(14).
(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.

(14) 1994 c. 37.

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(**15**).

(2) This Part applies to appeals under section 39 of the Act(**16**).

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.

(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(**17**).

(2) This Part applies to—

- (a) applications for admission submitted to a sheriff under section 21 of the Act(**18**);
- (b) guardianship applications submitted to a sheriff under section 40 of the Act(**19**); and
- (c) community care applications submitted under section 35A of the Act(**20**).

(15) 1976 c. 66.

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

(17) 1984 c. 36.

(18) 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.

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

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

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(21).

(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
- (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.

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

(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)(**22**), 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(**23**); 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.

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

(23) S.I. 1996/743.

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⁽²⁴⁾ 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⁽²⁵⁾; 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);
- (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.

⁽²⁴⁾ Section 35F was inserted by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 4.

⁽²⁵⁾ 1995 c. 43.

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)(**26**) 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—

- (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⁽²⁷⁾.

(2) This Part applies to appeals under section 6(5) or 6(5A) of the Act⁽²⁸⁾.

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⁽²⁹⁾.

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

⁽²⁷⁾ 1978 c. 40.

⁽²⁸⁾ 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).

⁽²⁹⁾ 1983 c. 2.

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)(**30**) 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
- (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.

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

- (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⁽³¹⁾.

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⁽³²⁾; and

⁽³¹⁾ 1990 c. 40.

⁽³²⁾ 1975 c. 65.

“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)(**33**) 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(**34**) 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.

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)(**35**) 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.

(33) 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.

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

(35) Section 66 was amended by S.I. 1996/438.