Status: *This is the original version (as it was originally made).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

SCOTTISH STATUTORY INSTRUMENTS

2002 No. 132

SHERIFF COURT

Act of Sederunt (Summary Cause Rules) 2002

Made - - - -	*1st March 2002*
Coming into force - -	*10th June 2002*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(**1**) 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 said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Cause Rules) 2002 and shall come into force on 10th June 2002.

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

Summary Cause Rules

2. The provisions of Schedule 1 to this Act of Sederunt shall have effect for the purpose of providing rules for a summary cause other than a small claim.

Transitional provision

3. Nothing in Schedule 1 to this Act of Sederunt shall apply to a summary cause commenced before 10th June 2002 and any such action shall proceed according to the law and practice in force immediately before that date.

Revocation

4. 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 except–

(a) in relation to any summary cause commenced before 10th June 2002; and

(**1**) 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), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2) and the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c. 48).

(b) for the purposes of the Act of Sederunt (Small Claim Rules) 1988(**2**).

Edinburgh
1st March 2002

W DOUGLAS CULLEN
Lord President, I.P.D.

(**2**) S.I. 1988/1976 as amended by S.I. 1990/661 and 2105, 1991/821, 1992/249 and 1993/1956.

SCHEDULE 1 Paragraph 2

SUMMARY CAUSE RULES 2002

ARRANGEMENT OF RULES

CHAPTER 1

Citation, interpretation and application

1.1 Citation, interpretation and application

CHAPTER 2

Representation

2.1 Representation

CHAPTER 3

Relief from failure to comply with rules

3.1 Dispensing power of sheriff

CHAPTER 4

Commencement of action

4.1 Form of summons
4.2 Statement of claim
4.3 Defender's copy summons
4.4 Authentication and effect of summons
4.5 Period of notice
4.6 Intimation

CHAPTER 5

Register of Summary Causes, service and return of the summons

5.1 Register of Summary Causes
5.2 Persons carrying on business under trading or descriptive name
5.3 Form of service and certificate thereof
5.4 Service within Scotland by sheriff officer
5.5 Service on persons whose address is unknown
5.6 Service by post
5.7 Service on persons outwith Scotland
5.8 Endorsation by sheriff clerk of defender's residence not necessary
5.9 Contents of envelope containing defender's copy summons
5.10 Re-service

5.11 Defender appearing barred from objecting to service
5.12 Return of summons

CHAPTER 6

Arrestment

6.1 Service of schedule of arrestment
6.2 Arrestment before service
6.3 Recall and restriction of arrestment

CHAPTER 7

Undefended action

7.1 Undefended action
7.2 Application for time to pay direction or time order
7.3 Decree in actions to which the Hague Convention or the Civil Jurisdiction and Judgments Act 1982 apply

CHAPTER 8

Defended action

8.1 Response to summons
8.2 Procedure in defended action
8.3 Purpose of hearing
8.4 Remit to person of skill
8.5 Inspection and recovery of documents
8.6 Exchange of lists of witnesses
8.7 Exchange of reports of skilled witnesses
8.8 Evidence generally
8.9 Hearing parts of action separately
8.10 Returning borrowed parts of process before proof
8.11 Conduct of proof
8.12 Administration of oath or affirmation to witness
8.13 Noting of evidence etc.
8.14 Parties to be heard at close of proof
8.15 Objections to admissibility of evidence
8.16 Incidental appeal against rulings on confidentiality of evidence and production of documents
8.17 Application for time to pay direction or time order in defended action
8.18 Pronouncement of decision

CHAPTER 9

Incidental applications and sists

9.1 General
9.2 Application to sist action

CHAPTER 10

Counterclaim

10.1 Counterclaim

CHAPTER 11

Third party procedure

11.1 Application for third party notice
11.2 Procedure
11.3 Warrants for diligence on third party notice

CHAPTER 12

Summary decree

12.1 Application of chapter
12.2 Application for summary decree
12.3 Summary decree in a counterclaim etc.

CHAPTER 13

Alteration of summons etc.

13.1 Alteration of summons etc.

CHAPTER 14

Additional defender

14.1 Additional defender

CHAPTER 15

Application for sist of party and transference

15.1 Application for sist of party and transference

CHAPTER 16

Transfer and remit of actions

16.1 Transfer to another court
16.2 Remit between procedures
16.3 Remit from Court of Session

CHAPTER 17

Productions and documents

17.1 Lodging of productions

17.2 Copy productions
17.3 Borrowing of productions
17.4 Penalty for failure to return productions
17.5 Documents lost or destroyed
17.6 Documents and productions to be retained in custody of sheriff clerk

CHAPTER 18

Recovery of evidence and attendance of witnesses

18.1 Diligence for recovery of documents
18.2 Optional procedure before executing commission and diligence
18.3 Applications for orders under section 1 of the Administration of Justice (Scotland) Act 1972
18.4 Confidentiality
18.5 Preservation and obtaining of evidence
18.6 Warrants for production of original documents from public records
18.7 Letter of request
18.8 Citation of witnesses
18.9 Citation of witnesses by party litigants
18.10 Witnesses failing to attend

CHAPTER 19

Challenge of documents

19.1 Challenge of documents

CHAPTER 20

European Court

20.1 Interpretation of rules 20.2 to 20.5
20.2 Application for reference
20.3 Preparation of case for reference
20.4 Sist of action
20.5 Transmission of reference

CHAPTER 21

Abandonment

21.1 Abandonment of action

CHAPTER 22

Decree by default

22.1 Decree by default

CHAPTER 23

Decrees, extracts, execution and variation

23.1 Decree
23.2 Final decree
23.3 Expenses
23.4 Correction of interlocutor or note
23.5 Taxes on funds under control of the court
23.6 Extract of decree
23.7 Charge
23.8 Service of charge where address of defender is unknown
23.9 Diligence on decree in actions for delivery
23.10 Applications in same action for variation, etc. of decree

CHAPTER 24

Recall of decree

24.1 Recall of decree

CHAPTER 25

Appeals

25.1 Appeals
25.2 Effect of and abandonment of appeal
25.3 Hearing of appeal
25.4 Appeal in relation to a time to pay direction
25.5 Sheriff to regulate interim possession
25.6 Provisions for appeal in actions for recovery of heritable property to which rule 30.2 applies
25.7 Appeal to the Court of Session

CHAPTER 26

Management of damages payable to persons under legal disability

26.1 Orders for payment and management of money
26.2 Methods of management
26.3 Subsequent orders
26.4 Management of money paid to sheriff clerk
26.5 Management of money payable to children

CHAPTER 27

Action of multiplepoinding

27.1 Application of chapter
27.2 Application of other rules
27.3 Pursuer in multiplepoinding
27.4 Parties
27.5 Statement of fund or subject *in medio*

27.6 Response to summons
27.7 Procedure where response lodged
27.8 Objections to fund or subject *in medio*
27.9 Claims hearing
27.10 Procedure at claims hearing
27.11 Advertisement
27.12 Consignation and discharge of holder

CHAPTER 28

Action of furthcoming

28.1 Expenses included in claim

CHAPTER 29

Action of count, reckoning and payment

29.1 Response to summons
29.2 Accounting hearing

CHAPTER 30

Recovery of possession of heritable property

30.1 Action raised under section 38 of the 1907 Act
30.2 Action against persons in possession of heritable property without right or title
30.3 Effect of decree
30.4 Preservation of defender's goods and effects
30.5 Action of removing where fixed term of removal
30.6 Form of notices and letter
30.7 Giving notice of removal
30.8 Evidence of notice to remove

CHAPTER 31

Action of sequestration for rent

31.1 General
31.2 Appraisal inventory and execution of citation
31.3 Procedure
31.4 Sale to be reported within 14 days
31.5 Recall of sequestration
31.6 Warrant to eject and re-let where premises displenished
31.7 Warrant to sequestrate etc.

CHAPTER 32

Action for aliment

32.1 Recall or variation of decree for aliment
32.2 Warrant and forms for intimation

CHAPTER 33

Child Support Act 1991

33.1 Interpretation of rules 33.2 to 33.4
33.2 Statement of claim
33.3 Effect of maintenance calculations
33.4 Effect of maintenance calculations on extracts of decrees relating to aliment

CHAPTER 34

Action of damages for personal injury

34.1 Application of chapter and disapplication of certain rules
34.2 Form of summons
34.3 Response to summons
34.4 Inspection and recovery of documents
34.5 Statement of valuation of claim
34.6 Intimation to connected persons
34.7 Application for further damages

CHAPTER 35

Electronic transmission of documents

35.1 Extent of provision
35.2 Time of lodgement
APPENDIX 1 FORMS
1. Summary cause summons
1a Summary cause summons – defender's copy – claim for or including payment of money (where time to pay direction or time order may be applied for)
1b Summary cause summons – defender's copy – claim for or including payment of money (where time to pay direction or time order may not applied for)
1c Summary cause summons – defender's copy – non-monetary claim
1d Summary cause summons – defender's copy – multiplepoinding
2. Claim in a summons for payment of money
3. Claim in a summons for recovery of possession of heritable property
3a Notice of removal under sections 34, 35 or 36 of the Sheriff Courts (Scotland) Act 1907
3b Notice of removal under section 37 of the Sheriff Courts (Scotland) Act 1907
3c Letter of removal
4. Claim in a summons of sequestration for rent
4a Notice informing defender of right to apply for certain orders under the Debtors (Scotland) Act 1987
4b Certificate of sequestration
5. Claim in a summons of multiplepoinding
5a Statement by holder of fund or subject when not the pursuer
5b Claim on the fund or subject in an action of multiplepoinding
6. Claim in a summons of furthcoming
7. Claim in a summons for delivery

8. Claim in a summons for implement of an objection
9. Claim in a summons for count, reckoning and payment
10. Statement of claim in a summons for damages for personal injury
10a Claim for provisional damages
10b Form of response
10c Statement of valuation of claim
10d Intimation to connected persons
10e Specification of documents
10f Minute – application for further damages
10g Notice of application for further damages
11. Service
12. Certificate of execution of service
13. Service on person whose address is unknown – form of advertisement
14. Service on person whose address is unknown – form of notice to be displayed on the walls of court
15. Service by post – form of notice
16. Recall or restriction of arrestment – certificate authorising the release of arrested funds or property
17. Minute – no form of response lodged by defender
18. Minute – pursuer not objecting to application for a time to pay direction or time order
19. Minute – pursuer opposing an application for a time to pay direction or time order
20. Form of oath for witnesses
21. Form of affirmation for witnesses
22. Third party notice
23. Response to third party notice
24. Order by the court and certificate in optional procedure for recovery of documents
25. Minute in an application for letter of request
25a Letter of request
26. Witness citation
26a Certificate of witness citation
27. Reference to the European Court
28. Extract decree – basic
28a Extract decree – payment
28b Extract decree – recovery of possession of heritable property
28c Extract decree and warrant to sell in sequestration for rent and sale
28d Extract decree – warrant for ejection and to re-let in sequestration for rent and sale
28e Extract decree – furthcoming
28f Extract decree – delivery
28g Extract decree – delivery – payment failing delivery
28h Extract decree – aliment
28i Extract decree – ad factum praestandum
28j Extract decree – absolvitor
28k Extract decree – dismissal
29. Certificate by sheriff clerk – service of charge where address of defender is unknown
30. Minute for recall of decree
30a Minute for recall of decree – service copy
31. Note of appeal to the sheriff principal
32. Application for leave to appeal against time to pay direction

33. Appeal against time to pay direction
34. Application for certificate of suitability for appeal to the Court of Session
35. Form of receipt for money paid to sheriff clerk
36. Action for aliment – notice of intimation to children and next of kin where address of defender is unknown
37. Action for aliment – notice of intimation to children, next of kin and guardian where defender suffers from mental disorder

APPENDIX 2 GLOSSARY

Signature

Explanatory Note

CHAPTER 1

Citation, interpretation and application

Citation, interpretation and application

1.1.—(1) These Rules may be cited as the Summary Cause Rules 2002.

(2) In these Rules–

"the 1907 Act" means the Sheriff Courts (Scotland) Act 1907(**3**);

"the 1971 Act" means the Sheriff Courts (Scotland) Act 1971(**4**);

"the 1975 Act" means the Litigants in Person (Costs and Expenses) Act 1975(**5**);

"authorised lay representative" means a person to whom section 32(1) of the Solicitors (Scotland) Act 1980(**6**) (offence to prepare writs) does not apply by virtue of section 32(2)(a) of that Act;

"small claim" has the meaning assigned to it by section 35(2) of the 1971 Act(**7**);

"summary cause" has the meaning assigned to it by section 35(1) of the 1971 Act(**8**).

(3) Any reference to a specified Chapter or rule shall be construed as a reference to the Chapter or rule bearing that number in these Rules, 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.

(4) A form referred to by number means the form so numbered in Appendix 1 to these Rules or a form substantially of the same effect with such variation as circumstances may require.

(5) The glossary in Appendix 2 to these Rules is a guide to the meaning of certain legal expressions used in these Rules, but is not to be taken as giving those expressions any meaning which they do not have in law generally.

(6) These Rules shall apply to a summary cause other than a small claim.

(**3**) 1907 c. 51.
(**4**) 1971 c. 58.
(**5**) 1975 c. 47.
(**6**) 1980 c. 46. Section 32 was amended by the Solicitors (Scotland) Act 1988 (c. 42), Schedule 1, paragraph 7, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 29(6) and S.S.I. 2000/121.
(**7**) Section 35(2) was substituted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18(1).
(**8**) Section 35(1) was amended by S.I. 1976/900, 1981/842 and 1988/1993.

CHAPTER 2

Representation

Representation

2.1.—(1) A party may be represented by an advocate, solicitor or, subject to the following provisions of this rule, an authorised lay representative.

(2) An authorised lay representative shall not appear in court on behalf of a party except at the hearing held in terms of rule 8.2(1) and, unless the sheriff otherwise directs, any subsequent or other calling where the action is not defended on the merits or on the amount of the sum due.

(3) Subject to the provisions of this rule, an authorised lay representative may, in representing a party, do everything for the preparation and conduct of an action as may be done by an individual conducting his own action.

(4) If the sheriff finds that the authorised lay representative is–

(a) not a suitable person to represent the party; or

(b) not in fact authorised to do so,

that person must cease to represent the party.

(5) A party may be represented by a person other than an advocate or solicitor at any stage of any proceedings under the Debtors (Scotland) Act 1987(**9**), other than appeals to the sheriff principal, if the sheriff is satisfied that that person is a suitable person to represent the party at that stage and is authorised to do so.

CHAPTER 3

Relief from failure to comply with rules

Dispensing power of sheriff

3.1.—(1) The sheriff may relieve any party from the consequences of any failure to comply with the provisions of these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as he thinks fit.

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

CHAPTER 4

Commencement of action

Form of summons

4.1.—(1) A summary cause action shall be commenced by summons, which shall be in Form 1.

(2) The form of claim in a summons may be in one of Forms 2, 3, 4, 5, 6, 7, 8 or 9.

Statement of claim

4.2. The pursuer must insert a statement of his claim in the summons to give the defender fair notice of the claim; and the statement must include–

(a) details of the basis of the claim including relevant dates; and

(**9**) 1987 c. 18.

(b) if the claim arises from the supply of goods or services, a description of the goods or services and the date or dates on or between which they were supplied and, where relevant, ordered.

Defender's copy summons

4.3. A copy summons shall be served on the defender–

(a) where the action is for, or includes a claim for, payment of money–

(i) in Form 1a where an application for a time to pay direction under the Debtors (Scotland) Act 1987 or time order under the Consumer Credit Act 1974(**10**) may be applied for; or

(ii) in Form 1b in every other case;

(b) where the action is not for, and does not include a claim for, payment of money, in Form 1c; or

(c) in an action of multiplepoinding, in Form 1d.

Authentication and effect of summons

4.4.—(1) A summons shall be authenticated by the sheriff clerk in some appropriate manner except where–

(a) he refuses to do so for any reason;

(b) the defender's address is unknown; or

(c) a party seeks to alter the normal period of notice specified in rule 4.5(2).

(2) If any of paragraphs (1)(a), (b) or (c) applies, the summons shall be authenticated by the sheriff, if he thinks it appropriate.

(3) The authenticated summons shall be warrant for–

(a) service on the defender; and

(b) where the appropriate warrant has been sought in the summons–

(i) arrestment on the dependence; or

(ii) arrestment to found jurisdiction,

as the case may be.

Period of notice

4.5.—(1) An action shall proceed after the appropriate period of notice of the summons has been given to the defender prior to the return day.

(2) The appropriate period of notice shall be–

(a) 21 days where the defender is resident or has a place of business within Europe; or

(b) 42 days where the defender is resident or has a place of business outwith Europe.

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

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

(**10**) 1974 c. 39.

(5) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882(**11**), where service is by post the period of notice shall run from the beginning of the day next following the date of posting.

(6) The sheriff clerk shall insert in the summons–

(a) the return day, which is the last day on which the defender may return a form of response to the sheriff clerk; and

(b) the calling date, which is the date set for the action to call in court.

(7) The calling date shall be seven days after the return day.

Intimation

4.6. Any provision in these Rules requiring papers to be sent to or any intimation to be made to any party, applicant or claimant shall be construed as if the reference to the party, applicant or claimant included a reference to the solicitor representing that party, applicant or claimant.

CHAPTER 5

Register of Summary Causes, service and return of the summons

Register of Summary Causes

5.1.—(1) The sheriff clerk shall keep a register of summary cause actions and incidental applications made in such actions, which shall be known as the Register of Summary Causes.

(2) There shall be entered in the Register of Summary Causes a note of all actions, together with a note of all minutes under rule 24.1(1) (recall of decree) and the entry for each action or minute must contain the following particulars where appropriate:–

(a) the names, designations and addresses of the parties;

(b) whether the parties were present or absent at any hearing, including an inspection, and the names of their representatives;

(c) the nature of the action;

(d) the amount of any claim;

(e) the date of issue of the summons;

(f) the method of service;

(g) the return day;

(h) the calling date;

(i) whether a form of response was lodged and details of it;

(j) the period of notice if shortened or extended in accordance with rule 4.5(3);

(k) details of any minute by the pursuer regarding an application for a time to pay direction or time order, or minute by the pursuer requesting decree or other order;

(l) details of any interlocutors issued;

(m) details of the final decree and the date of it; and

(n) details of any variation or recall of a decree.

(3) There shall be entered in the Register of Summary Causes in the entry for the action to which they relate details of incidental applications including, where appropriate–

(**11**) 1882 c. 77. Section 4 was repealed in part by S.I. 1994/1443.

(a) whether parties are present or absent at the hearing of the application, and the names of their representatives;

(b) the nature of the application; and

(c) the interlocutor issued or order made.

(4) The Register of Summary Causes must be–

(a) authenticated in some appropriate manner by the sheriff in respect of each day any order is made or application determined in an action; and

(b) open for inspection during normal business hours to all concerned without fee.

(5) The Register of Summary Causes may be kept in electronic or documentary form.

Persons carrying on business under trading or descriptive name

5.2.—(1) A person carrying on a business under a trading or descriptive name may sue or be sued in such trading or descriptive name alone.

(2) An extract of–

(a) a decree pronounced in an action; or

(b) a decree proceeding upon any deed, decree arbitral, bond, protest of a bill, promissory note or banker's note or upon any other obligation or document on which execution may 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.

(3) A summons, decree, charge or other document following upon such summons or decree in an action in which a person carrying on business under a trading or descriptive name sues or is sued in that name may 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 action is brought; or

(b) if 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).

Form of service and certificate thereof

5.3.—(1) Subject to rule 5.5 (service where address of defender is unknown), a form of service in Form 11 must be enclosed with the defender's copy summons.

(2) After service has been effected a certificate of execution of service in Form 12 must be prepared and signed by the person effecting service.

(3) When service is by a sheriff officer, the certificate of execution of service must–

(a) be signed by him; and

(b) specify whether the service was personal or, if otherwise, the mode of service and the name of any person to whom the defender's copy summons was delivered.

(4) If service is effected in accordance with rule 5.4(2), the certificate must also contain a statement of–

(a) the mode of service previously attempted; and

(b) the circumstances which prevented such service from being effected.

Service within Scotland by sheriff officer

5.4.—(1) A sheriff officer may validly serve any summons, decree, charge or other document following upon such summons or decree issued in an action by–

(a) personal service; or

(b) leaving it in the hands of–

(i) an inmate at the person's dwelling place; or

(ii) an employee at the person's place of business.

(2) If a sheriff officer has been unsuccessful in effecting service in accordance with paragraph (1), he may, after making diligent inquiries, serve the document–

(a) by depositing it in the person's dwelling place or place of business by means of a letter box or by other lawful means; or

(b) by affixing it to the door of the person's dwelling place or place of business.

(3) Subject to the requirements of rule 6.1 (service of schedule of arrestment), if service is effected in accordance with paragraph (2), the sheriff officer must thereafter send by ordinary post to the address at which he thinks it most likely that the person may be found a letter containing a copy of the document.

(4) In proceedings in or following on an action, it shall be necessary for any sheriff officer to be accompanied by a witness except where service, citation or intimation is to be made by post.

(5) Where the firm which employs the sheriff officer has in its possession–

(a) the document or a copy of it certified as correct by the pursuer's solicitor, the sheriff officer may serve the document upon the defender without having the document or certified copy in his possession (in which case he shall if required to do so by the person on whom service is executed and within a reasonable time of being so required, show the document or certified copy to the person); or

(b) a certified copy of the interlocutor pronounced allowing service of the document, the sheriff officer may serve the document without having in his possession the certified copy interlocutor if he has in his possession a facsimile copy of the certified copy interlocutor (which he shall show, if required, to the person on whom service is executed).

Service on persons whose address is unknown

5.5.—(1) If the defender's address is unknown to the pursuer and cannot reasonably be ascertained by him, the sheriff may grant warrant to serve the summons–

(a) by the publication of an advertisement in Form 13 in a newspaper circulating in the area of the defender's last known address; or

(b) by displaying on the walls of court a notice in Form 14.

(2) Where a summons is served in accordance with paragraph (1), the period of notice, which must be fixed by the sheriff, shall run from the date of publication of the advertisement or display on the walls of court, as the case may be.

(3) If service is to be effected under paragraph (1), the pursuer must lodge a service copy of the summons with the sheriff clerk.

(4) The defender may uplift from the sheriff clerk the service copy of the summons lodged in accordance with paragraph (3).

(5) If display on the walls of court is required under paragraph (1)(b), the pursuer must supply to the sheriff clerk for that purpose a completed copy of Form 14.

(6) In every case where advertisement in a newspaper is required for the purpose of service, a copy of the newspaper containing said advertisement must be lodged with the sheriff clerk.

(7) If service has been made under this rule and thereafter the defender's address becomes known, the sheriff may allow the summons to be amended and, if appropriate, grant warrant for re-service subject to such conditions as he thinks fit.

Service by post

5.6.—(1) If it is competent to serve or intimate any document or to cite any person by recorded delivery, such service, intimation or citation, must be made by the first class recorded delivery service.

(2) On the face of the envelope used for postal service under this rule, there must be written or printed a notice in Form 15.

(3) The certificate of execution of postal service must have annexed to it any relevant postal receipt.

Service on persons outwith Scotland

5.7.—(1) If any summons, decree, charge or other document following upon such summons or decree, or any charge or warrant, requires to be served outwith Scotland on any person, it must be served in accordance with this rule.

(2) If the person has a known home or place of business in–

(a) England and Wales, Northern Ireland, the Isle of Man or the Channel Islands; or

(b) any country with which the United Kingdom does not have a convention providing for service of writs in that country,

the document must be served either–

(i) 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; or

(ii) in accordance with the rules for personal service under the domestic law of the place in which the document is to be served.

(3) Subject to paragraph (4), if the document requires to be served 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(**12**) or the European Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters as set out in Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982(**13**), it must be served–

(a) by a method prescribed by the internal law of the country where service is to be effected for the service of documents in domestic actions upon persons who are within its territory;

(b) by or through a British consular authority at the request of the Secretary of State for Foreign and Commonwealth Affairs;

(c) by or through a central authority in the country where service is to be effected at the request of the Secretary of State for Foreign and Commonwealth Affairs;

(d) 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

(**12**) Cmnd. 3986 (1969).

(**13**) 1982 c. 27. Schedule 1 was substituted by S.I. 1990/2591 and by S.I. 2000/1894. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1 and Schedule 1 and amended by S.I. 2000/1824.

(e) where the law of the country in which service is to be effected permits, service by an *huissier*, other judicial officer or competent official of the country where service is to be made.

(4) If the document requires to be served in a country to which Council Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters(**14**) applies, service may be effected by a method prescribed in paragraph (3)(b) or (c) only in exceptional circumstances.

(5) If the document requires to be served in a country with which the United Kingdom has a convention on the service of writs in that country other than the conventions specified in paragraph (3) or the regulation specified in paragraph (4), it must be served by one of the methods approved in the relevant convention.

(6) Subject to paragraph (9), a document which requires to be posted in Scotland for the purposes of this rule must be posted by a solicitor or a sheriff officer, and the form of service and certificate of execution of service must be in Forms 11 and 12 respectively.

(7) On the face of the envelope used for postal service under this rule there must be written or printed a notice in Form 15.

(8) Where service is effected by a method specified in paragraph (3)(b) or (c), the pursuer must–

(a) send a copy of the summons and warrant for service with form of service attached, or other document, with a request for service to be effected by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and

(b) lodge in process a certificate of execution of service signed by the authority which has effected service.

(9) If service is effected by the method specified in paragraph (3)(e), the pursuer must–

(a) send to the official in the country in which service is to be effected a copy of the summons and warrant for service, with citation attached, or other document, with a request for service to be effected by delivery to the defender or his residence; and

(b) lodge in process a certificate of execution of service by the official who has effected service.

(10) Where service is executed in accordance with paragraph (2)(b)(ii) or (3)(a) other than on another party in–

(a) the United Kingdom;

(b) the Isle of Man; or

(c) the Channel Islands,

the party executing service must lodge a certificate stating that the form of service employed is in accordance with the law of the place where the service was executed.

(11) A certificate lodged in accordance with paragraph (10) shall be given by a person who is conversant with the law of the country concerned and who–

(a) practises or has practised law in that country; or

(b) is a duly accredited representative of the government of that country.

(12) Every summons or document and every citation and notice on the face of the envelope referred to in paragraph (7) must 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.

(**14**) O.J. No. L 160, 30.06.00, p.37.

(13) A translation referred to in paragraph (12) must be certified as a correct translation by the person making it and the certificate must contain the full name, address and qualifications of the translator and be lodged along with the execution of such service.

Endorsation by sheriff clerk of defender's residence not necessary

5.8. Any summons, decree, charge or other document following upon a summons or decree may be served, enforced or otherwise lawfully executed 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 the summons, or by a sheriff officer of the sheriff court district in which it is to be executed.

Contents of envelope containing defender's copy summons

5.9. Nothing must be included in the envelope containing a defender's copy summons except–

(a) the copy summons;

(b) a response or other notice in accordance with these Rules; and

(c) any other document approved by the sheriff principal.

Re-service

5.10.—(1) If it appears to the sheriff that there has been any failure or irregularity in service upon a defender, the sheriff may order the pursuer to re-serve the summons on such conditions as he thinks fit.

(2) If re-service has been ordered in accordance with paragraph (1) or rule 5.5(7) the action shall proceed thereafter as if it were a new action.

Defender appearing barred from objecting to service

5.11.—(1) A person who appears in an action shall not be entitled to state any objection to the regularity of the execution of service or intimation on him and his appearance shall remedy any defect in such service or intimation.

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

Return of summons

5.12.—(1) If any appearance in court is required on the calling date in respect of any party–

(a) the summons; and

(b) the relevant certificate of execution of service,

shall be returned to the sheriff clerk not later than two days before the calling date.

(2) If no appearance by any party is required on the calling date, only the certificate of execution of service need be returned to the sheriff clerk, not later than two days before the calling date.

(3) If the pursuer fails to proceed in accordance with paragraph (1) or (2) as appropriate, the sheriff may dismiss the action.

CHAPTER 6

Arrestment

Service of schedule of arrestment

6.1. 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 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 must, 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 before service

6.2.—(1) An arrestment to found jurisdiction or an arrestment on the dependence of an action used prior to service shall cease to have effect, unless the summons is served within 21 days from the date of execution of the arrestment.

(2) When such an arrestment as is referred to in paragraph (1) has been executed, the party using it must forthwith report the execution to the sheriff clerk.

Recall and restriction of arrestment

6.3.—(1) The sheriff may order that an arrestment on the dependence of an action or counterclaim shall cease to have effect if the party whose funds or property are arrested–

(a) pays into court; or

(b) finds caution to the satisfaction of the sheriff clerk in respect of,

the sum claimed together with the sum of £50 in respect of expenses.

(2) Without prejudice to paragraph (1), a party whose funds or property are arrested may at any time apply to the sheriff to exercise his powers to recall or restrict an arrestment on the dependence of an action or counterclaim, with or without consignation or caution.

(3) An application made under paragraph (2) must be intimated by the applicant to the party who instructed the arrestment.

(4) On payment into court in accordance with paragraph (1), or if the sheriff recalls or restricts an arrestment on the dependence of an action in accordance with paragraph (2) and any condition imposed by the sheriff has been complied with, the sheriff clerk must–

(a) issue to the party whose funds or property are arrested a certificate in Form 16 authorising the release of any sum or property arrested to the extent ordered by the sheriff; and

(b) send a copy of the certificate to–

(i) the party who instructed the arrestment; and

(ii) the party who has possession of the funds or property that are arrested.

CHAPTER 7

Undefended action

Undefended action

7.1.—(1) Subject to paragraphs (4), (5) and (6), where the defender has not lodged a form of response on or before the return day–

(a) the action shall not require to call in court on the calling date; and

(b) the pursuer must lodge a minute in Form 17 before the sheriff clerk's office closes for business on the second day before the calling date.

(2) If the pursuer does not lodge a minute in terms of paragraph (1), the sheriff must dismiss the action.

(3) If the sheriff is not prepared to grant the order requested in Form 17, the sheriff clerk must–

(a) fix a date, time and place for the pursuer to be heard; and

(b) inform the pursuer of–

(i) that date, time and place; and

(ii) the reasons for the sheriff wishing to hear him.

(4) Where no form of response has been lodged in an action–

(a) for recovery of possession of heritable property; or

(b) of sequestration for rent,

the action shall call in court on the calling date and the sheriff shall determine the action as he thinks fit.

(5) Where no form of response has been lodged in an action of multiplepoinding the action shall proceed in accordance with rule 27.9(1)(a).

(6) Where no form of response has been lodged in an action of count, reckoning and payment the action shall proceed in accordance with rule 29.2.

(7) If the defender does not lodge a form of response in time or if the sheriff is satisfied that he does not intend to defend the action on the merits or on the amount of the sum due, the sheriff may grant decree with expenses against him.

Application for time to pay direction or time order

7.2.—(1) If the defender admits the claim, he may, where competent–

(a) make an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) or a time order by completing the appropriate part of the form of response contained in the defender's copy summons and lodging it with the sheriff clerk on or before the return day; or

(b) lodge a form of response indicating that he admits the claim and intends to apply orally for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) or time order.

(2) Where the defender has lodged an application in terms of paragraph (1)(a), the pursuer may intimate that he does not object to the application by lodging a minute in Form 18 before the time the sheriff clerk's office closes for business on the day occurring two days before the calling date stating that he does not object to the defender's application and seeking decree.

(3) If the pursuer intimates in accordance with paragraph (2) that he does not object to the application–

(a) the sheriff may grant decree on the calling date;

(b) the parties need not attend; and

(c) the action will not call in court.

(4) If the pursuer wishes to oppose the application for a time to pay direction or time order made in accordance with paragraph (1)(a), he must lodge a minute in Form 19 before the time the sheriff clerk's office closes for business on the day occurring two days before the calling date.

(5) Where the pursuer objects to an application in terms of paragraph (1)(a) or the defender has lodged a form of response in accordance with paragraph (1)(b), the action shall call on the calling date when the parties may appear and the sheriff must decide the application and grant decree accordingly.

(6) The sheriff shall decide an application in accordance with paragraph (5) whether or not any of the parties appear.

(7) Where the defender has lodged an application in terms of paragraph (1)(a) and the pursuer fails to proceed in accordance with either of paragraphs (2) or (4) the sheriff may dismiss the claim.

Decree in actions to which the Hague Convention or Civil Jurisdiction and Judgments Act 1982 apply

7.3.—(1) If the summons 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(**15**) applies, decree must not be granted until it is established to the satisfaction of the sheriff that the requirements of Article 15 of that Convention have been complied with.

(2) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree until it has been shown that the defender has been able to receive the summons in sufficient time to arrange his defence or that all necessary steps have been taken to that end.

(3) For the purposes of paragraph (2)–

(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(**16**);

(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; and

(c) the term "Contracting State" has the meaning assigned in section 1 of that Act(**17**).

CHAPTER 8

Defended action

Response to summons

8.1.—(1) If the defender intends–

(a) to challenge the jurisdiction of the court or the competency of the action;

(b) to defend the action (whether as regards the amount claimed or otherwise); or

(c) state a counterclaim,

(**15**) Cmnd. 3986 (1969).

(**16**) 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.

(**17**) Section 1 was amended by S.I. 1990/2591, the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 2 and S.I. 2000/1824.

he must complete and lodge with the sheriff clerk on or before the return day the form of response contained in the defender's copy summons including a statement of his response which gives fair notice to the pursuer.

(2) The sheriff clerk must upon receipt intimate to the pursuer a copy of any response lodged under paragraph (1).

Procedure in defended action

8.2.—(1) Where the defender has lodged a form of response in accordance with rule 8.1(1) the action will call in court for a hearing.

(2) The hearing shall be held on the calling date.

(3) The sheriff may continue the hearing to such other date as he considers appropriate.

(4) The defender must either be present or be represented at the hearing.

(5) Where the defender–

(a) does not appear or is not represented; and

(b) the pursuer is present or is represented,

decree may be granted against the defender in terms of the summons.

(6) Where at the hearing–

(a) the pursuer does not appear or is not represented; and

(b) the defender is present or represented,

the sheriff shall dismiss the action and may grant decree in terms of any counterclaim.

(7) If all parties fail to appear at the hearing, the sheriff shall, unless sufficient reason appears to the contrary, dismiss the action and any counterclaim.

Purpose of hearing

8.3.—(1) If, at the hearing, the sheriff is satisfied that the action is incompetent or that there is a patent defect of jurisdiction, he must grant decree of dismissal in favour of the defender or, if appropriate, transfer the action in terms of rule 16.1(2).

(2) At the hearing, the sheriff shall–

(a) ascertain the factual basis of the action and any defence, and the legal basis on which the action and defence are proceeding; and

(b) seek to negotiate and secure settlement of the action between the parties.

(3) If the sheriff cannot secure settlement of the action between the parties, he shall–

(a) identify and note on the summons the issues of fact and law which are in dispute;

(b) note on the summons any facts which are agreed;

(c) where it appears that the claim as stated or any defence stated in response to it is not soundly based in law in whole or in part, hear parties forthwith on that matter and may grant decree in favour of any party; and

(d) if satisfied that the claim and any defence have or may have a sound basis in law and that the dispute between the parties depends upon resolution of disputed issues of fact, fix a diet of proof or, alternatively, if satisfied that the claim and any defence have a sound basis in law and that the facts of the case are sufficiently agreed, hear parties forthwith on the merits of the action and may grant decree in whole or in part in favour of any party.

(4) Where the sheriff fixes a proof, the sheriff clerk shall make up a folder for the case papers.

Remit to person of skill

8.4.—(1) The sheriff may, on an incidental application by any party or on a joint application, remit to any person of skill, or other person, to report on any matter of fact.

(2) If a remit under paragraph (1) is made by joint application or of consent of all parties, the report of such person shall be final and conclusive with respect to the matter of fact which is the subject of the remit.

(3) If a remit under paragraph (1) is made–

(a) on the application of one of the parties, the expenses of its execution must, in the first instance, be met by that party; or

(b) on a joint application or of consent of all parties, the expenses must, in the first instance, be met by the parties equally, unless the sheriff otherwise orders.

Inspection and recovery of documents

8.5.—(1) Each party shall, within 28 days after the date of the fixing of a proof, intimate to every other party, and lodge with the sheriff clerk, a list of documents, which are or have been in his possession or control which he intends to use or put in evidence at the proof, including the whereabouts of those documents.

(2) A party who has received a list of documents from another party under paragraph (1) may inspect those documents which are in the possession or control of the party intimating the list at a time and place fixed by that party which is reasonable to both parties.

(3) Nothing in this rule shall affect–

(a) the law relating, or the right of a party to object, to the inspection of a document on the ground of privilege or confidentiality; or

(b) the right of a party to apply under rule 18.1 for a commission and diligence for recovery of documents or under rule 18.3 for an order under section 1 of the Administration of Justice (Scotland) Act 1972(**18**).

Exchange of lists of witnesses

8.6.—(1) Within 28 days after the date of the fixing of a proof, each party shall intimate to every other party, and lodge with the sheriff clerk, a list of witnesses, including any skilled witnesses, whom he intends to call to give evidence.

(2) A party who seeks to call as a witness a person not on his list intimated and lodged under paragraph (1) shall, if any other party objects to such a witness being called, seek leave of the sheriff to call that person as a witness; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(3) The list of witnesses intimated under paragraph (1) shall include the name, occupation (where known) and address of each intended witness.

Exchange of reports of skilled witnesses

8.7.—(1) Not less than 28 days before the diet of proof, a party shall–

(a) disclose to every other party in the form of a written report the substance of the evidence of any skilled person whom he intends to call as a witness; and

(b) lodge a copy of that report in process.

(**18**) 1972 c. 59. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 19.

(2) Except on special cause shown, a party may only call as a skilled witness any person the substance of whose evidence has been disclosed in accordance with paragraph (1).

Evidence generally

8.8. Where possible, the parties shall agree photographs, sketch plans, and any statement or document not in dispute.

Hearing parts of action separately

8.9.—(1) In any action which includes a claim for payment of money, the sheriff may–

(a) of his own accord; or

(b) on the incidental application of any party,

order that proof on liability or any specified issue be heard separately from proof on any other issue and determine the order in which the proofs shall be heard.

(2) The sheriff shall pronounce such interlocutor as he thinks fit at the conclusion of the first proof of any action ordered to be heard in separate parts under paragraph (1).

Returning borrowed parts of process before proof

8.10. All parts of process which have been borrowed must be returned to process not later than noon on the day preceding the proof.

Conduct of proof

8.11. The pursuer must lead in the proof unless the sheriff, on the incidental application of any of the parties which has been intimated to the other parties not less than seven days before the diet of proof, directs otherwise.

Administration of oath or affirmation to witness

8.12. The sheriff must administer the oath to a witness in Form 20 or, where the witness elects to affirm, the affirmation in Form 21.

Noting of evidence, etc.

8.13.—(1) The sheriff who presides at the proof may make a note of any facts agreed by the parties since the hearing held in terms of rule 8.2(1).

(2) The parties may, and must if required by the sheriff, lodge a joint minute of admissions of the facts upon which they have reached agreement.

(3) The sheriff must–

(a) make for his own use notes of the evidence led at the proof, including any evidence the admissibility of which is objected to, and of the nature of any such objection; and

(b) retain these notes until after any appeal has been disposed of.

Parties to be heard at close of proof

8.14.—(1) After all the evidence has been led relevant to the particular proof, the sheriff must hear parties on the evidence.

(2) At the conclusion of that hearing, the sheriff may–

(a) pronounce his decision; or

(b) reserve judgment.

Objections to admissibility of evidence

8.15. If in the course of a proof an objection is made to the admissibility of any evidence and that line of evidence is not abandoned by the party pursuing it, the sheriff must except where–

(a) he is of the opinion that the evidence is clearly irrelevant or scandalous; or

(b) it is an objection falling within rule 8.16(1),

note the terms of the objection and allow the evidence to be led reserving the question of its admissibility to be decided by him at the close of the proof.

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

8.16.—(1) Where a party or any other person objects to the admissibility of oral or documentary evidence on the ground of confidentiality or to the production of a document on any ground, he may, if dissatisfied with the ruling of the sheriff on the objection, express immediately his formal dissatisfaction with the ruling and, with leave of the sheriff, appeal to the sheriff principal.

(2) The sheriff principal shall dispose of an appeal under paragraph (1) with the least possible delay.

(3) Except as provided in paragraph (1), no appeal may be made during a proof against any decision of the sheriff as to the admissibility of evidence or the production of documents.

(4) The appeal referred to in paragraph (1) shall not remove the action from the sheriff who may proceed with the action in relation to any issue which is not dependent on the ruling appealed against.

Application for time to pay direction or a time order in defended action

8.17. A defender in an action which proceeds as defended may, where it is competent to do so, make a incidental application or apply orally at any hearing, at any time before decree is granted, for a time to pay direction (including where appropriate, an order recalling or restricting an arrestment on the dependence) or time order.

Pronouncement of decision

8.18.—(1) If the sheriff pronounces his decision at the end of the hearing held in terms of rule 8.2(1) or any proof, he must state briefly the grounds of his decision, including the reasons for his decision on any question of law or of admissibility of evidence.

(2) If the sheriff pronounces his decision after reserving judgement, he must give to the sheriff clerk within 28 days–

(a) a statement of his decision; and

(b) a brief note of the matters mentioned in paragraph (1).

(3) The sheriff clerk must send copies of the documents mentioned in paragraphs (2)(a) and (b) to each of the parties.

CHAPTER 9

Incidental applications and sists

General

9.1.—(1) Except where otherwise provided, any incidental application in an action may be made–

(a) orally with the leave of the sheriff during any hearing of the action; or

(b) by lodging the application in written form with the sheriff clerk.

(2) An application lodged in accordance with paragraph (1)(b) may only be heard after not less than two days' notice has been given to the other party.

(3) Where the party receiving notice of an incidental application lodged in accordance with paragraph (1)(b) intimates to the sheriff clerk and the party making the application that the application is not opposed, the application shall not require to call in court unless the sheriff so directs.

(4) Any intimation made under paragraph (3) shall be made not later than noon on the day before the application is due to be heard.

Application to sist action

9.2.—(1) Where an incidental application to sist an action is made, the reason for the sist–

(a) shall be stated by the party seeking the sist; and

(b) shall be recorded in the Register of Summary Causes and on the summons.

(2) Where an action has been sisted, the sheriff may, after giving parties an opportunity to be heard, recall the sist.

CHAPTER 10

Counterclaim

Counterclaim

10.1.—(1) If a pursuer intends to oppose a counterclaim, he must lodge answers within seven days of the lodging of the form of response.

(2) The pursuer must at the same time as lodging answers intimate a copy of any answers to every other party.

(3) The defender may apply for warrant to arrest on the dependence of a counterclaim.

(4) An application under paragraph (3) must be made by appending to the counterclaim the words "warrant for arrestment on the dependence applied for" and shall be granted by the sheriff clerk who receives the counterclaim by adding the words "Grants warrant as craved" and by authenticating the warrant in an appropriate manner.

(5) Any such warrant shall have the like effect as it would have in any summons.

CHAPTER 11

Third party procedure

Application for third party notice

11.1.—(1) Where in an action a defender claims that–

(a) he has in respect of the subject matter of the action a right of contribution, relief or indemnity against any person who is not a party to the action; or

(b) a person whom the pursuer is not bound to call as a defender should be made a party to the action along with the defender in respect that such person is–

(i) solely liable, or jointly or jointly and severally liable with the defender to the pursuer in respect of the subject matter of the action; or

(ii) liable to the defender in respect of the claim arising from or in connection with the liability, if any, of the defender to the pursuer,

he may apply by incidental application for an order for service of a third party notice upon that other person.

(2) An application for service of a third party notice shall be made at the time when the defender lodges a form of response, unless the sheriff on cause shown shall permit a later application.

(3) Where–

(a) a pursuer against whom a counterclaim is made; or

(b) a third party convened in the action,

seeks, in relation to the claim against him, to make against a person who is not a party, a claim mentioned in paragraph (1) as a claim which could be made by a defender against a third party, he shall apply by incidental application for an order for service of a third party notice; and rules 11.2 and 11.3 shall, with the necessary modifications, apply to such a claim as they apply in relation to a counterclaim by a defender.

Procedure

11.2.—(1) If an application in terms of rule 11.1 is granted, the sheriff shall–

(a) fix a date on which he will regulate further procedure; and

(b) grant warrant to serve on the third party–

(i) a copy of the summons;

(ii) a copy of the grounds upon which it is claimed that the third party is liable; and

(iii) a notice in Form 22 and a copy of Form 23.

(2) A copy of the third party notice, and any certificate of execution of service, shall be lodged by the defender before the hearing fixed under paragraph (1)(a).

(3) A third party seeking to answer the claim against him shall complete and lodge the form of response no later than seven days before the hearing fixed under paragraph (1)(a).

(4) The sheriff clerk must upon receipt intimate to the other parties a copy of any response lodged under paragraph (3).

Warrants for diligence on third party notice

11.3.—(1) A defender who applies for an order for service of a third party notice may apply for a warrant for arrestment to found jurisdiction or for arrestment on the dependence which would have been permitted had the warrant been sought in a separate action.

(2) A certified copy of the interlocutor granting warrant for diligence shall be sufficient authority for execution of the diligence.

CHAPTER 12

Summary decree

Application of chapter

12.1. This chapter applies to any action other than an action of multiplepoinding.

Application for summary decree

12.2.—(1) A pursuer may at any time after a defender has lodged a form of response apply by incidental application for summary decree against any defender on the ground that there is no defence to the action or any part of it.

(2) In applying for summary decree the pursuer may ask the sheriff to dispose of the whole or part of the subject matter of the action.

(3) The pursuer shall intimate an application under paragraph (1) by registered or recorded delivery post to every other party not less than seven days before the date fixed for the hearing of the application.

(4) On an application under paragraph (1), the sheriff may ordain any party, or a partner, director, officer or office-bearer of any party–

(a) to produce any relevant document or article; or

(b) to lodge an affidavit in support of any assertion of fact made in the action or at the hearing of the incidental application.

(5) Notwithstanding the refusal of an application for summary decree, a subsequent application may be made on a change of circumstances.

Summary decree in a counterclaim etc.

12.3. Rule 12.2 shall apply with the necessary modifications to an application by any other party for summary decree.

CHAPTER 13

Alteration of summons etc.

Alteration of summons etc.

13.1.—(1) The sheriff may, on the incidental application of a party, allow amendment of the summons, form of response, counterclaim or answers to a counterclaim and adjust the note of disputed issues at any time before final judgment is pronounced on the merits.

(2) In an undefended action, the sheriff may order the amended summons to be re-served on the defender on such period of notice as he thinks fit.

(3) Paragraph (1) includes amendment for the following purposes:–

(a) increasing or reducing the sum claimed;

(b) seeking a different remedy from that originally sought;

(c) correcting or supplementing the designation of a party;

(d) enabling a party to sue or be sued in a representative capacity; and

(e) sisting a party in substitution for, or in addition to, the original party.

(4) Where an amendment sists an additional or substitute defender to the action the sheriff shall order such service and regulate further procedure as he thinks fit.

CHAPTER 14

Additional defender

Additional defender

14.1.—(1) Any person who has not been called as a defender may apply by incidental application to the sheriff for leave to enter an action as a defender, and to state a defence.

(2) An application under this rule must specify–

(a) the applicant's title and interest to enter the action; and

(b) the grounds of the defence which he proposes to state.

(3) On the lodging of an application under this rule–

(a) the sheriff must appoint a date for hearing the application; and

(b) the applicant must forthwith serve a copy of the application and of the order for a hearing on the parties to the action.

(4) After hearing the applicant and any party to the action the sheriff may, if he is satisfied that the applicant has shown title and interest to enter the action, grant the application.

(5) Where an application is granted under paragraph (4)–

(a) the applicant shall be treated as a defender; and

(b) the sheriff must forthwith consider whether any decision already taken in the action on the issues in dispute between the parties requires to be reconsidered in light of the terms of the application.

CHAPTER 15

Application for sist of party and transference

Application for sist of party and transference

15.1.—(1) If a party dies or becomes legally incapacitated while an action is depending, any person claiming to represent that party or his estate may apply by incidental application to be sisted as a party to the action.

(2) If a party dies or becomes legally incapacitated while an action is depending and the provisions of paragraph (1) are not invoked, any other party may apply by incidental application to have the action transferred in favour of or against, as the case may be, any person who represents that party or his estate.

CHAPTER 16

Transfer and remit of actions

Transfer to another court

16.1.—(1) The sheriff may transfer an action to any other sheriff court, whether in the same sheriffdom or not, if the sheriff considers it expedient to do so.

(2) If the sheriff is satisfied that the court has no jurisdiction, he may transfer the action to any sheriff court in which it appears to the sheriff that it ought to have been brought.

(3) An action so transferred shall proceed in all respects as if it had been brought originally in the court to which it is transferred.

Remit between procedures

16.2.—(1) If the sheriff makes a direction that an action is to be treated as an ordinary cause, he must, at the time of making that direction–

(a) direct the pursuer to lodge an initial writ, and intimate it to every other party, within 14 days of the date of the direction;

(b) direct the defender to lodge defences within 28 days of the date of the direction; and

(c) fix a date and time for an Options Hearing and that date shall be the first suitable court day occurring not sooner than ten weeks, or such lesser period as he considers appropriate, after the last date for lodging the initial writ.

(2) If the sheriff directs that an ordinary cause or small claim is to be treated as an action under these rules–

(a) he must specify the next step of procedure to be followed in the action; and

(b) in the case of an ordinary cause, the initial writ shall be deemed to be a summary cause summons.

Remit from Court of Session

16.3. On receipt of the process in an action which has been remitted from the Court of Session under section 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985(**19**), the sheriff clerk must–

(a) record the date of receipt in the Register of Summary Causes;

(b) fix a hearing to determine further procedure on the first court day occurring not earlier than 14 days after the date of receipt of the process; and

(c) forthwith send written notice of the date of the hearing fixed under paragraph (b) to each party.

CHAPTER 17

Productions and documents

Lodging of productions

17.1.—(1) A party who intends to rely at a proof upon any documents or articles in his possession, which are reasonably capable of being lodged with the court, must–

(a) lodge them with the sheriff clerk together with a list detailing the items no later than 14 days before the proof; and

(b) at the same time send a copy of the list to the other party.

(2) The documents referred to in paragraph (1) include any affidavit or other written statement admissible under section 2(1) of the Civil Evidence (Scotland) Act 1988(**20**).

(3) A party lodging a document under this rule must send a copy of it to every other party, unless it is not practicable to do so.

(4) Subject to paragraph (5), only documents or articles produced–

(a) in accordance with paragraph (1) (and, if it was a document to which rule 8.5(1) applies, was on the list lodged in accordance with that rule);

(b) at a hearing under rule 8.2; or

(c) under rule 18.2(2) or (3),

may be used or put in evidence.

(5) Documents other than those mentioned in paragraph (4) may be used or put in evidence only with the–

(a) consent of the parties; or

(b) permission of the sheriff on cause shown, and on such terms as to expenses or otherwise as to him seem proper.

(**19**) 1985 c. 73.
(**20**) 1988 c. 32.

Copy productions

17.2.—(1) A copy of every production, marked with the appropriate number of process of the principal production, must be lodged for the use of the sheriff at a proof not later than 48 hours before the diet of proof.

(2) Each copy production consisting of more than one sheet must be securely fastened together by the party lodging it.

Borrowing of productions

17.3.—(1) Any productions borrowed must be returned not later than noon on the day preceding the date of the proof.

(2) A receipt for any production borrowed must be entered in the list of productions and that list must be retained by the sheriff clerk.

(3) Subject to paragraph (4), productions may be borrowed only by–

(a) a solicitor; or

(b) his authorised clerk for whom he shall be responsible.

(4) A party litigant or an authorised lay representative may borrow a production only with permission of the sheriff and subject to such conditions as the sheriff may impose.

(5) Productions may be inspected within the office of the sheriff clerk during normal business hours, and copies may be obtained by a party litigant, where practicable, from the sheriff clerk.

Penalty for failure to return productions

17.4.—(1) If a solicitor has borrowed a production and fails to return it for any diet at which it is required, the sheriff may impose upon such solicitor a fine not exceeding £50.

(2) A fine imposed under paragraph (1) shall–

(a) be payable to the sheriff clerk; and

(b) be recoverable by civil diligence.

(3) An order imposing a fine under this rule shall not be subject to review except that the sheriff who granted it may, on cause shown, recall it.

Documents lost or destroyed

17.5.—(1) This rule applies to any–

(a) summons;

(b) form of response;

(c) answers to a counterclaim;

(d) third party notice or answers to a third party notice;

(d) Register of Summary Causes; or

(e) other document lodged with the sheriff clerk in connection with an action.

(2) Where any document mentioned in paragraph (1) is–

(a) lost; or

(b) destroyed,

a copy of it, authenticated in such manner as the sheriff may require, may be substituted and shall, for the purposes of the action including the use of diligence, be equivalent to the original.

Documents and productions to be retained in custody of sheriff clerk

17.6.—(1) This rule applies to all documents or other productions which have at any time been lodged or referred to during a hearing or proof.

(2) The sheriff clerk must retain in his custody any document or other production mentioned in paragraph (1) until–

(a) after the expiry of the period during which an appeal is competent; and

(b) any appeal lodged has been disposed of.

(3) Each party who has lodged productions in an action shall–

(a) after the final determination of the claim, where no appeal has been lodged, within 14 days after the appeal period has expired; or

(b) within 14 days after the disposal of any appeal lodged on the final determination of the action,

uplift the productions from the sheriff clerk.

(4) Where any production has not been uplifted as required by paragraph (3), the sheriff clerk shall intimate to–

(a) the solicitor who lodged the production; or

(b) where no solicitor is acting, the party himself or such other party as seems appropriate,

that if he fails to uplift the production within 28 days after the date of such intimation, it will be disposed of in such manner as the sheriff directs.

CHAPTER 18

Recovery of evidence and attendance of witnesses

Diligence for recovery of documents

18.1.—(1) At any time after a summons has been served, a party may make an incidental application in writing to the sheriff to grant commission and diligence to recover documents.

(2) A party who makes an application in accordance with paragraph (1) must list in the application the documents which he wishes to recover.

(3) A copy of the incidental application made under paragraph (1) must be intimated by the applicant to–

(a) every other party; and

(b) where necessary, the Advocate General for Scotland or the Lord Advocate (and if there is any doubt, both).

(4) The Advocate General for Scotland and the Lord Advocate may appear at the hearing of any incidental application under paragraph (1).

(5) The sheriff may grant commission and diligence to recover those documents in the list mentioned in paragraph (2) which he considers relevant to the action.

Optional procedure before executing commission and diligence

18.2.—(1) Any party who has obtained a commission and diligence for the recovery of documents may, at any time before executing it, serve by first class recorded delivery post on the person from whom the documents are sought to be recovered (or on his known solicitor or solicitors) an order with certificate attached in Form 24.

(2) Documents recovered in response to an order under paragraph (1) must be sent to, and retained by, the sheriff clerk who shall, on receiving them, advise the parties that the documents are in his possession and may be examined within his office during normal business hours.

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

(4) At the commission, the commissioner shall–

(a) administer the appropriate oath or affirmation to any clerk and any shorthand writer appointed for the commission; and

(b) administer to the haver the oath in Form 20, or where the haver elects to affirm, the affirmation in Form 21.

(5) Documents recovered under this rule may be tendered as evidence at any hearing or proof without further formality, and rules 18.4(2), (3) and (4) shall apply to such documents.

Applications for orders under section 1 of the Administration of Justice (Scotland) Act 1972

18.3.—(1) An application by a party for an order under section 1 of the Administration of Justice (Scotland) Act 1972(**21**), must be made by incidental application in writing.

(2) At the time of lodging an incidental application under paragraph (1), a specification of–

(a) the document or other property sought to be inspected, photographed, preserved, taken into custody, detained, produced, recovered, sampled or experimented with or upon, as the case may be; or

(b) the matter in respect of which information is sought as to the identity of a person who might be a witness or a defender,

must be lodged in process.

(3) A copy of the specification lodged under paragraph (2) and the incidental application made under paragraph (1) must be intimated by the applicant to–

(a) every other party;

(b) any third party haver; and

(c) where necessary, the Advocate General for Scotland or the Lord Advocate (and if there is any doubt, both).

(4) If the sheriff grants an incidental application under paragraph (1) in whole or in part, he may order the applicant to find such caution or give such other security as he thinks fit.

(5) The Advocate General for Scotland and the Lord Advocate may appear at the hearing of any incidental application under paragraph (1).

Confidentiality

18.4.—(1) Confidentiality may be claimed for any evidence sought to be recovered under rule 18.2 or 18.3.

(2) Where confidentiality is claimed under paragraph (1), the documents or property in respect of which confidentiality is claimed shall be enclosed in a separate, sealed packet.

(3) A sealed packet referred to in paragraph (2) shall not be opened except by authority of the sheriff obtained on the incidental application of the party who sought the commission and diligence or order.

(**21**) 1972 c. 59. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 19.

(4) The incidental application made under paragraph (3) must be intimated by the applicant to the party or parties from whose possession the documents specified in the commission and diligence or order were obtained.

(5) Any party received intimation under paragraph (4) may appear at the hearing of the application.

Preservation and obtaining of evidence

18.5.—(1) Evidence in danger of being lost may be taken to be retained until required and, if satisfied that it is desirable so to do, the sheriff may, upon the application of any party at any time, either take it himself or grant authority to a commissioner to take it.

(2) The interlocutor granting such a commission shall be sufficient authority for citing the witness to appear before the commission.

(3) The evidence of any witness who–

(a) is resident beyond the sheriffdom;

(b) although resident within the sheriffdom, resides at some place remote from the court in which the proof is to be held; or

(c) is by reason of illness, age, infirmity or other sufficient cause unable to attend the proof,

may be taken in the same manner as is provided in paragraph (1).

(4) On special cause shown, evidence may be taken from any witness or haver on a ground other than one mentioned in paragraph (1) or (3).

(5) Evidence taken under paragraph (1), (3) or (4) may be taken down by–

(a) the sheriff;

(b) the commissioner; or

(c) a clerk or shorthand writer nominated by the sheriff or commissioner,

and such evidence may be recorded in narrative form or by question and answer as the sheriff or commissioner shall direct and the extended notes of such evidence certified by such clerk or shorthand writer shall be the notes of such oral evidence.

(6) At the commission, the commissioner shall or where the sheriff takes evidence himself, the sheriff shall–

(a) administer the appropriate oath or affirmation to any clerk and any shorthand writer appointed for the commission; and

(b) administer to the witness the oath in Form 20, or where the witness elects to affirm, the affirmation in Form 21.

Warrants for production of original documents from public records

18.6.—(1) If a party seeks to obtain from the keeper of any public record production of the original of any register or deed in his custody for the purposes of an action, he must apply to the sheriff by incidental application.

(2) Intimation of an incidental application under paragraph (1) must be given to the keeper of the public record concerned at least seven days before the incidental application is lodged.

(3) In relation to a public record kept by the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland–

(a) where it appears to the sheriff that it is necessary for the ends of justice that an incidental application under this rule should be granted, he must pronounce an interlocutor containing a certificate to that effect; and

(b) the party applying for production may apply by letter (enclosing a copy of the interlocutor duly certified by the sheriff clerk), addressed to the Deputy Principal Clerk of Session, for an order from the Court of Session authorising the Keeper of the Registers or the Keeper of the Records, as the case may be, to exhibit the original of any register or deed to the sheriff.

(4) The Deputy Principal Clerk of Session must submit the application sent to him under paragraph (3) to the Lord Ordinary in chambers who, if satisfied, shall grant a warrant for production or exhibition of the original register or deed sought.

(5) A certified copy of the warrant granted under paragraph (4) must be served on the keeper of the public record concerned.

(6) The expense of the production or exhibition of such an original register or deed must be met, in the first instance, by the party who applied by incidental application under paragraph (1).

Letter of request

18.7.—(1) This rule applies to an application for a letter of request to a court or tribunal outside Scotland to obtain evidence of the kind specified in paragraph (2), being evidence obtainable within the jurisdiction of that court or tribunal, for the purpose of an action depending before the sheriff.

(2) An application to which paragraph (1) applies may be made in relation to a request–

(a) for the examination of a witness;

(b) for the inspection, photographing, preservation, custody, detention, production or recovery of, or the taking of samples of, or the carrying out of any experiment on or with, a document or other property, as the case may be;

(c) for the medical examination of any person;

(d) for the taking and testing of samples of blood from any person; or

(e) for any other order for obtaining evidence,

for which an order could be obtained from the sheriff.

(3) Such an application must be made by minute in Form 25 together with a proposed letter of request in Form 25a.

(4) It shall be a condition of granting a letter of request that any solicitor for the applicant, or a party litigant, as the case may be, is to be personally liable, in the first instance, for the whole expenses which may become due and payable in respect of the letter of request to the court or tribunal obtaining the evidence and to any witness who may be examined for the purpose; and he must consign into court such sum in respect of such expenses as the sheriff thinks fit.

(5) Unless the court or tribunal to which a letter of request is addressed is a court or tribunal in a country or territory–

(a) where English is an official language; or

(b) in relation to which the sheriff clerk certifies that no translation is required,

then the applicant must, before the issue of the letter of request, lodge in process a translation of that letter and any interrogatories and cross-interrogatories into the official language of that court or tribunal.

(6) The letter of request when issued, any interrogatories and cross-interrogatories and the translations (if any) must be forwarded by the sheriff clerk to the Foreign and Commonwealth Office or to such person and in such manner as the sheriff may direct.

Citation of witnesses

18.8.—(1) The citation of a witness or haver must be in Form 26 and the certificate of it must be in Form 26a.

(2) A party shall be responsible for securing the attendance of his witnesses or havers at a hearing and shall be personally liable for their expenses.

(3) The summons or the copy served on the defender shall be sufficient warrant for the citation of witnesses and havers.

(4) The period of notice given to witnesses or havers cited in terms of paragraph (3) must be not less than seven days.

(5) A witness or haver shall be cited–

(a) by registered post or the first class recorded delivery service by the solicitor for the party on whose behalf he is cited; or

(b) by a sheriff officer–

(i) personally;

(ii) by a citation being left with a resident at the person's dwelling place or an employee at his place of business;

(iii) by depositing it in that person's dwelling place or place of business;

(iv) by affixing it to the door of that person's dwelling place or place of business; or

(v) by registered post or the first class recorded delivery service.

(6) Where service is effected under paragraph (5) (b) (iii) or (iv), the sheriff officer shall, as soon as possible after such service, send by ordinary post to the address at which he thinks it most likely that the person may be found, a letter containing a copy of the citation.

Citation of witnesses by party litigants

18.9.—(1) Where a party to an action is a party litigant he shall–

(a) not later than 28 days before the diet of proof apply to the sheriff by incidental application to fix caution for expenses in such sum as the sheriff considers reasonable having regard to the number of witnesses he proposes to cite and the period for which they may be required to attend court; and

(b) before instructing a solicitor or a sheriff officer to cite a witness, find caution in the sum fixed in accordance with paragraph (1).

(2) A party litigant who does not intend to cite all the witnesses referred to in his application under paragraph 1(a), may apply by incidental application for variation of the amount of caution.

Witnesses failing to attend

18.10.—(1) A hearing must not be adjourned solely on account of the failure of a witness to appear unless the sheriff, on cause shown, so directs.

(2) A witness or haver who fails without reasonable excuse to answer a citation after having been properly cited and offered his travelling expenses if he has asked for them may be ordered by the sheriff to pay a penalty not exceeding £250.

(3) The sheriff may grant decree for payment of a penalty imposed under paragraph (2) above in favour of the party on whose behalf the witness or haver was cited.

(4) The sheriff may grant warrant for the apprehension of the witness or haver and for bringing him to court.

(5) A warrant mentioned in paragraph (4) shall be effective in any sheriffdom without endorsation and the expenses of it may be awarded against the witness or haver.

CHAPTER 19

Challenge of documents

Challenge of documents

19.1.—(1) If a party relies on a deed or other document to support his case, any other party may object to the deed or document without having to bring an action of reduction.

(2) If an objection is made, the sheriff may order the objector, if an action of reduction would otherwise have been competent, to find caution or to consign with the sheriff clerk a sum of money as security.

CHAPTER 20

European Court

Interpretation of rules 20.2 to 20.5

20.1.—(1) In rules 20.2 to 20.5–

"the European Court" means the Court of Justice of the European Communities;

"reference" means a reference to the European Court for–

(a) a preliminary ruling under Article 234 of the E.E.C. Treaty, Article 150 of the Euratom Treaty or Article 41 of the E.C.S.C. Treaty; or

(b) a ruling on the interpretation of the Conventions, as defined in section 1(1) of the Civil Jurisdiction and Judgments Act 1982, under Article 3 of Schedule 2 to that Act(**22**).

(2) The expressions "E.E.C. Treaty", "Euratom Treaty" and "E.C.S.C. Treaty" have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972(**23**).

Application for reference

20.2.—(1) The sheriff may, on the application of a party or of his own accord make a reference.

(2) A reference must be made in the form of a request for a preliminary ruling of the European Court in Form 27.

Preparation of case for reference

20.3.—(1) If the sheriff decides that a reference shall be made, he must within four weeks draft a reference.

(2) On the reference being drafted, the sheriff clerk must send a copy to each party.

(3) Within four weeks after the date on which copies of the draft have been sent to parties, each party may–

(a) lodge with the sheriff clerk; and

(b) send to every other party,

a note of any adjustments he seeks to have made in the draft reference.

(**22**) Schedule 2 was substituted by S.I. 1990/2591 and 2000/1824.
(**23**) 1972 c. 68.

(4) Within 14 days after the date on which any such note of adjustments may be lodged, the sheriff, after considering any such adjustments, must make and sign the reference.

(5) The sheriff clerk must forthwith intimate the making of the reference to each party.

Sist of action

20.4.—(1) Subject to paragraph (2), on a reference being made, the action must, unless the sheriff when making the reference otherwise orders, be sisted until the European Court has given a preliminary ruling on the question referred to it.

(2) The sheriff may recall a sist made under paragraph (1) for the purpose of making an interim order which a due regard to the interests of the parties may require.

Transmission of reference

20.5. A copy of the reference, certified by the sheriff clerk, must be transmitted by the sheriff clerk to the Registrar of the European Court.

CHAPTER 21

Abandonment

Abandonment of action

21.1.—(1) A pursuer may before an order granting absolvitor or dismissing the action has been pronounced, offer to abandon the action.

(2) Where the pursuer offers to abandon the action in accordance with paragraph (1), the sheriff clerk shall, subject to the approval of the sheriff, fix the amount of the defender's expenses to be paid by the pursuer in accordance with rule 23.3 and the action must be continued to the first appropriate court occurring not sooner than 14 days after the amount has been fixed.

(3) If before the continued diet the pursuer makes payment to the defender of the amount fixed under paragraph (2), the sheriff must dismiss the action unless the pursuer consents to absolvitor.

(4) If before the continued diet the pursuer fails to pay the amount fixed under paragraph (2), the defender shall be entitled to decree of absolvitor with expenses.

CHAPTER 22

Decree by default

Decree by default

22.1.—(1) If, after a proof has been fixed under rule 8.3(3)(d), a party fails to appear at a hearing where required to do so, the sheriff may grant decree by default.

(2) If all parties fail to appear at a hearing or proof where required to do so, the sheriff must, unless sufficient reason appears to the contrary, dismiss the action and any counterclaim.

(3) If, after a proof has been fixed under rule 8.3(3)(d), a party fails to implement an order of the court, the sheriff may, after giving him an opportunity to be heard, grant decree by default.

(4) The sheriff shall not grant decree by default solely on the ground that a party has failed to appear at the hearing of an incidental application.

CHAPTER 23

Decrees, extracts, execution and variation

Decree

23.1. The sheriff must not grant decree against–

(a) a defender or a third party in respect of a claim; or

(b) a pursuer in respect of a counterclaim,

under any provision of these Rules unless satisfied that a ground of jurisdiction exists.

Final decree

23.2. The final decree of the sheriff principal or the sheriff shall be granted, where expenses are awarded, only after expenses have been dealt with in accordance with rule 23.3.

Expenses

23.3.—(1) Subject to paragraphs (2) to (4), the sheriff clerk must, with the approval of the sheriff, assess the amount of expenses including the fees and outlays of witnesses awarded in any cause, in accordance with the statutory table of fees of solicitors appropriate to the action.

(2) A party litigant, who is not represented by a solicitor or advocate and who would have been entitled to expenses if he had been so represented, may be awarded any outlays or expenses to which he might be found entitled by virtue of the 1975 Act or any enactment under that Act.

(3) A party who is or has been represented by an authorised lay representative and who would have been found entitled to expenses if he had been represented by a solicitor or an advocate may be awarded any outlays or expenses to which a party litigant might be found entitled in accordance with paragraph (2).

(4) A party who is not an individual, and–

(i) is or has been represented by an authorised lay representative;

(ii) if unrepresented, could not represent itself; and

(iii) would have been found entitled to expenses if it had been represented by a solicitor or an advocate,

may be awarded any outlays to which a party litigant might be found entitled under the 1975 Act or any enactment made under that Act.

(5) In every case including an appeal where expenses are awarded, the sheriff clerk shall hear the parties or their solicitors on the claims for expenses including fees, if any, and outlays.

(6) Except where the sheriff principal or the sheriff has reserved judgment or where he orders otherwise, the hearing on the claim for expenses must take place immediately upon the decision being pronounced.

(7) When that hearing is not held immediately, the sheriff clerk must–

(a) fix the date, time and place when he shall hear the parties or their solicitors; and

(b) give all parties at least 14 days' notice in writing of the hearing so fixed.

(8) The party awarded expenses must–

(a) lodge his account of expenses in court at least seven days prior to the date of any hearing fixed under paragraph (7); and

(b) at the same time forward a copy of that account to every other party.

(9) The sheriff clerk must–

(a) fix the amount of the expenses; and

(b) report his decision to the sheriff principal or the sheriff in open court for his approval at a diet which the sheriff clerk has intimated to the parties.

(10) The sheriff principal or the sheriff, after hearing parties or their solicitors if objections are stated, must pronounce final decree including decree for payment of expenses as approved by him.

(11) In an appeal, the sheriff may pronounce decree under paragraph (10) on behalf of the sheriff principal.

(12) Failure by–

(a) any party to comply with any of the foregoing provisions of this rule; or

(b) the successful party or parties to appear at the hearing on expenses,

must be reported by the sheriff clerk to the sheriff principal or the sheriff at a diet which the sheriff clerk has intimated to the parties.

(13) In either of the circumstances mentioned in paragraphs (12)(a) or (b), the sheriff principal or sheriff must, unless sufficient cause be shown, pronounce decree on the merits of the action and find no expenses due to or by any party.

(14) A decree pronounced under paragraph (13) shall be held to be the final decree for the purposes of these Rules.

(15) The sheriff principal or sheriff may, if he thinks fit, on the application of the solicitor of any party to whom expenses may be awarded, made at or before the time of the final decree being pronounced, grant decree in favour of that solicitor for the expenses of the action.

Correction of interlocutor or note

23.4. At any time before extract, the sheriff may correct any clerical or incidental error in an interlocutor or note attached to it.

Taxes on funds under control of the court

23.5.—(1) Subject to paragraph (2), in an action in which money has been consigned into court under the Sheriff Court Consignations (Scotland) Act 1893(**24**), no decree, warrant or order for payment to any person shall be granted until there has been lodged with the sheriff clerk a certificate by an authorised officer of the Inland Revenue stating that all taxes or duties payable to the Commissioners of Inland Revenue have been paid or satisfied.

(2) In an action of multiplepoinding, it shall not be necessary for the grant of a decree, warrant or order for payment under paragraph (1) that all of the taxes or duties payable on the estate of a deceased claimant have been paid or satisfied.

Extract of decree

23.6.—(1) Extract of a decree signed by the sheriff clerk may be issued only after the lapse of 14 days from the granting of the decree unless the sheriff on application orders earlier extract.

(2) In an action (other than an action to which rule 30.2 applies) where an appeal has been lodged, the extract may not be issued until the appeal has been disposed of.

(3) The extract decree–

(a) may be written on the summons or on a separate paper;

(**24**) 1893 c. 44.

(b) may be in one of Forms 28 to 28k; and

(c) shall be warrant for all lawful execution.

Charge

23.7.—(1) The period for payment specified in any charge following on a decree for payment granted in an action shall be–

(a) 14 days if the person on whom it is served is within the United Kingdom; and

(b) 28 days if he is outside the United Kingdom or his whereabouts are unknown.

(2) The period in respect of any other form of charge on a decree in an action shall be 14 days.

Service of charge where address of defender is unknown

23.8.—(1) If the address of a defender is not known to the pursuer, a charge shall be deemed to have been served on the defender if it is–

(a) served on the sheriff clerk of the sheriff court district where the defender's last known address is located; and

(b) displayed by the sheriff clerk on the walls of court for the period of the charge.

(2) On receipt of such a charge, the sheriff clerk must display it on the walls of court and it must remain displayed for the period of the charge.

(3) The period specified in the charge shall run from the first date on which it was displayed on the walls of court.

(4) On the expiry of the period of charge, the sheriff clerk must endorse a certificate in Form 29 on the charge certifying that it has been displayed in accordance with this rule and must then return it to the sheriff officer by whom service was executed.

Diligence on decree in actions for delivery

23.9.—(1) In an action for delivery, the court may, when granting decree, grant warrant to search for and take possession of goods and to open shut and lockfast places.

(2) A warrant granted under paragraph (1) shall only apply to premises occupied by the defender.

Applications in same action for variation, etc. of decree

23.10.—(1) If by virtue of any enactment the sheriff, without a new action being initiated, may order that–

(a) a decree granted be varied, discharged or rescinded; or

(b) the execution of that decree in so far as it has not already been executed be sisted or suspended,

the party requesting the sheriff to make such an order must do so by lodging a minute to that effect, setting out briefly the reasons for the application.

(2) On the lodging of such a minute by the pursuer, the sheriff clerk must grant warrant for service upon the defender (provided that the pursuer has returned the extract decree).

(3) On the lodging of such a minute by the defender, the sheriff clerk must grant warrant for service upon the pursuer ordaining him to return the extract decree and may, where appropriate, grant interim sist of execution of the decree.

(4) Subject to paragraph (5), the minute shall not be heard in court unless seven days' notice of the minute and warrant has been given to the other parties by the party lodging the minute.

(5) The sheriff may, on cause shown, alter the period of seven days referred to in paragraph (4) but may not reduce it to less than two days.

(6) This rule shall not apply to any proceedings under the Debtors (Scotland) Act 1987(**25**) or to proceedings which may be subject to the provisions of that Act.

CHAPTER 24

Recall of decree

Recall of decree

24.1.—(1) A party may apply for recall of a decree granted under rule 7.1 or 8.2(5), (6) or (7) by lodging with the sheriff clerk a minute in Form 30, explaining the party's failure to appear and in the case of–

(a) a defender; or

(b) where decree has been granted in respect of a counterclaim, a pursuer,

stating, where he has not already done so–

(i) his proposed defence, in the case of a defender; or

(ii) his proposed answer, in the case of a pursuer responding to a counterclaim.

(2) A party may apply for recall of a decree in the same action on one occasion only.

(3) Except in relation to an application to which paragraph (4) applies, a minute by a pursuer under paragraph (1) must be lodged within 14 days of the grant of the decree.

(4) A minute lodged by–

(a) a pursuer in respect of a decree granted in terms of a counterclaim;

(b) a defender; or

(c) a third party,

shall be lodged–

(i) if the action was served on the party seeking recall outwith the United Kingdom under rule 5.7, within a reasonable time after he had knowledge of the decree against him or in any event before the expiry of one year from the date of that decree; or

(ii) in any other case, within 14 days of the execution of a charge or execution of arrestment, whichever first occurs, following on the grant of decree.

(5) On the lodging of a minute for recall of a decree, the sheriff clerk must fix a date, time and place for a hearing of the minute.

(6) If a hearing has been fixed under paragraph (5), the party seeking recall must serve upon the other party not less than seven days before the date fixed for the hearing–

(a) a copy of the minute in Form 30a; and

(b) a note of the date, time and place of the hearing.

(7) At a hearing fixed under paragraph (5), the sheriff shall recall the decree so far as not implemented and the hearing shall then proceed in terms of rule 8.3.

(8) A minute for recall of a decree, when lodged and served in terms of this rule, shall have the effect of preventing any further action being taken by the other party to enforce the decree.

(9) On receipt of the copy minute for recall of a decree, any party in possession of an extract decree must return it forthwith to the sheriff clerk.

(**25**) 1987 c. 18.

(10) If it appears to the sheriff that there has been any failure or irregularity in service of the minute for recall of a decree, he may order re-service of the minute on such conditions as he thinks fit.

CHAPTER 25

Appeals

Appeals

25.1.—(1) An appeal to the sheriff principal, other than an appeal to which rule 25.4 applies, must be by note of appeal in Form 31 lodged with the sheriff clerk not later than 14 days after the date of final decree–

(a) requesting a stated case; and

(b) specifying the point of law upon which the appeal is to proceed.

(2) The appellant must, at the same time as lodging a note of appeal, intimate a copy of it to every other party.

(3) The sheriff must, within 28 days of the lodging of a note of appeal, issue a draft stated case containing–

(a) findings in fact and law or, where appropriate, a narrative of the proceedings before him;

(b) appropriate questions of law; and

(c) a note stating the reasons for his decisions in law,

and the sheriff clerk must send a copy of the draft stated case to the parties.

(4) In an appeal where questions of admissibility or sufficiency of evidence have arisen, the draft stated case must contain a description of the evidence led at the proof to which these questions relate.

(5) Within 14 days of the issue of the draft stated case–

(a) a party may lodge with the sheriff clerk a note of any adjustments which he seeks to make;

(b) a respondent may state any point of law which he wishes to raise in the appeal; and

(c) the note of adjustment and, where appropriate, point of law must be intimated to every other party.

(6) The sheriff may, on the motion of a party or of his own accord, and must where he proposes to reject any proposed adjustment, allow a hearing on adjustments and may provide for such further procedure under this rule prior to the hearing of the appeal as he thinks fit.

(7) The sheriff must, within 14 days after–

(a) the latest date on which a note of adjustments has been or may be lodged; or

(b) where there has been a hearing on adjustments, that hearing,

and after considering such note and any representations made to him at the hearing, state and sign the case.

(8) If the sheriff is temporarily absent from duty for any reason, the sheriff principal may extend any period specified in paragraphs (3) or (7) for such period or periods as he considers reasonable.

(9) The stated case signed by the sheriff must include questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate.

(10) After the sheriff has signed the stated case, the sheriff clerk must–

(a) place before the sheriff principal all documents and productions in the case together with the stated case; and

(b) send to the parties a copy of the stated case together with a written note of the date, time and place of the hearing of the appeal.

Effect of and abandonment of appeal

25.2.—(1) When a note of appeal has been lodged, it may be insisted on by all other parties in the action although they may not have lodged separate appeals.

(2) After a note of appeal has been lodged, the appellant shall not be at liberty to withdraw it, except–

(a) with the consent of the other parties which may be incorporated in a joint minute; or

(b) by leave of the sheriff principal and on such terms as to expenses or otherwise as to him seem proper.

Hearing of appeal

25.3.—(1) The sheriff principal shall hear the parties or their solicitors orally on all matters connected with the appeal including liability for expenses, but if any party moves that the question of liability for expenses be heard after the sheriff principal has given his decision the sheriff principal may grant that motion.

(2) In the hearing of an appeal, a party shall not be allowed to raise questions of law of which notice has not been given except on cause shown and subject to such conditions as to expenses or otherwise as the sheriff principal may consider appropriate.

(3) The sheriff principal may permit a party to amend any question of law or to add any new question in accordance with paragraph (2).

(4) The sheriff principal may–

(a) adhere to or vary the decree appealed against;

(b) recall the decree appealed against and substitute another therefor; or

(c) remit, if he considers it desirable, to the sheriff, for any reason other than to have further evidence led.

(5) At the conclusion of the hearing, the sheriff principal may either pronounce his decision or reserve judgment in which latter case he must within 28 days thereof give his decision in writing and the sheriff clerk must forthwith intimate it to the parties.

Appeal in relation to a time to pay direction

25.4.—(1) This rule applies to appeals to the sheriff principal or to the Court of Session which relate solely to any application in connection with a time to pay direction.

(2) Rules 25.1, 25.2, 25.3(2) and (3) and 25.7 shall not apply to appeals under this rule.

(3) An application for leave to appeal against a decision in an application for a time to pay direction or any order connected therewith must–

(a) be made in Form 32 within seven days of that decision, to the sheriff who made the decision; and

(b) must specify the question of law upon which the appeal is to proceed.

(4) If leave to appeal is granted, the appeal must be lodged in Form 33 and intimated by the appellant to every other party within 14 days of the order granting leave and the sheriff must state in writing his reasons for his original decision.

(5) An appeal under this rule to the sheriff principal shall proceed in accordance with paragraphs (1), (4) and (5) of rule 25.3.

Sheriff to regulate interim possession

25.5.—(1) Notwithstanding an appeal, the sheriff shall have power–

(a) to regulate all matters relating to interim possession;

(b) to make any order for the preservation of any property to which the action relates or for its sale, if perishable;

(c) to make any order for the preservation of evidence; or

(d) to make in his discretion any interim order which a due regard for the interests of the parties may require.

(2) An order under paragraph (1) shall not be subject to review except by the appellate court at the hearing of the appeal.

Provisions for appeal in actions for recovery of heritable property to which rule 30.2 applies

25.6. In an action to which rule 30.2 applies–

(a) it shall not be competent to shorten or dispense with the period for appeal specified in rule 25.1;

(b) it shall be competent to appeal within that period for appeal irrespective of the early issue of an extract decree; and

(c) the lodging of a note of appeal shall not operate so as to suspend diligence unless the sheriff directs otherwise.

Appeal to the Court of Session

25.7.—(1) A certificate that an action is suitable for appeal to the Court of Session may be applied for by completing and lodging an application in Form 34 with the sheriff clerk.

(2) An application made in accordance with paragraph (1) must be lodged within 14 days of the date of the final decree.

(3) The sheriff clerk must put the application before the sheriff principal who, after hearing the parties or their solicitors, shall grant or refuse the certificate.

CHAPTER 26

Management of damages payable to persons under legal disability

Orders for payment and management of money

26.1.—(1) In an action of damages in which a sum of money becomes payable, by virtue of a decree or an extra-judicial settlement, to or for the benefit of a person under legal disability (other than a person under the age of 18 years), the sheriff shall make such order regarding the payment and management of that sum for the benefit of that person as he thinks fit.

(2) Any order required under paragraph (1) shall be made on the granting of decree for payment or of absolvitor.

Methods of management

26.2. In making an order under rule 26.1(1), the sheriff may–

(a) order the money to be paid to–

(i) the Accountant of Court; or

(ii) the guardian of the person under legal disability,

as trustee, to be applied, invested or otherwise dealt with and administered under the directions of the sheriff for the benefit of the person under legal disability;

(b) order the money to be paid to the sheriff clerk of the sheriff court district in which the person under legal disability resides, to be applied, invested or otherwise dealt with and administered, under the directions of the sheriff of that district, for the benefit of the person under legal disability; or

(c) order the money to be paid directly to the person under legal disability.

Subsequent orders

26.3.—(1) If the sheriff has made an order under rule 26.1(1), any person having an interest may apply for an order under rule 26.2, or any other order for the payment or management of the money, by incidental application.

(2) An application for directions under rule 26.2(a) or (b) may be made by any person having an interest by incidental application.

Management of money paid to sheriff clerk

26.4.—(1) A receipt in Form 35 by the sheriff clerk shall be a sufficient discharge in respect of the amount paid to him under rules 26.1 to 26.3.

(2) The sheriff clerk shall, at the request of any competent court, accept custody of any sum of money in an action of damages ordered to be paid to, applied, invested or otherwise dealt with by him, for the benefit of a person under legal disability.

(3) Any money paid to the sheriff clerk under rules 26.1 to 26.3 must be paid out, applied, invested or otherwise dealt with by the sheriff clerk only after such intimation, service and enquiry as the sheriff may order.

(4) Any sum of money invested by the sheriff clerk under rules 26.1 to 26.3 must be invested in a manner in which trustees are authorised to invest by virtue of the Trustee Investments Act 1961(**26**).

Management of money payable to children

26.5. If the sheriff has made an order under section 13 of the Children (Scotland) Act 1995(**27**), an application by a person for an order by virtue of section 11(1)(d) of that Act(**28**) must be made in writing.

CHAPTER 27

Action of multiplepoinding

Application of Chapter

27.1. This Chapter applies to an action of multiplepoinding.

Application of other rules

27.2.—(1) Rule 8.1 shall not apply to an action of multiplepoinding.

(2) Rules 8.2 to 8.17 shall only apply to an action of multiplepoinding in accordance with rule 27.7.

(**26**) 1961 c. 62.
(**27**) 1995 c. 36.
(**28**) Section 11 was amended by S.I. 1996/2203 and S.S.I. 2001/36.

Pursuer in multiplepoinding

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

Parties

27.4. The pursuer must call as defenders–

(a) all persons so far as known to him as having an interest in the fund or subject *in medio*; and

(b) where he is not the holder of the fund or subject, the holder of that fund or subject.

Statement of fund or subject *in medio*

27.5.—(1) Where the pursuer is the holder of the fund or subject *in medio* he shall include a statement of the fund or subject in his statement of claim.

(2) Where the pursuer is not the holder of the fund or subject *in medio*, the holder shall, before the return day–

(a) lodge with the sheriff clerk a statement in Form 5a providing–

(i) a statement of the fund or subject;

(ii) a statement of any claim or lien which he may profess to have on the fund or subject; and

(iii) a list of all persons known to him as having an interest in the fund the subject; and

(b) intimate the statement in Form 5a to the pursuer, the defenders and all persons listed in the statement as having an interest in the fund or subject.

Response to summons

27.6.—(1) If a defender intends to–

(a) challenge the jurisdiction of the court or the competency of the action;

(b) object to the extent of the fund or subject *in medio*; or

(c) make a claim on the fund,

he must complete and lodge with the sheriff clerk on or before the return day the form of response contained in the defender's copy summons as appropriate, including a statement of his response which gives fair notice to the pursuer.

(2) The sheriff clerk must upon receipt intimate to the pursuer a copy of any response lodged under paragraph (1).

Procedure where response lodged

27.7. Where in a form of response a defender states a defence in accordance with rule 27.6(1)(a)–

(a) the provisions of rules 8.2 to 8.17 shall, with the necessary modifications, apply to the resolution of the issues raised under that sub-paragraph; and

(b) rules 27.8 to 27.10 shall apply only once those issues have been so dealt with.

Objections to fund or subject *in medio*

27.8.—(1) If objections to the fund or subject *in medio* have been lodged, the sheriff must, after disposal of any defence–

(a) fix a hearing; and

(b) state the order in which the claimants shall be heard at the hearing.

(2) If no objections to the fund or subject *in medio* have been lodged, or if objections have been lodged and disposed of, the sheriff may approve the fund or subject and if appropriate find the holder liable only in one single payment.

Claims hearing

27.9.—(1) This rule applies where–

(a) no defence or objection to the extent of the fund or subject *in medio* has been stated;

(b) any defence stated has been repelled; or

(c) any such objection stated has been dealt with.

(2) The sheriff must–

(a) order claims in Form 5b to be lodged within 14 days; and

(b) must fix a claims hearing at which all parties may appear or be represented.

(3) The sheriff clerk must intimate to the parties, the order for claims and the date and time of any claims hearing fixed in terms of paragraph (2).

Procedure at claims hearing

27.10.—(1) If there is no competition between the claimants who appear at the claims hearing, the sheriff may order the holder of the fund or subject *in medio*, or the sheriff clerk if it is consigned with him in terms of rule 27.12, to make it over to the claimants in terms of their claims or otherwise and subject to such provisions as to expenses as he directs.

(2) If the sheriff is unable at the claims hearing to resolve competing claims, he shall pronounce an order–

(a) fixing a date, time and place for a further hearing; and

(b) regulating the nature and scope of the hearing and the procedure to be followed.

(3) The sheriff may require that evidence be led at the further claims hearing fixed under paragraph (2).

(4) The sheriff clerk must intimate to all claimants the date, time and place of any hearing fixed under paragraph (2).

(5) At the conclusion of the claims hearing or the further claims hearing fixed under paragraph (2), the sheriff may either pronounce his decision or reserve judgement in which case he must give his decision in writing within 28 days and the sheriff clerk must forthwith intimate it to the parties.

(6) In giving his decision under paragraph (5) the sheriff–

(a) must dispose of the action;

(b) may order the holder of the fund or subject *in medio*, or the sheriff clerk if it is consigned with him in terms of rule 27.12, to make it over to such claimants and in such quantity or amount as he may determine; and

(c) must deal with all questions of expenses.

Advertisement

27.11. If it appears to the sheriff at any stage in the multiplepoinding that there may be other potential claimants who are not parties to the action, he may order such advertisement or intimation of the order for claims as he thinks proper.

Consignation and discharge of holder

27.12.—(1) At any stage in an action of multiplepoinding the sheriff may order that–

(a) the fund or subject *in medio* be consigned in the hands of the sheriff clerk; or

(b) any subject *in medio* be sold and the proceeds of sale consigned in the hands of the sheriff clerk.

(2) After such consignation the holder of the fund or subject may apply for his exoneration and discharge.

(3) The sheriff may allow the holder of the fund or subject, on his exoneration and discharge, his expenses out of the fund as a first charge on the fund.

CHAPTER 28

Action of furthcoming

Expenses included in claim

28.1. The expenses of bringing an action for furthcoming, including the expenses of the arrestment, shall be deemed to be part of the arrestor's claim which may be paid out of the arrested fund or subject.

CHAPTER 29

Action of count, reckoning and payment

Response to summons

29.1. If a defender wishes to admit liability to account in an action for count, reckoning and payment, this must be stated on the form of response.

Accounting hearing

29.2.—(1) This rule applies where in an action of count, reckoning and payment–

(a) no form of response has been lodged;

(b) the defender has indicated on the form of response that he admits liability to account; or

(c) any defence stated has been repelled.

(2) Where paragraph 1(a) or (b) applies, the pursuer must lodge with the sheriff clerk a minute in Form 17 before close of business on the second day before the calling date.

(3) If the pursuer does not lodge a minute in accordance with paragraph (2), the sheriff must dismiss the action.

(4) Where the pursuer has lodged a minute in accordance with paragraph (2), or any defence stated has been repelled, the sheriff shall pronounce an order–

(a) for the lodging of accounts within 14 days and objections within such further period as the sheriff may direct;

(b) fixing a date, time and place for an accounting hearing; and

(c) regulating the nature and scope of the accounting hearing and the procedure to be followed.

(5) The sheriff may require that evidence be led at an accounting hearing fixed under paragraph (4) to prove the accounts and in support of any objection taken.

(6) The sheriff clerk must intimate to all claimants the date, time and place of any hearing fixed under paragraph (4).

CHAPTER 30

Recovery of possession of heritable property

Action raised under section 38 of the 1907 Act

30.1. An action for the recovery of possession of heritable property made in terms of section 38 of the 1907 Act(**29**) may be raised by–

(a) a proprietor;

(b) his factor; or

(c) any other person authorised by law to pursue a process of removing.

Action against persons in possession of heritable property without right or title

30.2.—(1) Subject to paragraph (2), this rule applies only to an action for recovery of possession of heritable property against a person or persons in possession of heritable property without right or title to possess the property.

(2) This rule shall not apply with respect to a person who has or had a title or other right to occupy the heritable property and who has been in continuous occupation since that title or right is alleged to have come to an end.

(3) Where the name of a person in occupation of a heritable property is not known and cannot reasonably be ascertained, the pursuer shall call that person as a defender by naming him as an "occupier".

(4) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the summons shall be served (whether or not it is also served on a named person), unless the sheriff otherwise directs, by an officer of the court–

(a) affixing a copy of the summons and a citation in Form 11 addressed to "the occupiers" to the main door or other conspicuous part of the premises, and if practicable, depositing a copy of each of those documents in the premises; or

(b) in the case of land only, inserting stakes in the ground at conspicuous parts of the occupied land to each of which is attached a sealed transparent envelope containing a copy of the summons and a citation in Form 11 addressed to "the occupiers".

(5) In an action to which this rule applies, the sheriff may in his discretion, and subject to rule 25.6, shorten or dispense with any period of time provided anywhere in these rules.

(6) An application by a party under this rule to shorten or dispense with any period may be made orally and the provisions in rule 9.1 shall not apply, but the sheriff clerk must enter details of any such application in the Register of Summary Causes.

Effect of decree

30.3. When decree for the recovery of possession is granted, it shall have the same force and effect as–

(a) a decree of removing;

(b) a decree of ejection;

(c) a summary warrant of ejection;

(d) a warrant for summary ejection in common form; or

(e) a decree pronounced in a summary application for removing,

(**29**) Section 38 was repealed in part by the Children (Scotland) Act 1995 (c. 36), Schedule 5.

in terms of sections 36, 37 and 38 respectively of the 1907 Act.

Preservation of defender's goods and effects

30.4. When decree is pronounced and the defender is neither present nor represented, the sheriff may give such directions as he deems proper for the preservation of the defender's goods and effects.

Action of removing where fixed term of removal

30.5.—(1) Subject to section 21 of the Agricultural Holdings (Scotland) Act 1991(**30**)–

(a) if the tenant has bound himself to remove by writing, dated and signed–

(i) within 12 months after the term of removal; or

(ii) where there is more than one ish, after the ish first in date to remove,

an action of removing may be raised at any time; and

(b) if the tenant has not bound himself, an action of removing may be raised at any time, but–

(i) in the case of a lease of lands exceeding two acres in extent for three years and upwards, an interval of not less than one year nor more than two years must elapse between the date of notice of removal and the term of removal first in date;

(ii) in the case of a lease of lands exceeding two acres in extent, whether written or oral, held from year to year or under tacit relocation, or for any other period less than three years, an interval of not less than six months must elapse between the date of notice of removal and the term of removal first in date; and

(iii) in the case of a house let with or without land attached not exceeding two acres in extent, as also of land not exceeding two acres in extent without houses, as also of mills, fishings, shootings, and all other heritable subjects excepting land exceeding two acres in extent and let for a year or more, 40 days at least must elapse between the date of notice of removal and the term of removal first in date.

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

Form of notices and letter

30.6.—(1) A notice under section 34, 35 or 36 of the 1907 Act(**31**) must be in Form 3a.

(2) A notice under section 37 of the 1907 Act must be in Form 3b.

(3) A letter of removal must be in Form 3c.

Giving notice of removal

30.7.—(1) A notice under section 34, 35, 36, 37 or 38 of the 1907 Act may be given by–

(a) a sheriff officer;

(b) the person entitled to give such notice; or

(c) the solicitor or factor of such person,

posting the notice by registered post or the first class recorded delivery service at any post office within the United Kingdom in time for it to be delivered at the address on the notice before the last date on which by law such notice must be given, addressed to the person entitled to receive such

(**30**) 1991 c. 55.
(**31**) Section 35 was repealed in part by the Requirements of Writing (Scotland) Act 1995 (c. 7), Schedule 5.

notice, and bearing the address of that person at the time, if known, or, if not known, to the last known address of that person.

(2) A sheriff officer may also give notice under any section of the 1907 Act mentioned in paragraph (1) in any manner in which he may serve an initial writ; and, accordingly, rule 5.4 shall, with the necessary modifications, apply to the giving of notice under this paragraph as it applies to service of a summons.

Evidence of notice to remove

30.8.—(1) It shall be sufficient evidence that notice has been given if–

(a) a certificate of the sending of notice under rule 30.7 dated and endorsed on the lease or an extract of it, or on the letter of removal, is signed by the sheriff officer or the person sending the notice, his solicitor or factor; or

(b) an acknowledgement of the notice is endorsed on the lease or an extract of it, or on the letter of removal, by the party in possession or his agent.

(2) If there is no lease, a certificate of the sending of such notice must be endorsed on a copy of the notice or letter of removal.

CHAPTER 31

Action of sequestration for rent

General

31.1. An action of sequestration for rent or in security of rent may be brought as a summary cause whether it be brought before or after the term of payment.

Appraisal inventory and execution of citation

31.2.—(1) The sheriff officer when he executes the warrant for sequestration shall have the effects appraised by one person who may also be a witness to the sequestration.

(2) A notice in accordance with Form 4a and an inventory or list of sequestrated effects with the appraisal in accordance with Part 1 of Form 4b shall be given to or left for the tenant who shall be cited thereafter in accordance with Chapter 5.

(3) After executing the sequestration the sheriff officer shall–

(a) prepare and sign the certificate of execution of sequestration contained in Part 2 of Form 4b; and

(b) return Form 4b (including the inventory and appraisal in Part 1) to the sheriff clerk within seven days of execution of the sequestration.

Procedure

31.3.—(1) After hearing the cause the sheriff shall dispose of it as he thinks fit and may either recall the sequestration in whole or in part, or grant decree for the rent found due and grant warrant for the sale of the sequestrated effects.

(2) Where warrant for sale of the sequestrated effects has been granted the sale shall be carried out by an officer of court or by such other person as the sheriff may direct by public roup at such place as the sheriff may direct and after–

(a) advertisement in a newspaper circulating in the district; and

(b) display, until the sale has been concluded, of a copy of the warrant on the walls of the court which granted it.

(3) Any proceeds of the sale surplus to the sum decerned for, the expenses awarded and the expenses of the sale, shall be returned to the owner, or if he cannot be found, consigned in the hands of the sheriff clerk.

(4) If the effects are not sold, they shall be delivered to the creditor at the appraised value to the amount of the sum decerned for and expenses, and the expenses of the sequestration and sale.

Sale to be reported within 14 days

31.4. A report of the proceedings in the sequestration and sale of proceeds, or of delivery of the effects, shall be made by the officer to the sheriff clerk within 14 days of the date of sale or delivery.

Recall of sequestration

31.5. If the tenant–

(a) pays to the landlord the rent due, with the expenses of raising the summons and sequestrating; or

(b) consigns the rent due, with a sum determined by the sheriff clerk to cover expenses, in the hands of the sheriff clerk,

the sheriff clerk shall recall the sequestration by appropriately endorsing the summons or the defender's copy thereof.

Warrant to eject and re-let where premises displenished

31.6.—(1) If the officer who has executed a warrant for sale, or who was instructed to execute such a warrant, reports to the court that the premises are displenished the landlord may apply to the court to obtain a warrant to cite the defender to a fixed diet at which the sheriff may make such order as appropriate.

(2) Where a warrant to re-let is granted the rent accruing thereafter shall only be exigible for such period as the tenant continues to occupy the premises.

Warrant to sequestrate, etc.

31.7. All warrants to sequestrate, inventory, sell, eject or re-let shall be deemed to include authority, if need be, to open shut and lockfast places for the purpose of carrying such warrants into execution.

CHAPTER 32

Action for aliment

Recall or variation of decree for aliment

32.1.—(1) Applications for the recall or variation of any decree for payment of aliment pronounced in the small debt court under the Small Debt Acts or in a summary cause under the 1971 Act must be made by summons.

(2) The sheriff may make such interim orders in relation to such applications or in relation to actions brought under section 3 of the Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963(**32**) as he thinks fit.

(3) In paragraph (1) "the Small Debt Acts" means and includes the Small Debt (Scotland) Acts 1837 to 1889 and Acts explaining or amending the same.

(**32**) 1963 c. 22. Section 3 was substituted by the Family Law (Scotland) Act 1985 (c. 37), section 23.

Warrant and forms for intimation

32.2. In the summons in an action brought under section 3 of the Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963, the pursuer must include an application for a warrant for intimation–

(a) in an action where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, to–

(i) every child of the marriage between the parties who has reached the age of 16 years; and

(ii) one of the next-of-kin of the defender who has reached that age,

unless the address of such a person is not known to the pursuer and cannot reasonably be ascertained, and a notice of intimation in Form 36 must be attached to the copy of the summons intimated to any such person; or

(b) in an action where the defender is a person who is suffering from a mental disorder, to–

(i) those persons mentioned in paragraphs (a)(i) and (ii), unless the address of such person is not known to the pursuer and cannot reasonably be ascertained; and

(ii) the guardian of, the defender, if one has been appointed,

and a notice in Form 37 must be attached to the copy of the summons intimated to any such person.

CHAPTER 33

Child Support Act 1991

Interpretation of rules 33.2 to 33.4

33.1. In rules 33.2 to 33.4 below–

"the 1991 Act" means the Child Support Act 1991(**33**);

"child" has the meaning assigned in section 55 of the 1991 Act;

"claim relating to aliment" means a crave for decree of aliment in relation to a child or for recall or variation of such a decree; and

"maintenance calculation" has the meaning assigned in section 54 of the 1991 Act(**34**).

Statement of claim

33.2.—(1) Any summons or counterclaim which contains a claim relating to aliment and to which section 8(6), (7), (8) or (10) of the 1991 Act applies must–

(a) state, where appropriate–

(i) that a maintenance calculation under section 11 of the 1991 Act (maintenance calculations)(**35**) is in force;

(ii) the date of the maintenance calculation;

(iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance calculation; and

(iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of the 1991 Act; and

(**33**) 1991 c. 48.
(**34**) Section 54 was relevantly amended by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 1(2).
(**35**) Section 11 was substituted by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 1(1).

(b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance calculation referred to in sub-paragraph (a).

(2) Any summons or counterclaim which contains a claim relating to aliment and to which section 8(6), (7), (8) or (10) of the 1991 Act does not apply must include a statement–

(a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of the 1991 Act(**36**), is outwith the United Kingdom; or

(b) that the child is not a child within the meaning of section 55 of the 1991 Act.

(3) A summons or counterclaim which involves parties in respect of whom a decision has been made in any application, review or appeal under the 1991 Act must–

(a) include in the statement of claim statements to the effect that such a decision has been made and give details of that decision; and

(b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

Effect of maintenance calculations

33.3.—(1) On receiving notification that a maintenance calculation has been made, cancelled or has ceased to have effect so as to affect an order of a kind prescribed for the purposes of section 10 of the 1991 Act, the sheriff clerk must enter in the Register of Summary Causes in respect of that order a note to that effect.

(2) The note mentioned in paragraph (1) must state that–

(a) the order ceases or ceased to have effect from the date two days after the making of the maintenance calculation; or

(b) the maintenance calculation has been cancelled or has ceased to have effect.

Effect of maintenance calculations on extracts of decrees relating to aliment

33.4.—(1) Where a decree relating to aliment is affected by a maintenance calculation, any extract of that decree issued by the sheriff clerk must be endorsed with the following certificate:–

"A maintenance calculation having been made under the Child Support Act 1991 on (*insert date*), this order, in so far as it relates to the making or securing of periodical payments to or for the benefit of (*insert name(s) of child/children*), ceases to have effect from (*insert date two days after the date on which the maintenance calculation was made*).".

(2) Where a decree relating to aliment has ceased to have effect on the making of a maintenance calculation and that maintenance calculation is later cancelled or ceases to have effect, any extract of that order issued by the sheriff clerk must be endorsed also with the following certificate:–

"The jurisdiction of the child support officer under the Child Support Act 1991 having terminated on (*insert date*), this order, in so far as it relates to (*insert name(s) of child/children*), again shall have effect as of (*insert date of termination of child support officer's jurisdiction*).".

(**36**) Section 3 was amended by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 52(2) and S.I. 2001/155.

CHAPTER 34

Action of damages for personal injury

Application of Chapter and disapplication of certain rules

34.1.—(1) This Chapter applies to an action of damages for personal injuries or the death of a person from personal injuries.

(2) In this Chapter "personal injuries" includes any disease or impairment of physical or mental condition.

(3) The following rules shall not apply to an action of damages for personal injuries or death:–

Rule 4.2, other than the requirement to give fair notice of the claim; and

Rule 8.1.

(4) Rules 8.2 to 8.17 shall only apply to an action of damages for personal injuries or death in accordance with rule 34.3(2).

Form of summons

34.2.—(1) The statement of claim in the summons shall be in Form 10 and shall include–

(a) a concise statement of the grounds of action, and the facts relied upon to establish the claim;

(b) the date of birth and where applicable National Insurance number of the pursuer; and

(c) the names of every medical practitioner from whom, and every hospital, or other institution in which, the pursuer, or in an action in respect of the death of a person, the deceased, received treatment for injuries sustained or for disease suffered by him.

(2) There shall be lodged along with the summons–

(a) all medical reports then available to the pursuer on which he intends, or intends to reserve the right, to rely in the action or a statement that there are no such medical reports; and

(b) a statement of valuation of claim (which shall include a list of supporting documents) in Form 10c.

(3) An application for an order under section 12(2)(a) of the Administration of Justice Act 1982(**37**) (provisional damages for personal injuries) shall be made by including in the summons a claim for provisional damages in Form 10a, and where such application is made, a concise statement as to the matters referred to in paragraphs (a) and (b) of section 12(1) of that Act shall be included in the statement of claim.

(4) In paragraph (3) above "provisional damages" means the damages referred to in section 12(4)(a) of the Administration of Justice Act 1982.

(5) A summons may include–

(a) an application for warrants for intimation in so far as permitted under these Rules; and

(b) a specification of documents containing such of the calls in Form 10e as the pursuer considers appropriate.

(6) Where a summons includes a specification of documents in accordance with paragraph (5)(b), it must, where necessary, be intimated to the Advocate General for Scotland or the Lord Advocate (and if there is any doubt, both) when lodged.

(7) A copy of Form 10b and a copy of the statement of valuation of claim lodged by the pursuer in Form 10c shall accompany the defender's copy summons when it is served on the defender.

(**37**) 1982 c. 53.

Response to summons

34.3.—(1) A defender wishing to defend the action shall complete and lodge with the sheriff clerk on or before the return day the form of response in Form 10b stating, in a manner which gives the pursuer fair notice, the grounds of fact and law on which the defender intends to resist the claim together with a brief statement of the facts upon which the defender relies in his defence.

(2) Where a defender lodges a form of response in accordance with paragraph (1), the provisions of rules 8.2 to 8.17 shall apply with the necessary modifications.

Inspection and recovery of documents

34.4.—(1) This rule applies where the summons includes a specification of documents in accordance with rule 34.2(5)(b).

(2) Subject to paragraph (5), where a response in Form 10b is lodged stating a defence to the action, the sheriff clerk shall make an order granting commission and diligence for the production and recovery of the documents mentioned in the specification.

(3) An order under paragraph (2) shall be treated for all purposes as an interlocutor of the court granting commission and diligence signed by the sheriff.

(4) Nothing in this rule shall affect the right of a party to apply under rule 18.1 for a commission and diligence for recovery of documents or under rule 18.3 for an order under section 1 of the Administration of Justice (Scotland) Act 1972 in respect of any document or other property not mentioned in the specification included in the summons.

(5) Where the defender, or where appropriate, the Advocate General for Scotland or the Lord Advocate, objects to the specification of documents, he shall make such objection by incidental application.

(6) An incidental application under paragraph (5) shall be–

(a) lodged on or before the return day; and

(b) determined at the hearing held in terms of rule 8.2(1).

Statement of valuation of claim

34.5.—(1) Each party to an action who is not required elsewhere in these rules to do so shall make a statement of valuation of claim (which shall include a list of supporting documents) in Form 10c in accordance with the following paragraphs of this rule.

(2) A statement of valuation of claim made in terms of paragraph (1) shall be lodged with the sheriff clerk.

(3) Each party on lodging a statement of valuation of claim in terms of paragraph (2), shall give written intimation to every other party of the statement and the list of documents contained in the statement of valuation of claim.

(4) A party who fails to lodge a statement of valuation of claim not later than 28 days before the date fixed for proof shall be liable to any other party for the expenses of proving the quantification of the claim, unless the sheriff, on special cause shown, otherwise directs.

Intimation to connected persons

34.6.—(1) This rule applies to an action of damages in which, following the death of any person from personal injuries, damages are claimed–

(a) by the executor of the deceased, in respect of the injuries from which the deceased died; or

(b) by any relative of the deceased, in respect of the death of the deceased.

(2) In this rule–

"connected person" means a person, not being a party to the action, who has title to sue the defender in respect of the personal injuries from which the deceased died or in respect of his death; and

"relative" has the meaning assigned to it in Schedule 1 to the Damages (Scotland) Act 1976(**38**).

(3) The pursuer shall state in the summons, as the case may be–

(a) that there are no connected persons;

(b) that there are connected persons, being the persons specified in the application for warrant for intimation; or

(c) that there are connected persons in respect of whom intimation should be dispensed with on the ground that–

(i) the names or whereabouts of such persons are not known to, and cannot reasonably be ascertained by, the pursuer; or

(ii) such persons are unlikely to be awarded more than £200 each.

(4) Where the pursuer makes statements under rule 34.6(3)(b) he shall include an application for warrant in the summons for intimation to any such person.

(5) A notice of intimation in Form 10d shall be attached to the copy of the summons, and a copy of Form 10c shall accompany the summons, where intimation is given on a warrant under paragraph (4).

(6) Where the pursuer makes statements under rule 34.6(3)(c), he shall apply in the summons for an order to dispense with intimation.

(7) In determining an application under paragraph (6), the sheriff shall have regard to–

(a) the desirability of avoiding a multiplicity of actions; and

(b) the expense, inconvenience or difficulty likely to be involved in taking steps to ascertain the name or whereabouts of the connected person.

(8) Where the sheriff is not satisfied that intimation to a connected person should be dispensed with, he may–

(a) order intimation to a connected person whose name and whereabouts are known;

(b) order the pursuer to take such further steps as he may specify in the interlocutor to ascertain the name or whereabouts of any connected person; and

(c) order advertisement in such manner, place and at such times as he may specify in the interlocutor.

(9) Where the name or whereabouts of a person, in respect of whom the sheriff has dispensed with intimation on a ground specified in rule 34.6(3)(c), subsequently becomes known to the pursuer, the pursuer shall apply to the sheriff by incidental application for a warrant for intimation to such a person; and such intimation shall be made in accordance with rule 34.6(5).

(10) A connected person may apply by incidental application to be sisted as an additional pursuer to the action.

(11) Such an incidental application shall also seek leave of the sheriff to adopt the existing grounds of action, and to amend the claim.

(12) The period within which answers to an incidental application under paragraph (10) may be lodged shall be 14 days from the date of intimation of the incidental application.

(**38**) 1976 c. 13.

(13) There shall be lodged along with the incidental application a statement of valuation of claim (which shall include a list of supporting documents) in Form 10c.

(14) The statement of valuation of claim lodged in accordance with paragraph (13) shall be intimated to the other parties at the same time as the incidental application.

(15) Where a connected person to whom intimation is made–

(a) does not apply to be sisted as an additional pursuer to the action;

(b) subsequently raises a separate action against the same defender in respect of the same personal injuries or death; and

(c) would, apart from this rule, be awarded the expenses or part of the expenses of that action,

he shall not be awarded those expenses except on cause shown.

Application for further damages

34.7.—(1) An application for further damages by a pursuer in respect of whom an order under section 12(2)(b) of the Administration of Justice Act 1982 has been made shall be made by lodging a minute with the sheriff clerk in Form 10f, which minute shall include–

(a) a claim for further damages;

(b) a concise statement of the facts supporting that claim;

(c) an application for warrant to serve the minute on–

(i) every other party; and

(ii) where such other parties are insured or otherwise indemnified, their insurer or indemnifier, if known to the pursuer; and

(d) a request for the court to fix a hearing on the application.

(2) A notice of intimation in Form 10g shall be attached to every copy of the minute served on a warrant granted under paragraph (1)(c).

(3) At the hearing fixed under paragraph (1)(d) above, the sheriff may determine the application or order such further procedure as he thinks fit.

CHAPTER 35

Electronic transmission of documents

Extent of provision

35.1.—(1) Any document referred to in these rules which requires to be–

(a) lodged with the sheriff clerk;

(b) intimated to a party; or

(c) sent by the sheriff clerk,

may be in electronic or documentary form, and if in electronic form may be lodged, intimated or sent by e-mail or similar means.

(2) Paragraph (1) does not apply to any certificate of execution of service, citation or arrestment, or to a decree or extract decree of the court.

(3) Where any document is lodged by e-mail or similar means the sheriff may require any principal document to be lodged.

Time of lodgement

35.2. The time of lodgement, intimation or sending shall be the time when the document was sent or transmitted.

APPENDIX 1

Forms

Rule 1.1(4)

FORM 1Summons

Rule 4.1(1)

FORM 1

OFFICIAL USE ONLY
SUMMONS No.

Summary Cause Summons

Action for/of

(state type, e.g. payment of money)

Sheriff Court (name, address, e-mail and telephone no.)	**1**	
Name and address of person raising the action (**pursuer**)	**2**	
Name and address of person against whom action raised (**defender, arrestee, etc.**)	**3**	
Name(s) and address(s) of any interested party (eg. connected person)	**3a**	
Claim (form of decree or other order sought)	**4**	
Name, full address, telephone no, and e-mail address of pursuer's solicitor or representative (if any) acting in the case	**5**	
Fee Details (Enter these only if forms sent electronically to court)	**5a**	
	6	**RETURN DAY** 20 **CALLING DATE** 20 at am. The pursuer is authorised to serve a copy summons in form *1a/1b/1c, on the defender, and give intimation to any interested party, not less than * 21/42 days before the **RETURN DAY** shown in the box above. The summons is warrant for service, *arrestment on the dependence and for citation of witnesses to attend court on any future date at which evidence may be led.
*Sheriff Clerk to delete as appropriate		
Court Authentication		Sheriff clerk depute (name: Date: 20

NOTE: The pursuer should complete boxes 1 to 5a above and box 7 on page 2. The sheriff clerk will complete box 6.

PAGE 1

7. STATE DETAILS OF CLAIM HERE (all cases) and PARTICULARS OF ARRESTMENT (furthcoming actions only)
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)

The details of the claim are:

FOR OFFICIAL USE ONLY

Sheriff's notes as to:

1. Issues of fact and law in dispute
2. Facts agreed
3. Reasons for any final disposal at the hearing held on the calling date

FORM 1aDefender's copy summons - Claim for or including claim for payment of money where time to pay direction or time order may be applied for

Rule 4.3(a)

FORM 1a

OFFICIAL USE ONLY SUMMONS No.

Summary Cause Summons
Action for/of
(state type, e.g. payment of money)

DEFENDER'S COPY: Claim for or including payment of money (where time to pay direction or time order may be applied for)

Sheriff Court (name, address, e-mail and telephone no.)	**1**	
Name and address of person raising the action (**pursuer**)	**2**	
Name and address of person against whom action raised (**defender, arrestee, etc.**)	**3**	
Name(s) and address(s) of any interested party (e.g. connected person)	**3a**	
Claim (form of decree or other order sought)	**4**	
Name, full address, telephone no. and e-mail address of pursuer's solicitor or representative (if any) acting in the case	**5**	
	6	**RETURN DAY** 20 **CALLING DATE** 20 at am

NOTE: You will find details of claim on page 2.

PAGE 1

7. STATEMENT OF CLAIM
PARTICULARS OF ARRESTMENT (furthcoming actions only)
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)

The details of the claim are:

8. SERVICE ON DEFENDER

(Place) (Date)

To: (defender)

You are hereby served with a copy of the above summons.

Solicitor / sheriff officer
delete as appropriate

NOTE: The pursuer should complete boxes 1 to 6 on page 1, the statement of claim in box 7 on page 2 and section A on page 5 before service on the defender. The person serving the Summons will complete box 8.

PAGE 2

WHAT MUST I DO ABOUT THIS SUMMONS?

Decide whether you wish to dispute the claim, admit any liability for the claim and whether you owe any money or not, and how you wish to proceed. Then, look at the 4 options listed below. Find the one which covers your decision and follow the instructions given there. You will find the RETURN DAY and the CALLING DATE on page one of the summons.

Written guidance on summary cause procedure can be obtained from the sheriff clerk at any sheriff clerk's office. Advice can also be obtained by contacting any of the following:

Citizen's Advice Bureau, Consumer Advice Centre, Trading Standards or Consumer Protection Department or a solicitor. (Addresses can be found in the guidance booklets.)

OPTIONS

1. ADMIT LIABILITY FOR THE CLAIM and settle it with the pursuer now.

If you wish to avoid the possibility of a court order passing against you, you should settle the claim (including any question of expenses) with pursuer or his representative **in good time before the return day.** Please do not send any payment direct to the court. Any payment should be made to the pursuer or his representative.

2. ADMIT LIABILITY FOR THE CLAIM and make written application to pay by instalments or by deferred lump sum.

Complete Box 1 of section B on page 5 of this form and return pages 5 and 7 to the court to **arrive on or before the return day.** You should then contact the court to find out whether or not the pursuer has accepted your offer. If he has not accepted it, the case will then call in court on the calling date, when the court will decide how the amount claimed is to be paid.

NOTE: If you fail to return pages 5 and 7 as directed, or if, having returned them, you fail to attend or are not represented at the calling date if the case is to call, the court will almost certainly decide the claim in your absence.

3. ADMIT LIABILITY FOR THE CLAIM and attend at court to make application to pay by instalments or deferred lump sum.

Complete Box 2 on page 5. Return page 5 to the court so that it arrives **on or before the return day.**

You must attend personally, or be represented, at court on the calling date. Your representative may be a Solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

NOTE: If you fail to return page 5 as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court will almost certainly decide the claim in your absence.

4. DISPUTE THE CLAIM and attend at court to do any of the following:

- Challenge the jurisdiction of the court or the competency of the action
- Defend the action (whether as regards the sum claimed or otherwise)
- State a counterclaim

Complete Box 3 on page 5. Return page 5 to the court so that it arrives **on or before the return day. You must attend personally, or be represented, at court on the calling date.**

Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

NOTE: If you fail to return page 5 as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court will almost certainly decide the claim in your absence.

WRITTEN NOTE OF PROPOSED DEFENCE

You must send to the court by the return day a written note of any proposed defence, or intimate that you intend to dispute the sum claimed or wish to dispute the court's jurisdiction. You must also attend or be represented at court on the calling date.

PLEASE NOTE

If you do nothing about this summons, the court will almost certainly, where appropriate, grant decree against you and order you to pay the pursuer the sum claimed, including any interest and expenses found due.

YOU ARE ADVISED TO KEEP PAGES 1 AND 2, AS THEY MAY BE USEFUL AT A LATER STAGE OF THE CASE.

SECTION A
This section must be completed before service

	Summons No
	Return Day
	Calling Date
SHERIFF COURT (Including address)	
PURSUER'S FULL NAME AND ADDRESS	DEFENDER'S FULL NAME AND ADDRESS

SECTION B **DEFENDER'S RESPONSE TO THE SUMMONS**
**** Delete those boxes which do not apply**

****Box 1**

ADMIT LIABILITY FOR THE CLAIM and make written application to pay by instalments or by deferred lump sum.

I do not intend to defend the case but admit liability for the claim.

I wish to make a written application about payment.

I have completed the application form on page 6.

****Box 2**

ADMIT LIABILITY FOR THE CLAIM and attend at court to make application to pay by instalments or deferred lump sum.

I admit liability for the claim

I intend to appear or be represented at court on the calling date.

****Box 3**

DISPUTE THE CLAIM (or the amount due) and attend at court
* I intend to challenge the jurisdiction of the court.
* I intend to challenge the competency of the action.
* I intend to defend the action.
* I wish to dispute the amount due only.

* I apply for warrant to serve a third party notice (see page 8).

I intend to appear or be represented in court on the calling date.

---

^I attach a note of my proposed defence/counterclaim.

OR

^ I return form 10b (personal injury cases only).

^ delete as necessary

WRITTEN NOTE OF PROPOSED DEFENCE / COUNTERCLAIM

State which facts in the statement of claim are admitted:

State briefly any facts regarding the circumstances of the claim on which you intend to rely:

State details of counterclaim, if any:

PLEASE REMEMBER: You must send your response to the court to **arrive on or before the return day** if you have completed a response in Section B. If you have admitted the claim, please do not send any payment direct to the court. **Any payments you wish to make should be made to the pursuer or his solicitor.**

PAGE 6

APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION
UNDER THE DEBTORS (SCOTLAND) ACT 1987 OR A TIME ORDER
UNDER THE CONSUMER CREDIT ACT 1974

I WISH TO APPLY FOR A* TIME TO PAY DIRECTION/TIME ORDER
* delete whichever does not apply

I admit the claim and make application to pay as follows:

(1) by instalments of £ per *week / fortnight / month

OR

(2) In one payment within the court order *weeks / months from the date of

To help the court please provide details of your financial position in the boxes below
***Please also indicate whether payments/receipts are weekly, fortnightly or monthly**

My outgoings are:	*Weekly / fortnightly / monthly	**My income is**	*Weekly / fortnightly / monthly
Rent/Mortgage	£	Wages/Pensions	£
Council Tax	£	Social Security	£
Gas/Electricity e.c	£	Other	
Food	£		
Loans and Credit Agreements	£		
Other	£		

Number of Dependent Children – ☐ Number of Dependent Relatives ☐

Please list details of all capital held, Eg. Value of house; amount in savings account, shares or other investments:

Notes: TIME TO PAY DIRECTIONS AND TIME ORDERS
(1) Time to pay directions
The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a 'time to pay direction'. This is an order which allows you to pay any sum which the court orders you to pay either in instalments or by deferred lump sum. A 'deferred lump sum' means that you will be ordered by the court to pay the whole amount at one time within a period which the court will specify.

If the court makes a time to pay direction it may also recall or restrict any arrestment made on your property by the pursuer in connection with the action or debt (for example, your bank account may have been frozen).

PAGE 7

No court fee is payable when making an application for a time to pay direction.

If a time to pay direction is made, a copy of the court order (called an extract decree) will be sent to you by the pursuer telling you when payment should start or when it is you have to pay the lump sum.

If a time to pay direction is not made, and an order for immediate payment is made against you, an order to pay (called a charge) may be served on you if you do not pay.

(2) Time Orders
The Consumer Credit Act 1974 allows you to apply to the court for a 'time order' during a court action. A time order is similar to a time to pay direction, but can only be applied for in certain circumstances, e.g., in relation to certain types of credit agreement. Payment under a time order can only be made by instalments, so that you cannot apply to pay by deferred lump sum.

*APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT
I seek the recall or restriction of the arrestment of which the details are as follows:-

Date:
****Delete if inapplicable***

APPLICATION FOR SERVICE OF A THIRD PARTY NOTICE

NOTE:
You can apply to have another party added to the action if;

(A) You think that, as regards the matter which the action is about, that other party has a duty to:
1. Indemnify you; or
2. Make a contribution in respect of the matter; or
3. Relieve you from any responsibility as regards it

or

(B) You think that other party is:
1. Solely liable to the pursuer; or
2. Liable to the pursuer along with you; or
3. Has a liability to you as a result of the pursuer's claim against you.

You may apply for warrant to found jurisdiction or to arrest on the dependence of the action if you wish to do so.

FORM OF APPLICATION

(TO BE RETURNED TO THE COURT ALONG WITH YOUR RESPONSE)

I request the court to grant warrant for service of a third party notice on the following party:
Name :

Address :

The reason I wish a third party notice to be served on the party mentioned above is as follows:
(Give details below of the reasons why you wish the party to be made a defender in the action.)

*** I apply for warrant to arrest on the dependence/to found jurisdiction**

* delete as appropriate

Date :

Rule 4.3(a)

FORM 1b

OFFICIAL USE ONLY SUMMONS No.

Summary Cause Summons
Action for/of
(state type, e.g. payment of money)

DEFENDER'S COPY: Claim for or including payment of money (where time to pay direction or time order may not be applied for)

Sheriff Court (name, address, e-mail and telephone no.)	**1**	
Name and address of person raising the action (**pursuer**)	**2**	
Name and address of person against whom action raised (**defender, arrestee, etc.**)	**3**	
Name(s) and address(s) of any interested party (e.g. connected person)	**3a**	
Claim (Form of decree or other order sought)	**4**	
Name, full address, telephone no., and e-mail address of pursuer's solicitor or representative (if any)	**5**	

6	**RETURN DAY**	**20**		
	CALLING DATE	**20**	**at**	**am.**

NOTE: You will find details of claim on page 2.

PAGE 1

7. STATEMENT OF CLAIM
PARTICULARS OF ARRESTMENT (furthcoming actions only.)
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)

The details of the claim are:

8. SERVICE ON DEFENDER

(Place) (Date)

To: (defender)

You are hereby served with a copy of the above summons.

Solicitor / sheriff officer
delete as appropriate

NOTE: The pursuer should complete boxes 1 to 6 on page 1, the statement of claim in box 7 on page 2 and section A on page 5 before service on the defender. The person serving the Summons will complete box 8.

PAGE 2

WHAT MUST I DO ABOUT THIS SUMMONS?

Decide whether you wish to dispute the claim, or admit any liability for the claim and whether you owe any money or not, and how you wish to proceed. Thereafter, look at the 2 options listed below. Find the one which covers your decision and follow the instructions given there. You will find the RETURN DAY and the CALLING DATE on page one of the summons.

Written guidance on summary cause procedure can be obtained from the sheriff clerk at any sheriff clerk's office. Further advice can also be obtained by contacting any of the following:

Citizen's Advice Bureau, Consumer Advice Centre, Trading Standards or Consumer Protection Department or a Solicitor. (Addresses can be found in the guidance booklets)

OPTIONS

1. ADMIT LIABILITY FOR THE CLAIM and settle it with the pursuer now.

If you wish to avoid the possibility of a court order passing against you, you should settle the claim (including any question of expenses) with pursuer or his representative **in good time before the return day**. Please do not send any payment direct to the court. Any payment should be made to the pursuer or his representative.

2. DISPUTE THE CLAIM and attend at court to do any of the following:

- Challenge the jurisdiction of the court or the competency of the action
- Defend the action
- Dispute the sum claimed
- State a counterclaim

Complete Section B on page 4. Return your response to the court so that it arrives **on or before the return day. You must attend personally, or be represented, at court on the calling date.**

Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

NOTE: If you fail to return your response as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court will almost certainly decide the claim in your absence.

WRITTEN NOTE OF PROPOSED DEFENCE

You must send to the court by the return day a written note of any proposed defence, or intimate that you intend to dispute the sum claimed or wish to challenge the court's jurisdiction. You must also attend or be represented at court on the calling date.

PLEASE NOTE:

If you do nothing about this summons, the court will almost certainly, where appropriate, grant decree against you and order you to pay the pursuer the sum claimed, including any interest and expenses found due.

YOU ARE ADVISED TO KEEP PAGES 1 AND 2, AS THEY MAY BE USEFUL AT A LATER STAGE OF THE CASE.

SECTION A
This section must be completed before service

Summons No

Return Day

Calling Date

SHERIFF COURT (Including address)

PURSUER'S FULL NAME AND ADDRESS

DEFENDER'S FULL NAME AND ADDRESS

SECTION B **DEFENDER'S RESPONSE TO THE SUMMONS**

DISPUTE THE CLAIM (or the amount due) and attend at court
* I intend to challenge the jurisdiction of the court.
* I intend to challenge the competency of the action.
* I intend to defend the claim.
* I wish to dispute the amount due only.
* I apply for warrant to serve a third party notice (see page 6).

I intend to appear or be represented in court on the calling date.

*I attach a note of my proposed defence/counterclaim (see page 5).

OR

* I return Form 10b (personal injury cases only).

** delete as necessary*

WRITTEN NOTE OF PROPOSED DEFENCE / COUNTERCLAIM

State which facts in the statement of claim are admitted:

State briefly any facts regarding the circumstances of the claim on which you intend to rely:

State details of counterclaim, if any:

PLEASE REMEMBER: You must send your response to the court, to **arrive on or before the return day** if you have completed a response in Section B. If you have admitted the claim, please do not send any payment direct to the court. **Any payments you wish to make should be made to the pursuer or his solicitor.**

APPLICATION FOR SERVICE OF A THIRD PARTY NOTICE

NOTE:
You can apply to have another party added to the action if:

(A) You think that, as regards the matter which the action is about, that other party has a duty to:
1. Indemnify you; or
2. Make a contribution in respect of the matter; or
3. Relieve you from any responsibility as regards it.

or

(B) You think that other party is:
4. Solely liable to the pursuer; or
5. Liable to the pursuer along with you, or
6. Has a liability to you as a result of the pursuer's claim against you.

You may apply for warrant to found jurisdiction or to arrest on the dependence of the action if you wish to do so.

FORM OF APPLICATION

(TO BE RETURNED TO THE COURT ALONG WITH YOUR RESPONSE)

I request the court to grant warrant for service of a third party notice on the following party:
Name :

Address :

The reason I wish a third party notice to be served on the party mentioned above is as follows:
(Give details below of the reasons why you wish the party to be made a defender in the action.)

*** I apply for warrant to arrest on the dependence/to found jurisdiction**

* delete as appropriate

Rule 4.3(b)

FORM 1c

OFFICIAL USE ONLY SUMMONS No.

Summary Cause Summons Action for/of

(state type, e.g. delivery)

DEFENDER'S COPY: Non Monetary Claim

Sheriff Court (name, address, e-mail and telephone no.)	1	
Name and address of person raising the action (**pursuer**)	2	
Name and address of Person against whom Action raised (**defender**)	3	
Claim (Form of decree or other order sought)	4	
Name, full address, telephone no, and e-mail address of pursuer's solicitor or representative (if any)	5	
	6	**RETURN DAY** **20**
		CALLING DATE **20** **at** **a.m.**

NOTE: You will find details of claim on page 2.

PAGE 1

7. STATE DETAILS OF CLAIM HERE OR ATTACH A STATEMENT OF CLAIM
(to be completed by the pursuer. If space is insufficient, a separate sheet may be attached)

The details of the claim are:

8. SERVICE ON DEFENDER

(Place) (Date)

To: (defender)

You are hereby served with a copy of the above summons.

* Solicitor / sheriff officer
(delete as appropriate)

NOTE: The pursuer should complete boxes 1 to 6 on page 1, the statement of claim in box 7 on page 2 and section A on page 5 before service on the defender. The person serving the Summons will complete box 8.

PAGE 2

WHAT MUST I DO ABOUT THIS SUMMONS?

Decide whether you wish to dispute the action and how you wish to proceed. Thereafter, look at the 2 options listed below. Find the one which covers your decision and follow the instructions given there. You will find the RETURN DAY and the CALLING DATE on page one of the summons.

Written guidance on summary cause procedure can be obtained from the sheriff clerk at any sheriff clerk's office. Further advice can also be obtained by contacting any of the following:

Citizen's Advice Bureau, Consumer Advice Centre, Trading Standards or Consumer Protection Department or a Solicitor. (Addresses can be found in the guidance booklets)

OPTIONS

1. ADMIT LIABILITY FOR THE CLAIM and settle it with the pursuer now.

If you wish to avoid the possibility of a court order passing against you, you should settle the claim (including any liability for expenses) with the pursuer or his representative **in good time before the return day.**

2. DISPUTE THE CLAIM and attend at court to do any of the following:

- Challenge the jurisdiction of the court or the competency of the action
- Defend the action
- State a counterclaim

Complete Section B on page 4. Return page 4 to the court so that it arrives **on or before the return day. You must attend personally, or be represented, at court on the calling date.**

Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

NOTE: If you fail to return page 4 as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court will almost certainly decide the claim in your absence.

WRITTEN NOTE OF PROPOSED DEFENCE

You must send to the court by the return day a written note of any proposed defence, or intimate that you wish to challenge the jurisdiction of the court. You must also attend or be represented at court on the calling date.

PLEASE NOTE

If you do nothing about this summons, the court will almost certainly, where appropriate, grant decree against you, including any interest and expenses found due.

YOU ARE ADVISED TO KEEP PAGES 1 AND 2, AS THEY MAY BE USEFUL AT A LATER STAGE OF THE CASE.

SECTION A
This section must
Be completed
Before service

Summons No

Return Day

Calling Date

SHERIFF COURT (Including address)

PURSUER'S FULL NAME AND ADDRESS

DEFENDER'S FULL NAME AND ADDRESS

SECTION B **DEFENDER'S RESPONSE TO THE SUMMONS**

DISPUTE THE CLAIM and attend at court
***** I intend to challenge the jurisdiction of the court.
***** I intend to challenge the competency of the court.
***** I wish to defend the action.
***** I apply for warrant to serve a third party notice (see page 6).

I intend to appear or be represented in court on the calling date.
*I attach a note of my proposed defence/counterclaim (see page 5).

** delete as necessary*

PAGE 4

WRITTEN NOTE OF PROPOSED DEFENCE / COUNTERCLAIM

State which facts in the statement of claim are admitted:

State briefly any facts regarding the circumstances of the claim on which you intend to rely:

State details of counterclaim, if any:

PLEASE REMEMBER: You must send your response to the court to **arrive on or before the return day** if you have completed a response in Section B.

PAGE 5

APPLICATION FOR SERVICE OF A THIRD PARTY NOTICE

NOTE:
You can apply to have another party added to the action if:

(A) You think that, as regards the matter which the action is about, that other party has a duty to:
1. Indemnify you; or
2. Make a contribution in respect of the matter; or
3. Relieve you from any responsibility as regards it.

or

(B) You think that other party is:
4. Solely liable to the pursuer; or
5. Liable to the pursuer along with you; or
6. Has a liability to you as a result of the pursuer's claim against you.

You may apply for warrant to found jurisdiction or to arrest on the dependence of the action if you wish to do so.

FORM OF APPLICATION

(TO BE RETURNED TO THE COURT ALONG WITH YOUR RESPONSE)

I request the court to grant warrant for service of a third party notice on the following party:
Name :

Address :

The reason I wish a third party notice to be served on the party mentioned above is as follows:
(Give details below of the reasons why you wish the party to be made a defender in the action.)

*** I apply for warrant to arrest on the dependence/to found jurisdiction**

delete as appropriate

Rule 4.3(c)

FORM 1d

OFFICIAL USE ONLY SUMMONS No.

Summary Cause Summons

Action of Multiplepoinding

DEFENDER'S COPY

Sheriff Court (name, address, e-mail and telephone no.)	1	
Name and address of person raising the action (**pursuer**)	2	
Name and address of persons against whom action raised (**defenders**)	3	
Claim (Form of decree or other order sought – see Form 5)	4	
Name, full address, telephone no., and e-mail address of pursuer's solicitor (if any)	5	
	6	**RETURN DAY** **20** **CALLING DATE** **20** **at** **am.**

NOTE: You will find details of claim on page 2.

PAGE 1

7. STATE DETAILS OF CLAIM HERE OR ATTACH A STATEMENT OF CLAIM
(to be completed by the pursuer. If space is insufficient, a separate sheet may be attached)

The details of the claim are:

8. SERVICE ON DEFENDER

(Place) (Date)

To: (Defender)

You are hereby served with the above summons. The pursuer has been authorised by the court to serve it on you.

Solicitor / sheriff officer
(delete as appropriate)

NOTE: The Pursuer should complete boxes 1 to 6 on page 1, the statement of claim in box 7 on page 2 and section A on page 5 before service on the defender. The person serving the Summons will complete box 8.

PAGE 2

WHAT MUST I DO ABOUT THIS SUMMONS?

Decide whether you wish to dispute the action and how you wish to proceed. Thereafter, look at the 2 options listed below. Find the one which covers your decision and follow the instructions given there. You will find the RETURN DAY and the CALLING DATE on page one of the summons.

Written guidance on summary cause procedure can be obtained from the sheriff clerk at any sheriff clerk's office. Further advice can also be obtained by contacting any of the following:

Citizen's Advice Bureau, Consumer Advice Centre, Trading Standards or Consumer Protection Department or a solicitor. (Addresses can be found in the guidance booklets)

OPTIONS

1. ADMIT LIABILITY FOR THE CLAIM and settle it with the pursuer now.

If you wish to avoid the possibility of a court order passing against you, you should attempt to settle the claim (including any liability for expenses) with the pursuer or his Solicitor **in good time before the return day.**

2. DISPUTE THE CLAIM and attend at court to do any of the following:

- Challenge the jurisdiction of the court or the competency of the action.
- Object to the extent of the fund or subject detailed in the statement of claim on page 2.
- Make a claim on the fund or subject.

Complete Section B on page 4. Return page 4 to the court so that it arrives **on or before the return day. You must attend personally, or be represented, at court on the calling date.**

Your representative may be a Solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

NOTE: If you fail to return page 4 as directed, or if, having returned it, you fail to attend or are not represented at the calling date, the court will almost certainly deal with the action in your absence.

NOTES:

1. If you do nothing about this summons, the court will almost certainly deal with the action in your absence.

2. **IF YOU ARE THE HOLDER OF THE FUND,** you must complete the enclosed form 5a and send it to the sheriff clerk before the return day. You must also, before the return day, send a copy of form 5a to the pursuer, the other defenders in the action and to all the persons you have listed in form 5a as having an interest in the fund or subject.

YOU ARE ADVISED TO KEEP PAGES 1 AND 2, AS THEY MAY BE USEFUL AT A LATER STAGE OF THE CASE.

SECTION A
This section must be completed Before service

Summons No

Return Day

Calling Date

SHERIFF COURT (Including address)

PURSUER'S FULL NAME AND ADDRESS

DEFENDER'S FULL NAME AND ADDRESS

SECTION B **DEFENDER'S RESPONSE TO THE SUMMONS**

DISPUTE THE CLAIM and attend at court

I intend to:

* (1) Challenge the jurisdiction of the court or the competency of the action.
* (2) Object to the extent of the fund or subject detailed in the statement of claim.
* (3) Make a claim on the fund or subject.

I intend to appear or be represented in court on the calling date.

* *delete as necessary*

Please give below brief details of your reason(s) for disputing the claim in accordance with your response to 1, 2 or 3 above:

PAGE 4

FORM 2Form of claim in a summons for payment of money

Rule 4.1(2)

The pursuer claims from the defender(s) the sum of £ with interest on that sum at the rate of % annually from the date of service, together with the expenses of bringing the action.

FORM 3Form of claim in a summons for recovery of possession of heritable property

Rule 4.1(2)

The pursuer claims that, in the circumstances described in the statement contained on page 2 of this copy summons, he is entitled to recover possession of the property at (*address*), and that you refuse or delay to remove from said property.

The pursuer therefore asks the court to grant a decree against you, removing you, and your family, sub-tenants and dependants (if any) with your goods and possessions from the said property.

The pursuer also claims from you the expenses of bringing the action.

FORM 3aForm of notice of removal under sections 34, 35 or 36 of the Sheriff Courts (Scotland) Act 1907

Rule 30.6(1)

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

You are hereby required to remove from *(describe subjects)* at the term of *(or, if different terms, state them and the subjects to which they apply)*, in terms of *(describe lease, terms of letter of removal or otherwise)*.

(date) *(signature, designation and address)*

FORM 3bForm of notice of removal under section 37 of the Sheriff Courts (Scotland) Act 1907

Rule 30.6(2)

NOTICE OF REMOVAL UNDER SECTION 37 OF THE SHERIFF COURTS (SCOTLAND) ACT 1907

To: *(name, designation and address)*

You are hereby required to remove from *(describe subjects)* at the term of *(Whitsunday or Martinmas)*, *(date)*.

(date) *(signature, designation and address)*

FORM 3cForm of letter of removal

Rule 30.6(3)

To: *(name, designation and address)*

(place and date). I am to remove from (describe subjects by usual name or give a short description sufficient for identification) at the term of *(insert term and date)*.

(date) *(signature, designation and address)*

FORM 4Form of claim in a summons of sequestration for rent

Rule 4.1(2)

The pursuer claims that, in the circumstances described in the statement contained on page 2 of this copy summons, you owe, *(and/or will owe)* him the sum of £ as rent for the premises at *(address)*, and that you refuse or delay to make payment of said sums.

The pursuer therefore asks the court to grant warrant to list, value, sequestrate and, if necessary, secure the goods and effects within the said premises.

The pursuer also asks the court to grant a decree against you ordering you to pay the said sum to him.

The pursuer also claims from you the expenses of bringing the action.

The court hereby authorises the pursuer to sequestrate, inventory and appraise your effects.

FORM 4aNotice informing defender of right to apply for certain orders under the Debtors (Scotland) Act 1987

Rule 31.2(2)

Where articles are sequestrated in an action for sequestration for rent, you have the right to apply to the sheriff for the following orders under the Debtors (Scotland) Act 1987:

(1) You may apply to the sheriff within 14 days from the date upon which the articles were sequestrated for an order releasing any of said articles on either of the following grounds:

(a) that it is exempt from the process of sequestration for rent. Articles which are exempt are listed in section 16 of the Debtors (Scotland) 1987;

or

(b) its inclusion in the process of sequestration for rent (or its subsequent sale) is unduly harsh.

(2) Where a mobile home, such as a caravan, is your only, or principal, residence and it has been sequestrated for rent, you may apply to the sheriff, before a warrant to sell is granted, for an order that, for a specified period, no further steps shall be taken in the sequestration.

Any enquiry relating to the above rights should be made to a solicitor, Citizens Advice Bureau or other local advice centre, or to any sheriff clerk's office.

FORM 4bCertificate of Sequestration

Rule 31.2(2)

PART 1 – Inventory and appraisal

1 ITEM NO.	2 DESCRIPTION OF EFFECTS	3 APPRAISED AT £ p

PART 2 – Certificate of execution

By virtue of the authority contained in the summary cause summons no.(*insert number*) lodged at (*insert place*) Sheriff Court in the case of (*insert names of parties*) in which warrant for citation was granted on (*insert date*),

On the day of 20 , I, (*insert name, designation and address*), accompanied by (*insert name, designation and address of witness/person appraising the effects*) attended at the premises at (*insert address of premises*), mentioned in the summons,

I there sequestrated the effects listed in column 1 above, all of which were found within or at those premises, and had them appraised, on oath, at the values shown in column 3 above.

I *gave a copy of this form to/left a copy of this form for the tenant on (*insert date*).

* *delete as appropriate*

(*Signature of sheriff officer*) (*Signature of witness/appraiser*)

Date: Date:

NOTE: This form should be returned to the sheriff clerk within seven days of the date of the sequestration.

FORM 5Form of claim in a summons of multiplepoinding

Rule 4.1(2)

The pursuer claims that, in the circumstances described in the statement contained on page 2 of this copy summons, he (*state party*) is the holder of a fund (*or subject*) valued at £ on which competing claims are being made by the defenders.

The pursuer therefore asks the court to grant a decree finding the holder of the said fund or subject liable to make payment of, or to deliver, same to the party found by the court to be entitled thereto.

The pursuer also asks that the expenses of bringing the action be deducted from the value of the said fund or subject before payment is made.

FORM 5aForm of statement by holder of fund or subject when not the pursuer

Rule 27.5(2)(a)

(1) I, (*name, address*), hereby state that the fund or subject in the summary cause summons raised at the instance of AB (*design*) against CD, (*EF and GH*) (*design*) is as follows (*description and details of fund or subject*).

(2) I have the following claim or lien on said fund or subject (give details, including a reference to any document founded upon in support of the claim).

(3) I am aware that the persons listed below have an interest in the said fund/subject:

(*list names and addresses*)

(4) I certify that I have today intimated a copy of this statement to each of the persons contained in the list at (3) above.

(*date*)

FORM 5bForm of claim on the fund or subject in action of multiplepoinding

Rule 27.9(2)(a)

I, EF, claim to be preferred on the fund in the multiplepoinding raised in the name of AB against CD, EF etc. for the sum of £ by reason of (*state ground of claim, including a reference to any document founded upon in support thereof*) with interest thereon from (*date*).

I also claim any appropriate court expenses which I may incur by appearing in this action.

(*signature*)

FORM 6Form of claim in a summons of furthcoming

Rule 4.1(2)

The pursuer claims that, in the circumstances described in the statement contained on page 2 of this copy summons, the said (*name of common debtor*) is due to him the sum of £ .

He further claims that he has lawfully arrested in the hands of the said (*name of arrestee*) the goods or money valued at £ and described in the said statement of claim, which ought to be made furthcoming to him.

He therefore asks the court to order that you make furthcoming and deliver to him the said arrested goods or money or so much thereof as will satisfy (*or part satisfy*) the said sum of £ owing to him.

The pursuer also claims from you the expenses of bringing this action. If the value of the arrested funds are insufficient to meet the sum owing to the pursuer plus the expenses of the action, the pursuer claims those expenses from the said (*name of common debtor*).

FORM 7Form of claim in a summons for delivery

Rule 4.1(2)

The pursuer claims that, in the circumstances described in the statement contained on page 2 of this copy summons, he has right to the possession of the article(s) described therein.

He therefore asks the court to grant a decree ordering you to deliver the said articles to the pursuer.

Alternatively, if you do not deliver said articles, the pursuer asks the court to grant a decree ordering you to pay to him the sum of £ with interest on that sum at the rate of % annually from (*date*) until payment.

The pursuer also claims from you the expenses of bringing the action.

FORM 8Form of claim in a summons for implement of an obligation

Rule 4.1(2)

The pursuer claims that, in the circumstances described in the statement contained on page 2 of this copy summons, you are obliged to .

He therefore asks the court to grant a decree ordering you to implement the said obligation.

Alternatively, if you do not fulfil the obligation, the pursuer asks the court to grant a decree ordering you to pay to him the sum of £ with interest on that sum at the rate of % annually from (*date*) until payment.

The pursuer also claims from you the expenses of bringing the action.

FORM 9Form of claim in a summons for count, reckoning and payment

Rule 4.1(2)

The pursuer claims that, in the circumstances described in the statement contained on page 2 of this copy summons, you have intromitted with (*describe briefly the fund or estate*), in which he has an interest.

He therefore asks the court to grant a decree ordering you to produce a full account of your intromissions therewith, and for payment to him of the sum of £ , or such other sum as appears to the court to be the true balance due by you, with interest thereon at the rate of % annually from (*date*) until payment.

Alternatively, if you do not produce such an account, the pursuer asks the court to grant a decree ordering you to pay to him the said sum of £ with interest thereon at the rate of % annually from (*date*) until payment.

The pursuer also claims from you the expenses of bringing the action.

FORM 10Form of statement of claim in a summons for damages for personal injury

Rule 34.2(1)

1. The pursuer is (*state designation, address, occupation, date of birth and National Insurance number of the pursuer*). (*In an action arising out of the death of a relative state designation of the deceased and relation to the pursuer.*)

2. The defender is (*state designation, address and occupation of the defender*).

3. The court has jurisdiction to hear this claim against the defender because (*state briefly ground of jurisdiction*).

4. (*State briefly the facts necessary to establish the claim*).

5. (*State briefly the personal injuries suffered and give the names and addresses of medical practitioners and hospitals and other institutions in which the person injured received treatment: and specify every medical practitioner from whom, and hospital and other institution in which the pursuer or the deceased received treatment in respect of injury or disease to which the action relates*).

6. (*State whether claim based on fault at common law or breach of statutory duty, or other basis of liability: if breach of statute, state provision of enactment*).

* It is not necessary to include in the statement of claim the amount(s) claimed. This should be done by completing a valuation of claim in Form 10c.

FORM 10aForm of claim for provisional damages

Rule 34.2(3)

For payment to the pursuer by the defender of the sum *(amount in words and figures)* as provisional damages.

(Statements to include risk that pursuer will as result of cause of action develop serious disease or deterioration of condition in future; and that defender public authority or corporation or insured or indemnified in respect of claim).

FORM 10bForm of response

Rules 34.2(7) and 34.3(1)

SHERIFF COURT OF

(Action for damages: personal injuries)

[AB](*designation and address*), pursuer

against

[CD](*designation and address*), defender

RESPONSE TO STATEMENT OF CLAIM

Question	*Response*
1. Is it intended to dispute the description and designation of the pursuer? If so, why?	
2. Is the description and designation of the defender disputed? If so, why?	
3. Is there any dispute that the court has jurisdiction to hear the claim. If so, why?	
4. (a) State which facts in paragraph 4 of the statement of claim are admitted.	
(b) State any facts regarding the circumstances of the claim upon which the defender intends to rely.	
5. (a) State whether the nature and extent of the pursuer's injuries is disputed and whether medical reports can be agreed.	
(b) If the defender has a medical report upon which he intends to rely to contradict the pursuer's report in any way, state the details.	
(c) State whether the claims for other losses are disputed in whole or in part.	
(d) State any other facts in relation to the quantification claim upon which the defender intends to rely.	
6. (a) Does the defender accept that the common <u>law duty</u> or duties in the statement of claim were incumbent upon the defender in the circumstances? If not, state why.	
(b) Does the defender accept that the <u>statutory duty or duties alleged</u> in the statement of claim were incumbent upon them in the circumstances? If not, state why.	
(c) State any other provisions or propositions upon which the defender proposes to rely in relation to the question of his liability for the accident including, if appropriate, details of any allegation of contributory negligence.	

	Question	*Response*
(d)	Does the defender allege that the accident was caused by any other wrongdoer? If so, give details.	
(e)	Does the defender allege that he is entitled to be indemnified or relieved from any liability he might have to the pursuer? If so, give details.	

FORM 10cForm of statement of valuation of claim

Rules 34.2(2)(b), 34.5(1) and 34.6(13)

SHERIFF COURT OF

(Action for damages: personal injuries)

[AB] (*designation and address*), pursuer

against

[CD] (*designation and address*), defender

Head of Claim	*Components*	*Valuation*
Solatium:	Past	£x
	Future	£x
Interest on past solatium	Percentage applied to past solatium. State percentage rate.	£x
Past wage loss	Date from which wage loss claimed (.....)	£x
	Date to which wage loss claimed (.....)	
	Rate of net wage loss (per week, per month or per annum)	
Interest on past wage loss	Percentage applied to past wage loss (State percentage rate)	£x
Past services		
Specify nature, duration, and components of calculation	Total amount claimed (.....)	£x
	Interest	
Future losses including wages, disadvantage on the labour market, services or loss of capacity to provide services. Specify which and provide details.		
Other financial losses	Specify	£x
	TOTAL	£x

DEFENDER ONLY.

The defender should adapt the form as appropriate.

Where the defender is unable to state a valuation of any part of the claim because of the absence of information properly and reasonably sought in writing from the pursuer, please explain and produce with this form a copy of the relative request.

FORM 10dForm of intimation to connected persons

Rule 34.6(5)

Court ref. no.

To: *(insert name and address as in warrant)*

You are hereby given notice that an action has been raised against *(name)*, your *(insert relationship, e.g., father, brother or other relative as the case may be)*. A copy of the summons is enclosed.

It is believed that you may have a title or interest to sue the said *(name of defender)* in this action, which is based upon *(the injuries from which the late (insert name and designation) died)* (*or the death of the late (name and designation)*). You may therefore be entitled to enter this action as an additional pursuer.

If you wish to appear as a party in the action, or are uncertain about what action to take, you should contact a solicitor. You may, depending on your financial circumstances, be entitled to legal aid, and you can get information about legal aid from a solicitor.

You may also obtain advice from any Citizen's Advice Bureau, other advice agency or any sheriff clerk's office.

FORM 10eSpecification of documents

Rule 34.2(5)(b)

SPECIFICATION OF DOCUMENTS

1. All books, medical records reports, charts, X-rays, notes and other documents of [*specify name of each medical practitioners named in summons in accordance with rule 34.2(1)(c)*], and relating to the pursuer [*or as the case may be the deceased*], in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature, extent and cause of the pursuer's [*or, as the case may be, the deceased's*] injuries when he attended his doctor on or after (*specify date*) and the treatment received by him since that date.

2. All books, medical records reports, charts, X-rays, notes and other documents of (*specify name of each institution named in summons in accordance with rule 34.2(1)(c)*), and relating to the pursuer [*or, as the case may be, the deceased*], in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature, extent and cause of all injuries from which the pursuer [*or, as the case may be, the deceased*] was suffering when he was admitted to that institution on or about (*specify date*), the treatment received by him since that date and his certificate of discharge, if any.

3. All wage books, cash books, wage sheets, computer records and other earnings information held by or on behalf of the defenders, for the period (*specify dates*) in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show (a) the pursuer's [*or, as the case may be, the deceased's*] earnings, both gross and net, over the said period and (b) the earnings of other employees in the same or similar employment over the said period.

4. All accident reports, memoranda or other written communications made to the defenders or anyone on their behalf by an employee of the defenders at or about the time at which the pursuer [*or, as the case may be, the deceased*] sustained the injuries in respect of which the summons in this cause was issued and relevant to the matters contained in the statement of claim.

5. Failing principals, drafts, copies or duplicates of the above or any of them.

FORM 10fForm of minute – application for further damages

Rule 34.7(1)

Court ref. no.:

Sheriff Court at (*insert place of court*)

APPLICATION FOR FURTHER DAMAGES

in the cause

(AB) (*insert designation and address*), pursuer

against

(CD) (*insert designation and address*), defender

The pursuer claims payment from the defender of the sum (*amount in words and figures*) as further damages.

(*Insert concise statement of facts supporting claim for further damages*).

The pursuer requests the court to fix a hearing on this minute and applies for warrant to serve the minute on—

(*Here state names and addresses of other parties to the action; and, where such other parties are insured or otherwise indemnified, their insurers or indemnifiers, if known to the pursuer*).

FORM 10gForm of notice of application for further damages

Rule 34.7(3)

Date:

To

TAKE NOTICE

(*Pursuer's name and address*), pursuer, raised an action against (*defender's name and address*), defender, in the sheriff court at (*insert place of court*).

In the action, the sheriff on (*date*) made an award of provisional damages in favour of the pursuer against (*you* ***or*** *name of party*). [The sheriff specified that the pursuer may apply for an award of further damages at any time before (*date*)]. The pursuer has applied by minute for an award of further damages against you [*or name of party*]. A copy of the minute is attached.

A hearing on the minute has been fixed for (*date and time*) at (*place of sheriff court*). If you wish to be heard on the minute, you should attend or be represented at court on that date.

FORM 11Form of service

Rule 5.3(1)

XY, you are hereby served with a copy of the above (or attached) summons.

(*signature of solicitor or sheriff officer*)

FORM 12Form of certificate of execution of service

Rule 5.3(2)

Case name:

Court ref: no:

(*Place and date*)

I, , hereby certify that on the day of , 20 , I duly cited XY to answer the foregoing summons. This I did by (*set forth the mode of service*).

(*Signature of solicitor or sheriff officer*)

FORM 13Service on person whose address is unknownForm of advertisement

Rule 5.5(1)(a)

A summary cause action has been raised in the sheriff court at by AB, pursuer against CD, defender, whose last known address was .

If the said CD wishes to defend the action he should immediately contact the sheriff clerk's office at the above court.

Address of court:
Telephone no:
Fax no:
E-mail address:

FORM 14Service on person whose address is unknownFORM of notice to be displayed on the walls of court

Rule 5.5(1)(b)

A summary cause action has been raised in this court by AB, pursuer against CD, defender, whose last known address was .

If the said CD wishes to defend the action he should immediately contact the sheriff clerk's office.

(*Date*) Displayed on the walls of court of this date.

Sheriff clerk depute

FORM 15Service by post – form of notice

Rule 5.6(2)

This letter contains a citation to or intimation from the sheriff court at .

If delivery cannot be made the letter must be returned immediately to the sheriff clerk at (*insert full address*)

.

FORM 16Recall or restriction of arrestmentCertificate authorising the release of arrested funds or property

Rule 6.3(4)(a)

Sheriff court, (*place*)

Court ref. no.: AB (pursuer) against CD (defender)

I, (*name*), hereby certify that the sheriff on (*date*) authorised the release of the funds or property arrested on the *dependence of the action/counterclaim/third party notice to the following extent:

(*details of sheriff's order*)

(*Date*) Sheriff clerk depute

* *delete as appropriate*

Copy to:
Party instructing arrestment
Party possessing arrested funds/property

FORM 17Form of minute – no form of response lodged by defender

Rule 7.1(1)

Sheriff court, (*place*)

Calling date:

In respect that the defender(s) has/have failed to lodge a form of response to the summons, the pursuer respectfully craves the court to make the orders specified in the following case(s):

Court ref. No	Name(s) of defender(s)	Minute(s)

FORM 18Form of minute – pursuer not objecting to application for a time to pay direction or time order

Rule 7.2(2)

Sheriff court. (*place*)

Court ref. no.:

Name(s) of defender(s)

Calling date:

I do not object to the defender's application for

*a time to pay direction
*recall or restriction of an arrestment
*a time order

** delete as appropriate*

FORM 19Form of minute – pursuer opposing an application for a time to pay direction or time order

Rule 7.2(4)

Sheriff court. (*place*)

Court ref. no.:

Name(s) of defender(s)

Calling date:

I oppose the defender's application for

*a time to pay direction
*recall or restriction of an arrestment
*a time order

** delete as appropriate*

FORM 20Form of oath for witnesses

Rule 8.12

I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.

FORM 21Form of affirmation for witnesses

Rule 8.12

I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth.

FORM 22Form of third party notice

Rule 11.2(1)(b)(iii)

Court ref. no.

SHERIFF COURT, (*place*)

THIRD PARTY NOTICE

in the cause

(AB) (*insert designation and address*), pursuer

against

(CD) (*insert designation and address*), defender

To (EF)

You are given notice by (CD) of an order granted by the sheriff at (*insert place of court*) in which (AB) is the pursuer and (CD) is the defender. A copy of the order is enclosed herewith.

In the action, the pursuer claims from the defender (*insert a brief account of the circumstances of the claim*) as more fully appears in the copy summons enclosed.

The defender claims that, (**delete as appropriate*).

*if he is liable to the pursuer, you are liable to relieve him wholly/partially of his liability, as more fully appears in the copy grounds upon which the defender relies for this, which are also enclosed.

*he is not liable to the pursuer for the claim made against him. He maintains that any liability to the pursuer in respect of this claim rests solely on you, as more fully appears in the copy grounds upon which the defender relies for this, which are also enclosed.

*if he is liable to the pursuer in respect of this claim, he shares that liability with you, as more fully appears in the copy grounds upon which the defender relies for this, which are also enclosed.

*You are liable to him in respect of the claim, as more fully appears in the copy grounds upon which the defender relies for this, which are also enclosed.

If you wish to resist the claim(s) made by the defender as detailed above, you must–

(a) return the form of response enclosed to the sheriff clerk at (*address*) by (*date seven days before the date of hearing*); and

(b) attend or be represented at a hearing on (*date and time*).

(*Date*) (*Signature of person serving notice*)

FORM 23Form of response to third party notice

Rule 11.2(1)(b)(iii)

in the cause

(AB) (*insert designation and address*), pursuer

against

(CD) (*insert designation and address*), defender

I wish to answer the claim made against me by (CD), defender. (*here state briefly the grounds of opposition to the defender's claim.*)

(*date*)

FORM 24Order by the court and certificate in optional procedure for recovery of documents

Rule 18.2(1)

Sheriff Court, (*place and address*)

In the cause (court ref. no.)

in which

AB (*design*) is the pursuer

and

CD (*design*) is the defender

To: (*name and designation of party or haver from whom the documents are sought to be recovered.*)

You are required to produce to the sheriff clerk at (address) within days of the service upon you of this order:

(1) This order itself (which must be produced intact);

(2) The certificate marked 'B' attached;

(3) All documents within your possession covered by the specification which is enclosed; and

(4) A list of those documents.

You can produce the items listed above either:

(a) by delivering them to the sheriff clerk at the address shown above; or

(b) sending them to the sheriff clerk by registered or recorded delivery post.

(*date*) (*Signature, name, address and designation of person serving order*)

PLEASE NOTE:

If you claim confidentiality for any of the documents produced by you, you must still produce them. However, they may be placed in a separate envelope by themselves, marked 'confidential'. The court will, if necessary, decide whether the envelope should be opened or not.

B

CERTIFICATE

Sheriff Court, (*place and address*)

In the cause (court ref. no.)

in which

AB (*design*) is the pursuer

and

CD (*design*) is the defender.

Order for recovery of documents dated……

With reference to the above order and relative specification of documents, I certify:

* *delete as appropriate*

* that the documents produced herewith and the list signed by me which accompanies them are all the documents in my possession which fall under the specification.

* I have no documents in my possession falling under the specification.

* I believe that there are other documents falling within the specification which are not in my possession. These documents are (*list the documents as described in the specification.*) These documents were last seen by me on (*date*) in the possession of (*name and address of person/company, if known*).

* I know of no documents falling within the specification which are in the possession of any other person.

(*name*) (*date*)

FORM 25Form of minute in an application for letter of request

Rule 18.7(3)

Sheriff Court, (*place and address*)

MINUTE

for (*designation*)

In the cause (court ref. no.)

in which

AB (*design*) is the pursuer

and

CD (*design*) is the defender.

The minuter states to the court that the evidence specified in the proposed letter of request lodged with this minute is required for the purpose of this cause. The minuter respectfully asks the court to issue a letter of request in terms of the proposed letter of request to (*specify the court or tribunal having power to obtain the evidence*) in order to obtain the evidence so specified.

(*designation of minuter*)

FORM 25aForm of letter of request

Rule 18.7(3)

Part A – items to be included in every letter of request

1.	Sender	*(Identity and address)*.....
		.....
2.	Central authority of the	*(Identity and address)*.....
		.....
3.	Persons to whom the executed request is to be returned	*(Identity and address)*.....
		.....
4.	The undersigned applicant has the honour to submit the following request:	
5.	a. Requesting Judicial authority	*(Identity and address)*.....
		.....
	b. To the competent authority	*(the requested state)* .....
		.....
6.	Names and addresses of the parties and their representatives	
	a. pursuer	.....
	b. defender	.....
	c. other parties	.....
		.....
7.	Nature and purpose of the proceedings and summary of the facts	.....
		.....
		.....
8.	Evidence to be obtained or other judicial act to be performed	.....
		.....

PART B – items to be completed where applicable

9.	Identity and address of any person to be examined	.....
		.....

10.	Questions to be put to the person to be examined, or statement of the subject matter about which they are to be examined	*(or, see attached list)* ....
11.	Documents or other property to be inspected	*(specify whether to be produced, copied, valued etc.)* ....
12.	Any requirement that the evidence be given on oath or affirmation and any special form to be used	*(in the event that the evidence cannot be taken in the manner requested, specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence)*
13.	Special methods or procedure to be followed	....
14.	Request for notification of the time and place for the execution of the request and identity and address of any person to be notified	....
15.	Request for attendance or participation of judicial personnel of the requesting authority at the execution of the letter of request	....
16.	Specification of privilege or duty to refuse to give evidence under the law of the state of origin	....
17.	The fees and expenses incurred will be borne by	*(identity and address)* ....

PART C – to be included in every letter of request

18.	Date of request, signature and seal of the requesting authority	....

FORM 26Form of witness citation

Rule 18.8(1)

SHERIFF COURT, (*insert place*)

TO AB (*design*)

You are required to attend at (*full name and address of court*) on (*day*), (*date*) at (*time*) as a witness for the (*party*) in the action at the instance of AB (*design*) against CD (*design*) (and required to bring with you. ..).

If you fail to attend, warrant may be granted for your arrest.

(*date*) (*signature of solicitor or sheriff officer*)

Name of person/firm serving citation
Address
Telephone no.
Fax no.
E-mail address

NOTE: Within certain specified limits, a claim for any necessary outlays and loss of earnings incurred by your attendance at court as a witness will be met. Claims should be made to the person who has cited you to attend court. Proof of any expenses incurred may be requested and should be given to that person.

If you wish your travelling expenses to be paid prior to your attendance, you should apply for payment to the person who has cited you.

If you fail to attend without reasonable cause, having requested and been paid your travelling expenses, you may be ordered to pay a penalty not exceeding £250.

FORM 26aForm of certificate of witness citation

Rule 18.8(1)

I certify that on (*date*) I duly cited AB (*design*) to attend at (*name of court*) on (*date*) at (*time*) as a witness for the (*design party*) in the action at the instance of CD (*design*) against EF (*design*) (and I required him to bring with him….). This I did by……

(*Signature of solicitor or sheriff officer*)

FORM 27Form of reference to the European Court

Rule 20.2(2)

REQUEST

for

PRELIMINARY RULING

of

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

from

THE SHERIFFDOM OF (*insert name of sheriffdom*) at (*insert place of court*)

In the cause

AB (*insert designation and address*),

Pursuer

Against

CD (*insert designation and address*)

Defender

(*Here set out a clear and succinct statement of the case giving rise to the request for a ruling of the European Court in order to enable the European Court to consider and understand the issues of Community law raised and to enable governments of Member states and other interested parties to submit observations. The statement of the case should include:*

(*a*) *particulars of the parties;*

(*b*) *the history of the dispute between the parties;*

(*c*) *the history of the proceedings;*

(*d*) *the relevant facts as agreed by the parties or found by the court or, failing such agreement or finding, the contentions of the parties on such facts;*

(*e*) *the nature of the issues of law and fact between the parties;*

(*f*) *the Scots law, so far as relevant;*

(*g*) *the Treaty provisions or other acts, instruments or rules of Community law concerned;*

(*h*) *an explanation of why the reference is being made*).

The preliminary ruling of the Court of Justice of the European Communities is accordingly requested on the following questions:

1,2,etc. (*Here set out the question(s) on which the ruling is sought, identifying the Treaty provisions or other acts, instruments or rules of Community law concerned.*)

Dated the day of 20 .

FORM 28Form of extract decree – basic

Rule 23.6(3)

Sheriff Court Court ref. no.

Date of decree *in absence

Pursuer(s) Defender(s)

The sheriff

and granted decree against the for payment of expenses of £ against the (name of party)

This extract is warrant for all lawful execution thereon.

Date Sheriff clerk depute

* *delete as appropriate*

FORM 28aFORM of extract decree – payment

Rule 23.6(3)

Sheriff Court Court ref. no.

Date of decree *in absence

Pursuer(s) Defender(s)

The sheriff granted decree against the for payment to the the undernoted sums:

(1) Sum(s) decerned for: £

(2) Interest at per cent per year from (*date*) until payment.

(3) Expenses of £ against the (*name of party*).

* A time to pay direction was made under section 1(1) of the Debtors (Scotland) Act 1987.

* A time order was made under section 129(1) of the Consumer Credit Act 1974.

* The amount is payable by instalments of £ per commencing within *days/weeks/months of intimation of this extract decree.

* The amount is payable by lump sum within *days/weeks/months of intimation of this extract decree.

This extract is warrant for all lawful execution thereon.

Date Sheriff clerk depute

* *delete as appropriate*

FORM 28bForm of extract decree – recovery of possession of heritable property

Rule 23.6(3)

Sheriff Court Court ref. no.

Date of decree *in absence

Pursuer(s) Defender(s)

The sheriff

(1) granted warrant for ejecting the defender (and others mentioned in the summons) from the premises at , such ejection being not sooner than (*date*) at 12 noon,

(2) granted decree against the defender for payment to the pursuer of the sum of £ of expenses.

This extract is warrant for all lawful execution thereon.

Date Sheriff clerk depute

FORM 28cForm of extract decree and warrant to sell in sequestration for rent and sale

Rule 23.6(3)

Sheriff Court | Court ref. no.

Date of decree | *in absence

Pursuer(s) | Defender(s)

The sheriff granted decree against the for payment to the of the undernoted sums:

(1) Sum(s) decerned for: £

(2) Interest at per cent per year from (*date*) until payment.

(3) Expenses of £ against the (*name of party*).

* A time to pay direction was made under section 1(1) of the Debtors (Scotland) Act 1987.

* A time order was made under section 129(1) of the Consumer Credit Act 1974.

* The amount is payable by instalments of £ per commencing within *days/weeks/months of intimation of this extract decree.

* The amount is payable by lump sum within *days/weeks/months of intimation of this extract decree.

Further, the sheriff granted warrant to any officer of court or to AB (*design*) to sell, by public roup, at (*name of premises*) as much of the sequestrated effects as shall satisfy and pay (1) the said sum decerned for and (2) the expenses occasioned by the sale.

This extract is warrant for all lawful execution thereon.

Date | Sheriff clerk depute

* *delete as appropriate*

FORM 28dForm of extract – warrant for ejection and to re-let in sequestration for rent and sale

Rule 23.6(3)

Sheriff Court | Court ref. no.

Date of decree | *in absence

Pursuer(s) | Defender(s)

The sheriff

(1) granted warrant for ejecting the defender from the premises at *(address)*, they being displenished.

(2) granted warrant to the pursuer to re-let the said premises.

(3) granted decree for expenses of £ against the defender.

This extract is warrant for all lawful execution thereon.

Date | Sheriff clerk depute

** delete as appropriate*

FORM 28eForm of extract decree – furthcoming

Rule 23.6(3)

Sheriff Court | Court ref. no.

Date of decree | *in absence

Date of original decree

Pursuer(s)

Defender(s)/Arrestee(s)

Common debtor

The sheriff granted decree

(1) against the arrestee(s) for payment of £ . or such other sum(s) as may be owing by the arrestee(s) to the common debtor(s) by virtue of the original decree mentioned above in favour of the pursuer(s) against the common debtor(s).

(2) for expenses of £ .

* payable out of the arrested fund.

* payable by the common debtor.

** delete as appropriate*

This extract is warrant for all lawful execution thereon.

Date | Sheriff clerk depute

FORM 28fForm of extract decree – delivery

Rule 23.6(3)

Sheriff Court | Court ref. no.

Date of decree | *in absence

Pursuer(s)

Defender(s)

The sheriff granted decree against the defender

(1) for delivery to the pursuer of *(specify articles)*

(2) for expenses of £

* Further, the sheriff granted warrant to officers of court to (1) open shut and lockfast places occupied by the defender and (2) search for and take possession of said goods in the possession of the defender.

** delete as appropriate*

This extract is warrant for all lawful execution thereon.

Date | Sheriff clerk depute

FORM 28gForm of extract decree – delivery – payment failing delivery

Rule 23.6(3)

Sheriff Court | Court ref. no.

Date of decree | *in absence

Pursuer(s)

Defender(s)

The sheriff, in respect that the defender has failed to make delivery in accordance with the decree granted in this court on (*date*), granted decree for payment against the defender of the undernoted sums:

(1) Sum(s) decerned for: £ , being the alternative crave claimed.

(2) Interest at per cent per year from (*date*) until payment

(3) Expenses of £ against the (*name of party*).

* A time to pay direction was made under section 1(1) of the Debtors (Scotland) Act 1987.

* A time order was made under section 129(1) of the Consumer Credit Act 1974.

* The amount is payable by instalments of £ per , commencing within *days/weeks/months of intimation of this extract decree

* The amount is payable by lump sum within *days/weeks/months of intimation of this extract decree.

** delete as appropriate*

This extract is warrant for all lawful execution thereon.

Date | Sheriff clerk depute

FORM 28hForm of extract decree – aliment

Rule 23.6(3)

Sheriff Court | Court ref. no.

Date of decree | *in absence

Pursuer(s)

Defender(s)

The sheriff

Granted decree against the defender for payment to the pursuer of aliment at the rate of £ per *week/month.

** delete as appropriate*

This extract is warrant for all lawful execution thereon.

Date | Sheriff clerk depute

FORM 28iForm of extract decree – ad factum praestandum

Rule 23.6(3)

Sheriff Court | Court ref. no.

Date of decree | *in absence

Pursuer(s)

Defender(s)

The sheriff

(1) ordained the defender(s)……

(2) granted decree for payment of expenses of £ against the defender(s).

** delete as appropriate*

This extract is warrant for all lawful execution thereon.

Date | Sheriff clerk depute

FORM 28jForm of extract decree– absolvitor

Rule 23.6(3)

Sheriff Court Court ref. no.

Date of decree *in absence

Pursuer(s)

Defender(s)

The sheriff

(1) absolved the defender(s)

(2) granted decree for payment of expenses of £ against the

** delete as appropriate*

This extract is warrant for all lawful execution thereon.

Date Sheriff clerk depute

FORM 28kForm of extract decree – dismissal

Rule 23.6(3)

Sheriff Court Court ref. no.

Date of decree *in absence

Pursuer(s)

Defender(s)

The sheriff

(1) dismissed the action against the defender(s)

*(2) granted decree for payment of expenses of £ against the

*(3) found no expenses due to or by either party

** delete as appropriate*

This extract is warrant for all lawful execution thereon

Date Sheriff clerk depute

FORM 29Form of certificate by sheriff clerkService of charge where address of defender is unknown

Rule 23.8(4)

I certify that the foregoing charge was displayed on the walls of court on (*date*) and that it remained so displayed for a period of (*period of charge*) from that date.

(*date*) Sheriff clerk depute

FORM 30Minute for recall of decree

Rule 24.1(1)

Sheriff Court: (*place*)

Court ref. no.:

AB (*pursuer*) against CD (*defender(s)*)

The *(*pursuer/defender*) moves the court to recall the decree pronounced on (*date*) in this case * and in which execution of a charge/arrestment was effected on (*date*)

Reason for failure to appear or be represented:

Proposed defence/answer:

* *delete as appropriate*

FORM 30aMinute for recall of decree – service copy

Rule 24.1(6)(a)

Sheriff Court: (*place*)

Court ref. no.:

AB (*pursuer*) against CD (*defender(s)*)

The *(*pursuer/defender*) moves the court to recall the decree pronounced on (*date*) in this case * and in which execution of a charge/arrestment was effected on (*date*)

Reason for failure to appear or be represented:

Proposed defence/answer:

* *delete as appropriate*

NOTE: You must return the summons to the sheriff clerk at the court mentioned at the top of this form by (*insert date 2 days before the date of the hearing.*):

FORM 31Form of note of appeal to the sheriff principal

Rule 25.1(1)

SHERIFF COURT (*place*)

Court ref. no. AB (pursuer) against CD (defender)

The pursuer/defender appeals the sheriff's interlocutor of (*date*) to the sheriff principal and requests the sheriff to state a case.

The point(s) of law upon which the appeal is to proceed is/are: (*give brief statement*)

(*date*)

FORM 32Application for leave to appeal against time to pay direction

Rule 25.4(3)(a)

SHERIFF COURT (*place*)

Court ref. no. AB (pursuer) against CD (defender)

The pursuer/defender requests the sheriff to grant leave to appeal the decision made on (*date*) in respect of the defender's application for a time to pay direction to the sheriff principal/Court of Session.

The point(s) of law upon which the appeal is to proceed is/are: (*give brief statement*)

(*date*)

FORM 33Appeal against time to pay direction

Rule 25.4(4)

SHERIFF COURT (*place*)

Court ref. no. AB (pursuer) against CD (defender)

The pursuer/defender appeals the decision made on (*date*) in respect of the defender's application for a time to pay direction to the sheriff principal/Court of Session.

(*date*)

FORM 34Application for certificate of suitability for appeal to the Court of Session

Rule 25.7(1)

The pursuer/defender in the summary cause at the instance of AB against CD hereby moves the sheriff principal to certify that the cause is suitable for appeal to the Court of Session.

FORM 35Form of receipt for money paid to the sheriff clerk

Rule 26.4(1)

In the sheriff court of *(name of sheriffdom)* at *(place of sheriff court)*.

In the cause *(state names of parties or other appropriate description)*

AB *(designation)* has this day paid into court the sum of £ , being a payment made in terms of rule 26(4)(1) of the Summary Cause Rules 2002.

* Custody of this money has been accepted at the request of *(insert name of court making the request)*

* *delete as appropriate*

(Date) Sheriff clerk depute

FORM 36Action for alimentForm of notice of intimation to children and next of kin where address of defender is unknown

Rule 32.2(a)

Court ref. no.

To: (*insert name and address as in warrant*)

You are hereby given notice that an action for aliment has been raised against (*name*), your (*insert relationship, e.g. father, brother or other relative as the case may be*). A copy of the summons is enclosed.

If you know of his/her present address, you are requested to inform the sheriff clerk at (*insert full address*) in writing immediately.

If you wish to appear as a party in the action, or are uncertain about what action to take, you should contact a solicitor. You may, depending on your financial circumstances, be entitled to legal aid, and you can get information about legal aid from a solicitor.

You may also obtain advice from any Citizen's Advice Bureau, other advice agency or any sheriff clerk's office.

FORM 37Action for alimentForm of notice of intimation to children, next of kin and guardian where defender suffers from mental disorder

Rule 32.2(b)

Court ref. no.

To: (*insert name and address as in warrant*)

You are hereby given notice that an action for aliment has been raised against (*name*), your (*insert relationship, e.g. father or other relative, or word, as the case may be*). A copy of the summons is enclosed.

If you wish to appear as a party in the action, or are uncertain about what action to take, you should contact a solicitor immediately. You may, depending on your financial circumstances, be entitled to legal aid, and you can get information about legal aid from a solicitor.

You may also obtain advice from any Citizen's Advice Bureau, other advice agency or any sheriff clerk's office.

APPENDIX 2

GLOSSARY

Rule 1.1(5)

Absolve

To find in favour of and exonerate the defender.

Absolvitor

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

Action of count, reckoning and payment

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

Action of furthcoming

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

Appellant

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

Arrestee

A person subject to an arrestment.

Arrestment on the dependence

A court order to freeze the goods or bank account of the defender until the court has heard the case.

Arrestment to found jurisdiction

A court order used against a person who has goods or other assets in Scotland to give the court jurisdiction to hear a case. This is achieved by preventing anything being done with the goods or assets until the case has been disposed of.

Authorised lay representative

A person other than a lawyer who represents a party to a summary cause.

Calling date

The date on which the case will first be heard in court.

Cause

Another word for case or claim.

Caution (pronounced kay-shun)

A security, usually a sum of money, given to ensure that some obligation will be carried out.

Certificate of execution of service

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

Charge

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

Claim

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

Commission and diligence

Authorisation by the court for someone to take the evidence of a witness who cannot attend court or to obtain the production of documentary evidence. It is combined with a diligence authorising the person appointed to require the attendance of the witness and the disclosure of documents.

Consignation

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

Continuation

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

Contribution, Right of

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

Counterclaim

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

Damages

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

Declarator of irritancy of a lease

A decision of a court finding that a tenant has failed to observe a term of a lease which may lead to the termination of the lease.

Decree

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

Decree of ejection

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

Decree of removing

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

Defender

Person against whom a summary cause is started.

Deliverance

A decision or order of a court.

Diet

Date for a court hearing.

Diligence

The collective term for the procedures used to enforce a decree of a court. These include arrestment of wages, goods or a bank account.

Dismissal

An order bringing to an end the proceedings in a summary cause. It is usually possible for a new summary cause to be brought if not time barred.

Domicile

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

Execution of service

See Certificate of execution of service.

Execution of a charge

The intimation of the requirement to obey a decree or order of a court.

Execution of an arrestment

The carrying out of an order of arrestment.

Expenses

The costs of a court case.

Extract decree

The document containing the order of the court made at the end of the summary cause. For example, it can be used to enforce payment of a sum awarded.

Fund in medio

See Multiplepoinding.

Haver

A person who holds documents which are required as evidence in a case.

Heritable property

Land and buildings as opposed to moveable property.

Huissier

An official in France and some other European countries who serves court documents.

Incidental application

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

Interlocutor

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

Interrogatories

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

Intimation

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

Jurisdiction

The authority of a court to hear particular cases.

Ish

The date on which a lease terminates.

Letter of request

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

Messenger at arms

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

Minute

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

Minute for recall

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

Multiplepoinding (pronounced "multiple pinding")

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

Options Hearing

A preliminary stage in an ordinary cause action.

Ordinary cause

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

Party litigant

A person who conducts his own case.

Process

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

Productions

Documents or articles which are used in evidence.

Pursuer

The person who starts a summary cause.

Recall of an arrestment

A court order withdrawing an arrestment.

Restriction of an arrestment

An order releasing part of the money or property arrested.

Recall of a decree

An order revoking a decree which has been granted.

Recovery of documents

The process of obtaining documentary evidence which is not in the possession of the person seeking it (e.g. hospital records necessary to establish the extent of injuries received in a road accident).

Remit between procedures

A decision of the sheriff to transfer the summary cause to another court procedure e.g. small claim or ordinary cause procedure.

Respondent

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

Return day

The date by which the defender must send a written reply to the court and, where appropriate, the pursuer must return the summons to court.

Schedule of arrestment

The list of items which may be arrested.

Serve / service

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

Sheriff clerk

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

Sheriff officer

A person who serves court documents and enforces court orders.

Sist of action

The temporary suspension of a court case by court order.

Sist as a party

To add another person as a litigant in a case.

Small claim

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

Specification of documents

A list lodged in court of documents for the recovery of which a party seeks a court order.

Stated case

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

Statement of claim

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

Summons

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

Time to pay direction

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

Time order

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

Warrant for diligence

Authority to carry out one of the diligence procedures.

Writ

A legally significant writing.

SCHEDULE 2

Paragraph 4

REVOCATIONS

(1) *Act of Sederunt*	*(2)* *Reference*	*(3)* *Extent of revocation*
Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976	S.I.1976/476	The whole Act of Sederunt
Act of Sederunt (Summary Cause Rules, Sheriff Court) (Amendment) 1978	S.I. 1978/112	The whole Act of Sederunt
Act of Sederunt (Summary Cause Rules, Sheriff Court) (Amendment No. 2) 1978	S.I. 1978/1805	The whole Act of Sederunt
Act of Sederunt (Summary Cause Rules, Sheriff Court) (Amendment) 1980	S.I. 1980/455	The whole Act of Sederunt
Act of Sederunt (Ordinary Cause Rules, Sheriff Court) 1983	S.I. 1983/747	Paragraph 4
Act of Sederunt (Civil Jurisdiction of the Sheriff Court) 1986	S.I. 1986/1946	Paragraph 3
Act of Sederunt (Miscellaneous Amendments) 1986	S.I. 1986/1966	Paragraph 3
Act of Sederunt (Small Claim Rules) 1988	S.I. 1988/1976	Paragraph 3
Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, and Summary Cause, Rules) 1988	S.I. 1988/1978	Paragraphs 19 to 35 and Schedule 2
Act of Sederunt (Amendment of Ordinary Cause and Summary Cause Rules) (Written Statements) 1989	S.I. 1989/436	Paragraph 3
Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, Summary Cause and Small Claim, Rules) 1990	S.I. 1990/661	Paragraph 3
Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, Summary Cause and Small Claim, Rules) (No. 2) 1990	S.I. 1990/2105	Paragraph 3

(1) *Act of Sederunt*	*(2)* *Reference*	*(3)* *Extent of revocation*
Act of Sederunt (Amendment of Summary Cause and Small Claim Rules) 1991	S.I. 1991/821	The whole Act of Sederunt
Act of Sederunt (Amendment of Ordinary Cause, Summary Cause and Small Claim Rules) 1992	S.I. 1992/249	Paragraph 3
Act of Sederunt (Child Support Act 1991) (Amendment of Ordinary Cause and Summary Cause Rules) 1993	S.I. 1993/919	Paragraph 4
Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993	S.I. 1993/1956	Paragraph 3

EXPLANATORY NOTE

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

This Act of Sederunt makes rules of procedure in the sheriff court for summary cause actions except for those actions which have been prescribed as small claims in the Small Claims (Scotland) Order 1988 under section 35(2) of the Sheriff Courts (Scotland) Act 1971 (as substituted by section 18(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985).