



Sheriff Courts (Scotland) Act 1907

1907 CHAPTER 51 7 Edw 7

An Act to regulate and amend the Laws and practice relating to the civil procedure in Sheriff Courts in Scotland, and for other purposes. [28th August 1907]

Modifications etc. (not altering text)

- C1 Act excluded by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55\), s. 21\(4\)-\(7\)](#)
- C2 Act amended by [Agricultural Holdings \(Scotland\) Act 1949 \(c. 75\), s. 24\(3\), \(4\)](#)

PRELIMINARY

1 Short title.

This Act may be cited for all purposes as the Sheriff Courts (Scotland) Act 1907.

2^{F1}

Textual Amendments

- F1 [S. 2](#) repealed by [Statute Law Revision Act 1927 \(c. 42\), Sch. Pt. I](#)

3 Interpretation.

In construing this Act (unless where the context is repugnant to such construction)—

- (a) [^{F2} “sheriff principal”] includes [^{F2}sheriff];
- (b) “Tenant” includes sub-tenant;
- (c) “Lease” includes sub-lease;
- (d) “Action” [^{F3}or “cause”] includes every civil proceeding competent in the ordinary sheriff court;

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- (e) “Person” includes company, corporation, or association and firm of any description nominate or descriptive, or any Board corporate or unincorporate;
- (f) “Sheriff clerk” includes sheriff-clerk depute;
- (g) “Agent” means a law-agent enrolled in terms of the ^{M1}Law Agents (Scotland) Act 1873;
- (h) “Final judgment” means an interlocutor which, by itself, or taken along with previous interlocutors, disposes of the subject-matter of the cause, notwithstanding that judgment may not have been pronounced on every question raised, and that expenses found due may not have been modified, taxed, or decerned for;
 - (i) ^{F4}
- (j) “Small Debt Acts” means and includes the Small Debt (Scotland) Acts 1837 to 1889, and Acts explaining or amending the same;
- (k) “Initial writ” means the statement of claim, petition, note of appeal, or other document by which the action is initiated;
- (l) “Procurator-Fiscal” means procurator-fiscal in the sheriff-court;
- (m) ^{F5}
- (n) “Pursuer” means and includes any person making a claim or demand, or seeking any warrant or order competent in the sheriff court;
- (o) “Defender” means and includes any person who is required to be called in any action;
- (p) “Summary application” means and includes all applications of a summary nature brought under the common law jurisdiction of the [^{F2}sheriff principal], and all applications, whether by appeal or otherwise, brought under any Act of Parliament which provides, or, according to any practice in the sheriff court, which allows, that the same shall be disposed of in a summary manner, but which does not more particularly define in what form the same shall be heard, tried, and determined;
- (q) ^{F6}

Textual Amendments

- F2** Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4
- F3** Words inserted by Sheriff Courts (Scotland) Act 1913 (2 & 3 Geo. 5 c. 28), Sch. 1
- F4** S. 3(i) repealed by Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 2 Pt. II
- F5** S. 3(m) repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. I Gp. 3
- F6** S. 3(q) repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), s. 28(2), Sch. 3

Marginal Citations

- M1** 1873 c. 63.

JURISDICTION

[^{F7}4 Jurisdiction.

The jurisdiction of the [^{F8}sheriffs principal], within their respective sheriffdoms shall extend to and include all navigable rivers, ports, harbours, creeks, shores, and anchoring grounds in or adjoining such sheriffdoms. And the powers and jurisdictions

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formerly competent to the High Court of Admiralty in Scotland in all maritime causes and proceedings, civil and criminal, including such as may apply to persons furth of Scotland, shall be competent to the [F8sheriffs principal], provided the defender shall upon any legal ground of jurisdiction be amenable to the jurisdiction of the [F8sheriff principal] before whom such cause or proceeding may be raised, and provided also that it shall not be competent to the [F8sheriffs principal] to try any crime committed on the seas which it would not be competent for him to try if the crime had been committed on land; Provided always that where sheriffdoms are separated by a river, firth, or estuary, the [F8sheriffs principal] on either side shall have concurrent jurisdictions over the intervening space occupied by water.]

Textual Amendments

- F7 S. 4 repealed so far as relating to criminal proceedings by [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\), Sch. 10 Pt. I](#); extended by [Hovercraft Act 1968 \(c. 59\), s. 2](#)
- F8 Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\), s. 4](#)

5 Extension of jurisdiction.

Nothing herein contained shall derogate from any jurisdiction, powers, or authority presently possessed or in use to be exercised by the [F9sheriffs principal] of Scotland, and such jurisdiction shall extend to and include—

- (1) Actions of declarator (except declarators of marriage or nullity of marriage, . . . F10):
 - (1A) F11
 - [F12(2) Actions for alimnt or separation (other than any action mentioned in subsection (2A) below) . . . F13]
 - [F14(2A) Actions, arising out of an application under section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, for the recovery of maintenance:]
 - [F15(2B) Actions for divorce]
 - F16(2C)
- (3) Actions of division of commonty and of division or division and sale of common property, in which cases the M2Division of Commonties Act 1695 concerning the division of commonties shll be read and construed as if it conferred jurisdiction upon the sherrif court in the same manner as upon the Court of Session:
- (4) Actions relating to questions of heritable right or title (except actions of adjudication save in so far as now competent and actions of reduction) including all actions of declarator of irritancy and removing, whether at the instance of a superior against a vassal or of a landlord against a tenant:
- (5) Suspension of charges or threatened charges upon the decrees of court granted by the [F9sheriff principal] or upon decrees of registration proceeding upon bonds, bills, contracts or other obligations registered in the books of the sheriff court, the books of council and session, or any others competent . . . F17: . . . F18: . . . F19 .

Textual Amendments

- F9 Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\), s. 4](#)

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- F10** Words repealed (S.) by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(2), **Sch. 2**
- F11** S. 5(1A) which was inserted by Presumption of Death (Scotland Act) 1977 (c. 27), s.20(2), **Sch. 1** is repealed (S.) by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(2), **Sch. 2**
- F12** S. 5(2) substituted (S.) by virtue of Family Law (Scotland) Act 1985 (c. 37, SIF 49:3), s. 28(1), **Sch. 1 para. 1**
- F13** Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(2), **Sch. 2**
- F14** S. 5(2A) inserted by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), s. 85(3), **Sch. 2 para. 1(b)**
- F15** S. 5(2B) inserted by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 47), s. 1
- F16** S. 5(2C) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5**; S.I. 1996/2203, art. 3, **Sch.**
- F17** Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3, 72:2), ss. 15(a), 28(2), **Sch. 3**
- F18** Words repealed by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), s. 54, **Sch. 14**
- F19** Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), s. 28(2), **Sch. 3**

Modifications etc. (not altering text)

- C3** S. 5 excluded by Land Registration (Scotland) Act 1979 (c. 33, SIF 31:3), ss. 21(6), 22(7)

Marginal Citations

- M2** Scots Act 1695 c. 69

[^{F20}5A Power of sheriff to order sheriff clerk to execute deeds relating to heritage.

- (1) This section applies where—
- an action relating to heritable property is before the sheriff; or
 - it appears to the sheriff that an order under this section is necessary to implement a decree of a sheriff relating to heritable property.
- (2) Where the grantor of any deed relating to the heritable property cannot be found or refuses or is unable or otherwise fails to execute the deed, the sheriff may—
- where subsection (1)(a) above applies, on application;
 - where subsection (1)(b) above applies, on summary application,
- by the grantee, make an order dispensing with the execution of the deed by the grantor and directing the sheriff clerk to execute the deed.
- (3) Where in pursuance of an order under this section a deed is executed by the sheriff clerk, it shall have the like force and effect as if it had been executed by the grantor.
- (4) In this section—
- “grantor” means a person who is under an obligation to execute the deed; and
- “grantee” means the person to whom that obligation is owed.]

Textual Amendments

- F20** S. 5A inserted (S.) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 17

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[^{F21}6 Action competent in sheriff court.

[^{F22}Subject to section 8 of the ^{M3}Domicile and Matrimonial Proceedings Act 1973 [^{F23}and Chapter III of Part I of the Family Law Act 1986].] Any action competent in the sheriff court may be brought within the jurisdiction of the [^{F24}sheriff principal]—

- (a) Where the defender (or when there are several defenders [^{F25}over each of whom a sheriff court has jurisdiction in terms of this Act] where one of them) resides within the jurisdiction, or having resided there for at least forty days . . . ^{F26} has ceased to reside there for less than forty days [^{F26}and has no known residence in Scotland]:
- (b) Where the defender carries on business, and has a place of business within the [^{F27}jurisdiction], and is cited either personally or at such place of business:
- (c) Where the defender is a person not otherwise subject to the jurisdiction of the courts of Scotland, and a ship or vessel of which he is owner or part owner or master, or goods, debts, money, or other moveable property belonging to him, have been arrested within the jurisdiction:
- (d) Where the defender is the owner or part owner or tenant or joint tenant, whether individually or as a trustee, of heritable property within the jurisdiction, and the action relates to such property or to his interest therein:
- (e) Where the action is for interdict against an alleged wrong being committed or threatened to be committed within the jurisdiction:
- (f) Where the action relates to a contract the place of execution or performance of which is within the jurisdiction, and the defender is personally cited there:
- (g) Where in an action of furthcoming or multiplepoinding the fund or subject in medio is situated within the jurisdiction; or the arrestee or holder of the fund is subject to the jurisdiction of the court:
- (h) Where the party sued is the pursuer in any action pending within the jurisdiction against the party suing:

[^{F28}(i) where the action is founded on delict, and the delict forming the cause of action was committed within the jurisdiction”.]

- (j) Where the defender prorogates the jurisdiction of the court.]

Textual Amendments

- F21** S. 6 repealed by [Administration of Justice Act 1956 \(c. 46\), s. 45\(6\)](#) in relation to actions to which s. 45 of that Act applies
- F22** Words inserted by [Domicile and Matrimonial Proceedings Act 1973 \(c. 45\), s. 12\(7\), Sch. 4 para. 1](#)
- F23** Words inserted (S.) by [Family Law Act 1986 \(c. 55, SIF 49:3\), s. 68\(1\), Sch. 1 para. 3](#)
- F24** Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\), s. 4](#)
- F25** Words inserted by [Sheriff Courts \(Scotland\) Act 1913 \(2 & 3 Geo. 5 c. 28\), Sch. 1](#)
- F26** Words repealed by [Sheriff Courts \(Scotland\) Act 1913 \(2 & 3 Geo. 5 c. 28\), Sch. 1](#)
- F27** Words substituted by [Sheriff Courts \(Scotland\) Act 1913 \(2 & 3 Geo. 5 c. 28\), Sch. 1](#)
- F28** S. 6(i) substituted by [Law Reform \(Jurisdiction in Delict\) \(Scotland\) Act 1971 \(c. 55\), s. 1\(2\)\(3\)](#)

Modifications etc. (not altering text)

- C4** S. 6 repealed in part by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\), s. 20\(3\)](#)

Marginal Citations

- M3** 1973 c. 45.

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7 ^{X1}Privative jurisdiction in causes under fifty pounds value.

.....^{F29}.....^{F30}, all causes not exceeding [^{F31}one thousand five hundred pounds] in value exclusive of interest and expenses competent in the sheriff court shall be brought and followed forth in the sheriff court only, and shall not be subject to review by the Court of Session:

...^{F32}Provided ...^{F32} that nothing herein contained shall affect any right of appeal competent under any Act of Parliament in force for the time being.

Editorial Information

X1 Unreliable marginal note

Textual Amendments

F29 Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 72:2\)](#), s. 28(2), [Sch. 3](#)

F30 Words repealed by [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), [Sch. 2 Pt. II](#)

F31 Words substituted by virtue of S.I. 1988/1993, [art. 2](#)

F32 Words repealed by [Sheriff Courts \(Scotland\) Act 1913 \(2 & 3 Geo. 5 c. 28\)](#), [Sch. 1](#)

Modifications etc. (not altering text)

C5 [S. 7](#) extended (2.10.2000) by [S.S.I. 2000/301](#), [rule 4](#)

8^{F33}

Textual Amendments

F33 [S. 8](#) repealed by [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), [Sch. 2 Pt. II](#)

9^{F34}

Textual Amendments

F34 [S. 9](#) repealed by [Sheriff Courts \(Scotland\) Act 1913 \(2 & 3 Geo. 5 c. 28\)](#), [s. 1](#)

10 Privilege not to exempt from jurisdiction.

No person shall be exempt from the jurisdiction of the sheriff court on account of privilege by reason of being a member of the College of Justice.

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SHERIFFS

11 ^{X2} Appointment of sheriffs and salaried sheriffs-substitute.

The right of appointing to the salaried offices of [^{F35}sheriff principal] and salaried [^{F35}sheriff] shall be vested in His Majesty, and shall be exercised on the recommendation of the [^{F36}Secretary of State].

Editorial Information

X2 Unreliable marginal note

Textual Amendments

F35 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4

F36 Words substituted by virtue of Secretaries of State Act 1926 (c. 18), s. 1(3)

12, 13. ^{F37}

Textual Amendments

F37 Ss. 12, 13, 15, 16, 18 and 19 repealed by Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 2 Pt. I

14 Salaries of sheriffs and sheriffs-substitute.

It shall be lawful to grant to any [^{F38}sheriff principal or sheriff] such salary as to the Treasury may seem meet, and every such salary shall be paid [^{F39}quarterly or otherwise in every year as the Treasury may determine], and shall be charged upon and be payable out of the Consolidated Fund.

Textual Amendments

F38 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4

F39 Words substituted by Sheriffs' Pensions (Scotland) Act 1961 (c. 42), s. 8(3), Sch. 1

Modifications etc. (not altering text)

C6 S. 14 modified (9.11.1998) by 1998 c. 42, ss. 18(4)(e), 22(2) (with ss. 7(8), 22(5))

S. 14 modified (27.9.1999) by 1999 c. 22, ss. 68(3)(a), 108(3) (with Sch. 14 para. 7(2))

15, 16. ^{F40}

Textual Amendments

F40 Ss. 12, 13, 15, 16, 18 and 19 repealed by Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 2 Pt. I

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17 Honorary sheriff-substitute.

The [F41sheriff principal] may by writing under his hand appoint such persons as he thinks proper to hold the office of [F41honorary sheriff] within his sheriffdom during his pleasure, and for whom he shall be answerable. An [F41honorary sheriff], during the subsistence of his commission, shall be entitled to exercise the powers and duties appertaining to the office of [F41sheriff]. An [F41honorary sheriff] shall hold office, notwithstanding the death, resignation, or removal of the [F41sheriff principal], until his commission shall be recalled by a succeeding [F41sheriff principal]. In this section [F41“sheriff principal”]does not include [F41sheriff.]

Textual Amendments

F41 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4

18, 19. F42

Textual Amendments

F42 Ss. 12, 13, 15, 16, 18 and 19 repealed by Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 2 Pt. I

20 F43

Textual Amendments

F43 S. 20 repealed by Sheriffs' Pensions (Scotland) Act 1961 (c. 42), s. 8(3), Sch. 2

21 F44

Textual Amendments

F44 S. 21 repealed by Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 2 Pt. I

22— F45
24.

Textual Amendments

F45 Ss. 22–24 repealed by Sheriff Courts and Legal Officers (Scotland) Act 1927 (c. 35), Sch.

25, 26. F46

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Textual Amendments

F46 Ss. 25, 26 repealed by Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 2 Pt. I

APPEALS

27 Appeal to sheriff.

Subject to the provisions of this Act an appeal to the [^{F47}sheriff principal] shall be competent against all final judgments of the [^{F47}sheriff] and also against interlocutors—

- (A) Granting or refusing interdict, interim or final;
- (B) Granting interim decree for payment of money other than a decree for expenses, or making an order ad factum præstandum;
- (C) Sisting an action;
- (D) Allowing or refusing or limiting the mode of proof . . . ^{F48};
- (E) [^{F49}Refusing a reponing note; or
- (F) Against which the [^{F47}sheriff] either ex proprio motu or on the motion of any party grants leave to appeal;

Provided always that notwithstanding the death, resignation, or removal of a [^{F47}sheriff principal] appeals may be taken from the judgment of the [^{F47}sheriff], which appeals shall be heard by the succeeding [^{F47}sheriff principal] when he shall enter upon office.

[^{F49}It shall be competent for the [^{F47}sheriff principal]. when the action is before him on appeal on any point, to open the record ex proprio motu, if the record shall appear to him not to have been properly made up, or to allow further proof.]

Textual Amendments

F47 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4

F48 Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3, 72:2) ss. 11, 28(2), Sch. 3

F49 Words inserted by Sheriff Courts (Scotland) Act 1913 (2 & 3 Geo. 5 c. 28), Sch. 1

[^{F50}28 Appeal to Court of Session.

- (1) Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment either of a [^{F51}sheriff principal or sheriff] if the interlocutor appealed against is a final judgment or is an interlocutor—
 - (a) Granting interim decree for payment of money other than a decree for expenses; or
 - (b) Sisting an action; or
 - (c) Refusing a reponing note; or

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(d) Against which the [^{F51}sheriff principal or sheriff] either ex proprio motu or on the motion of any party, grants leave to appeal:

...
F52

(2) Nothing in this section nor in section twenty-seven of this Act contained shall affect any right of appeal or exclusion of such right provided by any Act of Parliament in force for the time being.]

Textual Amendments

F50 S. 28 substituted by Sheriff Courts (Scotland) Act 1913 (2 & 3 Geo. 5 c. 28), s. 2

F51 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4

F52 S. 28 proviso repealed by Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 2 Pt. II

Modifications etc. (not altering text)

C7 S. 28 applied (1.5.2003) by 2000 asp 7, ss. 22(7), 26(6), 37(2) (with s. 31); S.S.I. 2003/74, art. 2(2)(b)

29 Effect of appeal.

An appeal shall be effectual to submit to review the whole of the interlocutors pronounced in the cause, and shall be available to and may be insisted in by all other parties in the cause notwithstanding they may not have noted separate appeals. An appeal shall not prevent immediate execution of a warrant of sequestration for rent, or of warrants to take inventories, or place effects in custody ad interim, or warrants for interim preservation, and an interim interdict, although appealed against shall be binding till recalled.

30 F53

Textual Amendments

F53 S. 30 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 72:2), s. 28(2), Sch. 3

31 F54

Textual Amendments

F54 S. 31 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3, 72:2), ss. 11, 28(2), Sch. 3

32 F55

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Textual Amendments

F55 S. 32 repealed by Sheriff Courts (Scotland) Act 1913 (2 & 3 Geo. 5 c. 28), s. 1

33 **F56**

Textual Amendments

F56 S. 33 repealed by Juries Act 1949 (c. 27), Sch. 3

REMOVINGS

34 Removings.

Where lands exceeding two acres in extent are held under a probative lease specifying a term of endurance, and whether such lease contains an obligation upon the tenant to remove without warning or not, such lease, or an extract thereof from the books of any court of record, shall have the same force and effect as an extract decree of removing obtained in an ordinary action at the instance of the lessor, or any one in his right, against the lessee or any party in possession, and such lease or extract shall, along with authority in writing signed by the lessor or any one in his right or by his factor or law agent, be sufficient warrant to any sheriff officer or messenger-at-arms of the sheriffdom within which such lands or heritages are situated to eject such party in possession, his family, sub-tenants, cottars, and dependants, with their goods, gear and effects, at the expiry of the term or terms of endurance of the lease: Provided that previous notice in writing to remove shall have been given—

- (A) When the lease is for three years and upwards not less than one year and not more than two years before the termination of the lease; and
- (B) In the case of leases from year to year (including lands occupied by tacit relocation) or for any other period less than three years, not less than six months before the termination of the lease (or where there is a separate ish as regards land and houses or otherwise before that ish which is first in date):

Provided that if such written notice as aforesaid shall not be given the lease shall be held to be renewed by tacit relocation for another year, and thereafter from year to year: Provided further that nothing contained in this section shall affect the right of the landlord to remove a tenant who has been sequestrated under the ^{M4}Bankruptcy (Scotland) Act 1856, or against whom a decree of cessio has been pronounced under the ^{M5}Debtors (Scotland) Act 1880, or who by failure to pay rent has incurred any irritancy of his lease or other liability to removal: Provided further that removal or ejection in virtue of this section shall not be competent after six weeks from the date of the ish last in date: Provided further that nothing herein contained shall be construed to prevent proceedings under any lease in common form; and that the foregoing provisions as to notice shall not apply to any stipulations in a lease entitling the landlord to resume land for building, planting, feuing, or other purposes or to subjects let for any period less than a year.

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- C8** Reference to [Bankruptcy \(Scotland\) Act 1856 \(c. 79\)](#) to be construed as reference to [Bankruptcy \(Scotland\) Act 1913 \(c. 34\)](#); [Interpretation Act 1889 \(c. 63\)](#), **s. 38(1)**

Marginal Citations

- M4** 1856 c. 79.
M5 1880 c. 34.

35 Letter of removal.

Where any tenant in possession of any lands exceeding two acres in extent (whether with or without a written lease) shall, either at the date of entering upon the lease or at any other time, have granted a letter of removal,^{F57} . . . such letter of removal shall have the same force and effect as an extract decree of removing, and shall be a sufficient warrant for ejection to the like effect as is provided in regard to a lease or extract thereof, and shall be operative against the granter of such letter of removal or any party in his right within the same time and in the same manner after the like previous notice to remove: Provided always that where such letter is dated and signed within twelve months before the date of removal or before the first ish, if there be more than one ish, it shall not be necessary that any notice of any kind shall be given by either party to the other.

Textual Amendments

- F57** Words in [s. 35](#) repealed (1.8.1995) by [1995 c. 7, ss. 14\(2\), 15\(2\)](#), [Sch. 5](#) (with [ss. 9\(3\)\(5\)\(7\), 13](#))

36 Notice to remove.

Where lands exceeding two acres in extent are occupied by a tenant without any written lease, and the tenant has given to the proprietor or his agent no letter of removal, the lease shall terminate on written notice being given to the tenant by or on behalf of the proprietor, or to the proprietor by or on behalf of the tenant not less than six months before the determination of the tenancy, and such notice shall entitle the proprietor, in the event of the tenant failing to remove, to apply for and obtain a summary warrant of ejection against the tenant and everyone deriving right from him.

Modifications etc. (not altering text)

- C9** [S. 36](#) applied (10.6.2002) by [Act of Sederunt \(Summary Cause Rules\) 2002 \(S.S.I. 2002/132\)](#), **art. 2**, {[Sch. 1 rule 30.3](#)} (with [art. 3](#))

37 Notice of termination of tenancy.

In all cases where houses, with or without land attached, not exceeding two acres in extent, lands not exceeding two acres in extent let without houses, mills, fishings, shootings, and all other heritable subjects (excepting land exceeding two acres in extent) are let for a year or more, notice of termination of tenancy shall be given in writing to the tenant by or on behalf of the proprietor or to the proprietor by or on behalf

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of the tenant: Provided always that notice under this section shall not warrant summary ejection from the subjects let to a tenant, but such notice, whether given to or by or on behalf of the tenant, shall entitle the proprietor to apply to the [^{F58}sheriff principal] for a warrant for summary ejection in common form against the tenant and every one deriving right from him: Provided further that the notice provided for by this section shall be given at least forty days before the fifteenth day of May when the termination of the tenancy is the term of Whitsunday, and at least forty days before the eleventh day of November when the termination of the tenancy is the term of Martinmas.

Textual Amendments

F58 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4

Modifications etc. (not altering text)

C10 S. 37 applied (10.6.2002) by Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132), art. 2, {Sch. 1 rule 30.3} (with art. 3)

[^{F59}37A Exception for certain tenancies

The provisions of this Act relating to removings (including summary removings) shall not apply to or in relation to short limited duration tenancies or limited duration tenancies within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11).]

Textual Amendments

F59 S. 37A inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp. 11), ss. 94, 95(3)(4), Sch. para. 1 (with s. 95(1)); S.S.I. 2003/548, art. 2 (with art. 3, Sch.)

SUMMARY REMOVINGS

38 Summary removing.

Where houses or other heritable subjects are let for a shorter period than a year, any person by law authorised may present to the [^{F60}sheriff principal] a summary application for removing, and a decree pronounced in such summary cause shall have the full force and effect of a decree of removing and warrant of ejection. Where asuch a let is for a period not exceeding four months, notice of removal therefrom shall, in the absence of express stipulation, be given as many days before the ish as shall be equivalent to at least one-third of the full period of the duration of the let; and where the let exceeds four months, notice of removal shall, in the absence of express stipulation be given at least forty days before the expiry of the said period.

[^{F61}Provided that in no case shall notice of removal be given less than 28 days before the date on which it is to take effect.]

Textual Amendments

F60 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4

F61 S. 38 proviso added by Rent (Scotland) Act 1971 (c. 28), s. 135(3), Sch. 18 Pt. II

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Modifications etc. (not altering text)

C11 S. 38 applied (10.6.2002) by Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132), **art. 2**, {Sch. 1 rule 30.3} (with art. 3)

[^{F62}**38A** **Notice of termination in respect of dwelling-houses.**

Any notice of termination of tenancy or notice of removal given under section 37 or 38 above in respect of a dwelling-house, on or after 2nd of December 1974, shall be in writing and shall contain such information as may be prescribed by virtue of section 112 of the ^{M6}Rent (Scotland) Act 1984, and Rule 112 of Schedule 1 to this Act shall no longer apply to any such notice under section 37 above.]

Textual Amendments

F62 S. 38A inserted (S.) by virtue of Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339, **Sch. 23 para. 4**

Marginal Citations

M6 1984 c.58(39:4)

[^{F63}**CONSISTORIAL CAUSES**

Textual Amendments

F63 Ss. 38B, 38C inserted (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(1), **Sch. 1 para. 2**

38B Lord Advocate as party to action for divorce.

- (1) The Lord Advocate may enter appearance as a party in any action for divorce, and he may lead such proof and maintain such pleas as he thinks fit, and the sheriff shall, whenever he considers it necessary for the proper disposal of any such action, direct that the action shall be brought to the notice of the Lord Advocate in order that he may determine whether he should enter appearance therein.
- (2) No expenses shall be claimable by or against the Lord Advocate in any action in which he has entered appearance under this section.

^{F64}**38C]**

Textual Amendments

F64 S. 38C repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5**; S.I. 1996/2203, art. 3, **Sch.**

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PROCEDURE RULES

39 Procedure rules.

Subject to the provisions of any Act of Parliament in force after the passing of this Act, the procedure in all civil causes shall be conform to the rules of procedure set forth in the First Schedule hereto annexed. Such rules shall be construed and have effect as part of this Act.

Modifications etc. (not altering text)

C12 S. 39 excluded (1.4.1997) by S.I. 1997/291, rule 3.24, Sch. 3

40 Court of Session to regulate fees, &c.

The Court of Session may from time to time, by Act of Sederunt, make such regulations, . . . ^{F65} for regulating the fees of agents [^{F66}(other than such of the fees of agents as the Secretary of State may regulate under or by virtue of section 14A of the ^{M7}Legal Aid (Scotland) Act 1967)], officers, shorthand writers, and others, . . . ^{F67}; . . . ^{F68} Provided . . . ^{F69} that every such Act of Sederunt shall, within one week from the date thereof, be transmitted by the Lord President of the Court of Session to the [^{F70}Secretary of State], in order that it may be laid before the Houses of Parliament; and, if either of the Houses of Parliament shall within thirty-six days after it has been laid before them resolve that the whole or any part of such Act of Sederunt ought not to continue in force, the whole or such part thereof as shall be included in such resolution shall from and after the date of the passing of such resolution cease to be binding.

Textual Amendments

F65 Words repealed by Administration of Justice (Scotland) Act 1933 (c. 41), Sch.

F66 Words inserted by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 47), s. 6(1), Sch. 1 para. 7

F67 Words repealed by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 47), s. 6(2), Sch. 2

F68 Words repealed by Sheriff Courts (Scotland) Act 1913 (2 & 3 Geo. 5 c. 28), Sch. 1 and Administration of Justice (Scotland) Act 1933 (c. 41), Sch.

F69 Words repealed by Sheriff Courts (Scotland) Act 1913 (2 & 3 Geo. 5 c. 28), Sch. 1

F70 Words substituted by virtue of Secretaries of State Act 1926 (c. 18), s. 1(3)

Marginal Citations

M7 1967 c.43 (77:2).

41

F71

Textual Amendments

F71 S. 41 repealed by Administration of Justice (Scotland) Act 1933 (c. 41), Sch.

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42— F72
48.

Textual Amendments

F72 Ss. 42–48 repealed by Sheriff Courts (Scotland) Act 1971 (c. 58), Sch. 2 Pt. II

49 F73

Textual Amendments

F73 S. 49 repealed by Execution of Diligence (Scotland) Act 1926 (c. 16), s. 7

SUMMARY APPLICATIONS

50 Summary applications.

In summary applications (where a hearing is necessary) the [^{F74}sheriff principal] shall appoint the application to be heard at a diet to be fixed by him, and at that or any subsequent diet (without record of evidence unless the [^{F74}sheriff principal] shall order a record) shall summarily dispose of the matter and give his judgment in writing: Provided that wherever in any Act of Parliament an application is directed to be heard, tried, and determined summarily or in the manner provided by section fifty-two of the ^{M8}Sheriff Courts (Scotland) Act 1876, such direction shall be read and construed as if it referred to this section of this Act: Provided also that nothing contained in this Act shall affect any right of appeal provided by any Act of Parliament under which a summary application is brought.

Textual Amendments

F74 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4

Modifications etc. (not altering text)

C13 S. 50 applied (14.7.2000) by S.S.I. 2000/233, art. 44(4)

C14 S. 50 applied (23.5.2008) by The Dumfries and Galloway Council (Port William) Harbour Empowerment Order 2008 (S.S.I. 2008/188), art. 33(4) (with arts. 53-56)

C15 S. 50 applied (23.5.2008) by The Dumfries and Galloway Council (Isle of Whithorn) Harbour Empowerment Order 2008 (S.S.I. 2008/189), art. 33(4) (with arts. 53-56)

C16 S. 50 applied (23.5.2008) by The Dumfries and Galloway Council (Garlieston) Harbour Empowerment Order 2008 (S.S.I. 2008/190), art. 33(4) (with arts. 53(1), 54-56)

Marginal Citations

M8 1876 c. 70.

51 F75

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Textual Amendments

F75 S. 51 repealed by Statute Law (Repeals) Act 1973 (c. 39), Sch. 1 Pt. XII

52

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F76

Textual Amendments

F76 S. 52 repealed by Statute Law Revision Act 1927 (c. 42), Sch. Pt. I

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SCHEDULES

^{F77}FIRST SCHEDULE

ORDINARY CAUSE RULES 1993

Textual Amendments

- F77** Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by [S.I. 1993/1956](#), para. 2, [Sch.1](#).
 Sch. 1 (except rule 29.10) excluded (1.4.1997) by [S.I. 1997/291](#), [rule 3.24](#), Sch. 3
 Sch. 1 extended (14.2.2000) by [S.I. 2000/124](#), [reg. 30\(5\)](#)

[^{F77}INITIATION AND PROGRESS OF CAUSES

CHAPTER 1

CITATION, INTERPRETATION, REPRESENTATION AND FORMS

Citation

- 1.1. These Rules may be cited as the Ordinary Cause Rules 1993.

Interpretation

- 1.2. (1) In these Rules, unless the context otherwise requires—
 “document” has the meaning assigned to it in section 9 of the ^{M9}Civil Evidence (Scotland) Act 1988;
 “period of notice” means the period determined under rule 3.6 (period of notice after citation).
- (2) For the purposes of these Rules—
 (a) “affidavit” includes an affirmation and a statutory or other declaration; and
 (b) an affidavit shall be sworn or affirmed before a notary public or any other competent authority.
- (3) Where a provision in these Rules requires a party to intimate or send a document to another party, it shall be sufficient compliance with that provision if the document is intimated or sent to the solicitor acting in the cause for that party.
- (4) Unless the context otherwise requires, anything done or required to be done under a provision in these Rules by a party may be done by the agent for that party acting on his behalf.
- (5) Unless the context otherwise requires, a reference to a specified Chapter, Part, rule or form, is a reference to the Chapter, Part, rule or form in Appendix 1, so specified

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in these Rules; and a reference to a specified paragraph, sub-paragraph or head is a reference to that paragraph of the rule or form, that sub-paragraph of that paragraph or that head of that sub-paragraph, in which the reference occurs.

Marginal Citations

M9 1988 c.32.

Representation

1.3. (1) Subject to paragraph (2), a party to any proceedings arising solely under the provisions of the ^{M10}Debtors (Scotland) Act 1987 shall be entitled to be represented by a person other than a solicitor or an advocate provided that the sheriff is satisfied that such person is a suitable representative and is duly authorised to represent that party.

(2) Paragraph (1) shall not apply to an appeal to the sheriff principal.

Marginal Citations

M10 1987 c.18.

Forms

1.4. Where there is a reference to the use of a form in these Rules, that form in Appendix 1 or Appendix 2, as the case may be, to these Rules, or a form substantially to the same effect, shall be used with such variation as circumstances may require.

CHAPTER 2

RELIEF FROM COMPLIANCE WITH RULES

Relief from failure to comply with rules

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

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CHAPTER 3

COMMENCEMENT OF CAUSES

Form of initial writ

- 3.1^{F78} (1) A cause shall be commenced—
- (a) in the case of an ordinary cause, by initial writ in Form G1; or
 - (b) in the case of a commercial action within the meaning of Chapter 40, by initial writ in Form G1A.]
- (2) The initial writ shall be written, typed or printed on A4 size paper of durable quality and shall not be backed or folded.
 - (3) Where the pursuer has reason to believe that an ^{F79}agreement] exists prorogating jurisdiction over the subject-matter of the cause to another court, the ^{F80}initial] writ shall contain details of that agreement.
 - (4) Where the pursuer has reason to believe that proceedings are pending before another court involving the same cause of action and between the same parties as those named in the instance of the initial writ, the ^{F80}initial] writ shall contain details of those proceedings.
 - (5) An article of condescence shall be included in the ^{F80}initial] writ averring—
 - (a) the ground of jurisdiction; and
 - (b) the facts upon which the ground of jurisdiction is based.
 - (6) Where the residence, registered office or place of business, as the case may be, of the defender is not known and cannot reasonably be ascertained, the pursuer shall set out in the instance that the whereabouts of the defender are not known and aver in the condescence what steps have been taken to ascertain his present whereabouts.
 - (7) The initial writ shall be signed by the pursuer or his solicitor (if any) and the name and address of that solicitor shall be stated on the back of every service copy of that writ.

Textual Amendments

F78 Rule 3.1(1)(a)(b) substituted for rule 3.1(1) (1.3.2001) by S.S.I. 2001/8, para. 2(1)(2)

F79 Word in rule 3.1(3) substituted (1.1.1996) by S.I. 1996/2445, para. 3(2)(a)(i)

F80 Word in rule 3.1(3)-(5) substituted (1.11.1996) by S.I. 1996/2445, para. 3(2)(a)(ii)(b)(c)

Actions relating to heritable property

- 3.2. (1) In an action relating to heritable property, it shall not be necessary to call as a defender any person by reason only of any interest he may have as the holder of a heritable security over the heritable property.
- (2) Intimation of such an action shall be made to the holder of the heritable security referred to in paragraph (1)—
- (a) where the action relates to any heritable right or title; and
 - (b) in any other case, where the sheriff so orders.

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[^{F81}(3) In an action falling within section 1(1)(b) or (c) of the Mortgage Rights (Scotland) Act 2001 ^{M11}, the initial writ shall include averments about those persons who appear to the pursuer to be entitled to apply for an order under section 2 of that Act and such persons shall, so far as known to the pursuer, be called as defenders for their interest.]

Textual Amendments

F81 Rule 3.2(3) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(2)}

Marginal Citations

M11 2001 asp 11.

Warrants of citation

- 3.3. (1) The warrant of citation in any cause other than—
- (a) a family action within the meaning of rule 33.1(1),
 - (b) an action of multiplepounding,
 - (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender,
- [^{F82}(d) an action to which rule 3.2(3) applies,]
shall be in [^{F83}Form O1].
- (2) In a cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for the defender, the warrant of citation shall be in [^{F83}Form O2].
- (3) In a cause in which a warrant of citation in accordance with [^{F83}Form O2] is appropriate, there shall be served on the defender (with the initial writ and warrant) a notice in [^{F83}Form O3].
- [^{F84}(4) In an action to which rule 3.2(3) applies, the warrant of citation shall be in Form O2A.]

Textual Amendments

F82 Rule 3.3(1)(d) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(3)(a)}

F83 Words in rule 3.3 substituted (1.11.1996) by S.I. 1996/2445, para. 3(3)

F84 Rule 3.3(4) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(3)(b)}

Warrants for arrestment to found jurisdiction

- 3.4. (1) Where an application for a warrant for arrestment to found jurisdiction may be made, it shall be made in the crave of the [^{F85}initial] writ.

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- (2) Averments to justify the granting of such a warrant shall be included in the condescendence.

Textual Amendments

F85 Word in rule 3.4(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(4)

Warrants and precepts for arrestment on dependence

- 3.5. (1) A copy of—
- (a) an initial writ with warrant to cite which includes a warrant to arrest on the dependence,
 - (b) defences which include, or a minute of amendment which includes, a counterclaim with warrant granted to arrest on the dependence endorsed on that writ,
- certified as a true copy by the pursuer or defender, as the case may be, or his solicitor, shall be sufficient warrant to arrest on the dependence if it is otherwise competent to do so.
- (2) A precept of arrestment may be issued by the sheriff clerk on production to him of—
- (a) an initial writ containing a crave for payment of money on which a warrant of citation has been issued;
 - (b) defences which include, or a minute of amendment which includes, a counterclaim containing a crave for payment of money; or
 - (c) a document of liquid debt.

Period of notice after citation

- 3.6. (1) Subject to rule 5.6(1) (service where address of person is not known) and to paragraph (2) of this rule, a cause shall proceed after one of the following periods of notice has been given to the defender:—
- (a) where the defender is resident or has a place of business within Europe, 21 days after the date of execution of service; or
 - (b) where the defender is resident or has a place of business outside Europe, 42 days after the date of execution of service.
- (2) Subject to paragraph (3), the sheriff may, on cause shown, shorten or extend the period of notice on such conditions as to the method or manner of service as he thinks fit.
- (3) A period of notice may not be reduced to a period of less than 2 days.
- (4) Where a period of notice expires on a Saturday, Sunday, or 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.

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CHAPTER 4

CAVEATS

Orders against which caveats may be lodged

- 4.1. A person may lodge a caveat against—
- (a) an interim interdict sought in an action before he has lodged a notice of intention to defend; or
 - (b) an interim order (other than an order under section 1 of the ^{M12}Administration of Justice (Scotland) Act 1972 (orders for inspection of documents and other property, etc.)) sought before the expiry of the period within which he could lodge a notice of intention to defend.

Marginal Citations

M12 1972 c.59.

Form lodging and renewal of caveats

- 4.2. (1) A caveat shall be in Form G2 and shall be lodged with the sheriff clerk.
- (2) A caveat shall remain in force for a period of one year from the date on which it was lodged and may be renewed on its expiry for a further period of one year and yearly thereafter.
- (3) Where a caveat has been lodged and has not expired, no order in respect of which the caveat was lodged may be pronounced unless the sheriff is satisfied that all reasonable steps have been taken to afford the person lodging the caveat an opportunity of being heard; and the sheriff may continue the hearing on such an order until he is satisfied that such steps have been taken.

CHAPTER 5

CITATION, SERVICE AND INTIMATION

Signature of warrants

- 5.1. (1) Subject to paragraph (2), a warrant for citation, intimation or arrestment on the dependence may be signed by the sheriff or sheriff clerk.
- (2) The following warrants shall be signed by the sheriff:—
- (a) a warrant containing an order shortening or extending the period of notice or any other order other than a warrant which the sheriff clerk may sign;
 - (b) a warrant for arrestment on the dependence in a family action within the meaning of rule 33.1(1) in respect of a claim to which section 19 of the ^{M13}Family Law (Scotland) Act 1985 (arrestment in action for aliment or claim for financial provision) applies; and
 - (c) a warrant for intimation ordered under rule 33.8 (intimation where improper association).

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

Marginal Citations

M13 1985 c.37.

Form of citation and certificate

- 5.2. (1) Subject to rule 5.6 (service where address of person is not known), in any cause other than—
- (a) a family action within the meaning of rule 33.1(1),
 - (b) an action of multiplepounding, ^{F86} . . .
 - (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, [^{F87}or]
 - [^{F88}(d) an action to which rule 3.2(3) applies,]
- [^{F89}citation of] any person shall be in Form O4 which shall be attached to a copy of the [^{F90}initial] writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.
- (2) In a cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be in Form O5 which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.
- [^{F91}(2A) In an action to which rule 3.2(3) applies, citation shall be in Form O5A which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.]
- (3) The certificate of citation in any cause other than a family action within the meaning of rule 33.1(1) or an action of multiplepounding shall be in Form O6 which shall be attached to the initial writ.
 - (4) Where citation is by a sheriff officer, one witness shall be sufficient for the execution of citation.
 - (5) Where citation is by a sheriff officer, the certificate of citation shall be signed by the sheriff officer and the witness and shall state—
 - (a) the method of citation; and
 - (b) where the method of citation was other than personal or postal citation, the full name and designation of any person to whom the citation was delivered.
 - (6) Where citation is executed under paragraph 3 of rule 5.4 (depositing or affixing by sheriff officer), the certificate shall include a statement—
 - (a) of the method of service previously attempted;
 - (b) of the circumstances which prevented such service being executed; and
 - (c) that a copy was sent in accordance with the provisions of paragraph (4) of that rule.

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Textual Amendments

- F86** Word in rule 5.2(1)(b) omitted (17.1.2002) by virtue of Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(4)(a)}
- F87** Word in rule 5.2(1)(c) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(4)(b)}
- F88** Rule 5.2(1)(d) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(4)(c)}
- F89** Words in rule 5.2(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(5)(a)
- F90** Word in rule 5.2(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(5)(b)
- F91** Rule 5.2(2A) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(4)(d)}

Postal service or intimation

- 5.3. (1) In any cause in which service or intimation of any document or citation of any person may be by recorded delivery, such service, intimation or citation shall be by the first class recorded delivery service.
- (2) Notwithstanding the terms of section 4(2) of the ^{M14}Citation Amendment (Scotland) Act 1882 (time from which period of notice reckoned), where service or intimation is by post, the period of notice shall run from the beginning of the day after the date of posting.
- (3) On the face of the envelope used for postal service or intimation under this rule there shall be written or printed the following notice:—
- “This envelope contains a citation to or intimation from (*specify the court*). If delivery cannot be made at the address shown it is to be returned immediately to:- The Sheriff Clerk (*insert address of sheriff clerk’s office*).”

Marginal Citations

- M14** 1882 c.77.

Service within Scotland by sheriff officer

- 5.4. (1) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served by a sheriff officer on any person shall be served—
- personally; or
 - by being left in the hands of a resident at the person’s dwelling place or an employee at his place of business.
- (2) Where service is executed under paragraph (1)(b), the certificate of citation or service shall contain the full name and designation of any person in whose hands the initial writ, decree, charge, warrant or other order or writ, as the case may be, was left.

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- (3) Where a sheriff officer has been unsuccessful in executing service in accordance with paragraph (1), he may, after making diligent enquiries, serve the document in question—
- (a) by depositing it in that person’s dwelling place or place of business; or
 - (b) by affixing it to the door of that person’s dwelling place or place of business.
- (4) Subject to rule 6.1 (service of schedule of arrestment), where service is executed under paragraph (3), the sheriff officer shall, as soon as possible after such service, send a letter containing a copy of the document by ordinary first class post to the address at which he thinks it most likely that the person on whom service has been executed may be found.
- [^{F92}(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).]

Textual Amendments

F92 Sch. 1 rule 5.4(5) inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), para. 2(3)

Service on persons furth of Scotland

- 5.5. (1) Subject to the following provisions of this rule, an initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served on a person furth of Scotland shall be served—
- (a) at a known residence or place of business in England, Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—
 - (i) in accordance with the rules for personal service under the domestic law of the place in which service is to be executed; or
 - (ii) by posting in Scotland a copy of the document in question in a registered letter addressed to the person at his residence or place of business;
 - (b) in a country which is a party to the ^{M15}Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965 or the Convention in Schedule 1 or 3C to the ^{M16}Civil Jurisdiction and Judgments Act 1982—

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- (i) by a method prescribed by the internal law of the country where service is to be executed for the service of documents in domestic actions upon persons who are within its territory;
 - (ii) by or through the central, or other appropriate, authority in the country where service is to be executed at the request of the [^{F93}Secretary of State for Foreign and Commonwealth Affairs];
 - (iii) by or through a British Consular Office in the country where service is to be executed at the request of the [^{F93}Secretary of State for Foreign and Commonwealth Affairs];
 - (iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered letter addressed to the person at his residence; or
 - (v) where the law of the country in which service is to be executed permits, service by an huissier, other judicial officer or competent official of the country where service is to be executed; ^{F94} . . .
 - (c) in a country with which the United Kingdom has a convention on the service of writs in that country other than the conventions mentioned in subparagraph (b), by one of the methods approved in the relevant convention. [^{F95} ; or
 - (d) 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 ^{F96} applies, service may be effected by the methods prescribed in paragraphs (1)(b)(ii) and (iii) only in exceptional circumstances]
- (2) Any document which requires to be posted in Scotland for the purposes of this rule shall be posted by a solicitor or a sheriff officer; and on the face of the envelope there shall be written or printed the notice set out in rule 5.3(3).
- (3) In the case of service by a method referred to in paragraph (1)(b)(ii) and (iii), the pursuer shall—
- (a) send a copy of the writ and warrant of service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and
 - (b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.
- (4) In the case of service by a method referred to in paragraph (1)(b)(v), the pursuer or the sheriff officer, shall—
- (a) send a copy of the writ and warrant for service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the official in the country in which service is to be executed; and
 - (b) lodge in process a certificate of the official who executed service stating that it has been, and the manner in which it was, served.
- (5) Where service is executed in accordance with paragraph (1)(a)(i) or (1)(b)(i) other than on another party in the United Kingdom, the Isle of Man or the Channel Islands, the party executing service shall lodge a certificate by a person who is conversant with the law of the country concerned and who practises or has practised law in that country or is a duly accredited representative of the Government of that country,

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stating that the method of service employed is in accordance with the law of the place where service was executed.

- (6) Every writ, document, citation or notice on the face of the envelope mentioned in rule 5.3(3) shall be accompanied by a translation in an official language of the country in which service is to be executed unless English is an official language of that country.
- (7) A translation referred to in paragraph (6) shall be certified as correct by the person making it; and the certificate shall—
 - (a) include his full name, address and qualifications; and
 - (b) be lodged with the execution of citation or service.

Textual Amendments

- F93** Words in rule 5.5(1)(b)(ii)(iii) substituted (1.11.1996) by S.I. 1996/2445, para. 3(6)
- F94** Word in Sch. 1 rule 5.5 omitted (24.1.2003) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(4)(a)
- F95** Sch. 1 rule 5.5(1)(d) and word inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(4)(b)
- F96** O.J. No. L 160, 30.06.00, p.37.

Marginal Citations

- M15** Cmnd. 3986 (1969).
- M16** 1982 c.27; Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c.12), section 1(3).

Service where address of person is not known

- 5.6. (1) Where the address of a person to be cited or served with a document is not known and cannot reasonably be ascertained, the sheriff shall grant warrant for citation or service upon that person—
- (a) by the publication of an advertisement in Form G3 in a specified newspaper circulating in the area of the last known address of that person, or
 - (b) by displaying on the walls of court a copy of the instance and crave of the initial writ, the warrant of citation and a notice in Form G4;
- and the period of notice 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.
- (2) Where service requires to be executed under paragraph (1), the pursuer shall lodge a service copy of the initial writ and a copy of any warrant of citation with the sheriff clerk from whom they may be uplifted by the person for whom they are intended.
 - (3) Where a person has been cited or served in accordance with paragraph (1) and, after the cause has commenced, his address becomes known, the sheriff may allow the initial writ to be amended subject to such conditions as to re-service, intimation, expenses or transfer of the cause as he thinks fit.
 - (4) Where advertisement in a newspaper is required for the purpose of citation or service under this rule, a copy of the newspaper containing the advertisement shall be lodged with the sheriff clerk by the pursuer.

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

Persons carrying on business under trading or descriptive name

- 5.7. (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; and an extract—
- (a) of a decree pronounced in the sheriff court, or
 - (b) of a decree proceeding upon any deed, decree arbitral, bond, protest of a bill, promissory note or banker's note or upon any other obligation or document on which execution may proceed, recorded in the sheriff court books^{F97} . . . ,
[^{F98}against such person under such trading or descriptive name shall be a valid] warrant for diligence against such person.
- (2) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree in a cause in which a person carrying on business under a trading or descriptive name sues or is sued in that name shall be served—
- (a) at any place of business or office at which such business is carried on within the sheriffdom of the sheriff court in which the cause is brought; or
 - (b) where there is no place of business within that sheriffdom, at any place where such business is carried on (including the place of business or office of the clerk or secretary of any company, corporation or association or firm).

Textual Amendments

F97 Words in rule 5.7(1)(b) omitted (1.11.1996) by S.I. 1996/2445, para. 3(7)(a)

F98 Words in rule 5.7(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(7)(b)

Endorsation unnecessary

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

Re-service

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

No objection to regularity of citation, service or intimation

- 5.10. (1) A person who appears in a cause shall not be entitled to state any objection to the regularity of the execution of citation, service or intimation on him; and his appearance shall remedy any defect in such citation, service or intimation.
- (2) Nothing in paragraph (1) shall preclude a party from pleading that the court has no jurisdiction.

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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 shall, on the certificate of execution, certify that this has been done and specify the address to which the copy of the schedule was sent.

Arrestment on dependence before service

- 6.2 (1) An arrestment on the dependence of a cause used before service shall cease to have effect unless—
- (a) the initial writ is served within 20 days from the date of arrestment; and
 - (b) in the case of an undefended cause, decree in absence has been pronounced within 20 days after the expiry of the period of notice.
- (2) After such an arrestment has been executed, the party who executed it shall forthwith report the execution to the sheriff clerk.

Movement of arrested property

- 6.3 (1) Any person having an interest may apply by motion for a warrant authorising the movement of a vessel or cargo which is the subject of an arrestment to found jurisdiction or on the dependence of a cause.
- (2) Where the court grants a warrant sought under paragraph (1), it may make such further order as it thinks fit to give effect to that warrant.

CHAPTER 7

UNDEFENDED CAUSES

Application of this Chapter

- 7.1. This Chapter applies to any cause other than an action in which the sheriff may not grant decree without evidence.

Minute for granting of decree without attendance

- 7.2. (1) Subject to the following paragraphs, where the defender—
- (a) does not lodge a notice of intention to defend,
 - (b) does not lodge an application for a time to pay direction under the ^{M17}Debtors (Scotland) Act 1987,

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- (c) has lodged such an application for a time to pay direction and the pursuer does not object to the application or to any recall or restriction of an arrestment sought in the application,
- the sheriff may, on the pursuer endorsing a minute for decree on the initial writ, at any time after the expiry of the period for lodging that notice or application, grant decree in absence or other order in terms of the minute so endorsed without requiring the attendance of the pursuer in court.
- (2) The sheriff shall not grant decree under paragraph (1)—
- (a) unless it appears ex facie of the initial writ that a ground of jurisdiction exists under the ^{M18}Civil Jurisdiction and Judgments Act 1982 where that Act applies; and
- (b) the cause is not a cause—
- (i) in which decree may not be granted without evidence;
- (ii) to which paragraph (4) applies; or
- (iii) to which rule 33.31 (procedure in undefended family action for ^{F99}a section 11 order] applies.
- (3) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the initial writ in sufficient time to arrange for his defence or that all necessary steps have been taken to that end; and for the purposes of this paragraph—
- (a) the question whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982;
- (b) the question whether a person is domiciled in another Contracting State shall be determined in accordance with Article 52 of ^{F100}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.
- (4) Where an initial writ has been served in a country to which the ^{M19}Hague Convention on the Service Abroad of Judicial and Exta-Judicial Documents in ^{F101}Civil or Commercial] Matters dated 15th November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of Article 15 of that Convention have been complied with.

Textual Amendments

F99 Words in rule 7.2(2)(b)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 1

F100 Words in rule 7.2(3)(b) inserted (1.11.1996) by S.I. 1996/2445, para. 3(8)(a)

F101 Words in rule 7.2(4) substituted (1.11.1996) by S.I. 1996/2445, para. 3(8)(b)

Marginal Citations

M17 1987 c.18.

M18 1982 c.27.

M19 Cmnd. 3986 (1969).

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Applications for time to pay directions in undefended causes

- 7.3. (1) This rule applies to a cause in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.
- (2) A defender in a cause which is otherwise undefended, who wishes to apply for a time to pay direction, and where appropriate, to have an arrestment recalled or restricted, shall complete and lodge with the sheriff clerk the appropriate part of Form O3 before the expiry of the period of notice.
- (3) Where the pursuer does not object to the application of the defender made in accordance with paragraph (2), he shall minute for decree in accordance with rule 7.2; and the sheriff may grant decree or other order in terms of the application and minute.
- (4) Where the pursuer objects to the application of the defender made in accordance with paragraph (2), he shall minute for decree in accordance with rule 7.2; and the sheriff clerk shall thereafter fix a hearing on the application of the defender and intimate the hearing to the pursuer and defender.
- (5) The sheriff may determine an application in which a hearing has been fixed under paragraph (4) whether or not any of the parties appear.

Decree for expenses

- 7.4. On granting decree in abence or thereafter, the sheriff may grant decree for expenses.

Finality of decree in absence

- 7.5. Subject to section 9(7) of the ^{M20}Land Tenure Reform (Scotland) Act 1974 (decree in action of removing for breach of condition of long lease to be final when extract recorded in Register of Sasines), a decree in absence which has not been recalled or brought under review by suspension or by reduction shall become final and shall have effect as a decree in foro contentioso—
- (a) on the expiry of six months from the date of the decree or from the date of a charge made under it, [^{F102}as the case may be,] where the service of the initial writ or of the charge has been personal; and
- (b) in any event, on the expiry of 20 years from the date of the decree.

Textual Amendments

F102 Words in rule 7.5(a) inserted (1.11.1996) by S.I. 1996/2445, para. 3(9)

Marginal Citations

M20 1974 c.38.

Amendment of initial writ

- 7.6. (1) In an undefended cause, the sheriff may—
- (a) allow the pursuer to amend the initial writ in any way permitted by rule 18.2 (powers of sheriff to allow amendment); and

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- (b) order the amended [^{F103}initial] writ to be re-served on the defender on such period of notice as he thinks fit.
- (2) The defender shall not be liable for the expense occasioned by any such amendment unless the sheriff so orders.
- (3) Where an amendment has been allowed under paragraph (1), the amendment—
 - (a) shall not validate diligence used on the dependence of a cause so as to prejudice the rights of [^{F104}creditors of] the party against whom the diligence has been executed, who are interested in defeating such diligence; and
 - (b) shall preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.

Textual Amendments

F103 Word in rule 7.6(1)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(10)(a)

F104 Words in rule 7.6(3)(a) substituted (1.11.1996) by S.I. 1996/2445, para. 3(10)(b)

Disapplication of certain rules

- [^{F105}7.7. The following rules in Chapter 15 (motions) shall not apply to an action in which no notice of intention to defend has been lodged or to any action in so far as it proceeds as undefended:—
- rule 15.2 (intimation of motions),
 - rule 15.3 (opposition to motions),
 - rule 15.5 (hearing of motions).]

Textual Amendments

F105 Rule 7.7 inserted (1.11.1996) by S.I. 1996/2445, para. 3(11)

CHAPTER 8

REPONING

Reponing

- 8.1. (1) In any cause other than—
- (a) a cause mentioned in rule 33.1(1)(a) to (h) (certain family actions), or
 - (b) a cause to which Chapter 37 (causes under the Presumption of death (Scotland) Act 1977) applies,
- the defender may apply to be reponed by lodging with the sheriff clerk, before implement in full of a decree in absence, a reponing note setting out his proposed defence and explaining his failure to appear.
- (2) A copy of the note lodged under paragraph (1) shall be served on the pursuer.
 - (3) The sheriff may, on considering the reponing note, recall the decree so far as not implemented subject to such order as to expenses as he thinks fit; and the cause shall

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thereafter proceed as if the defender had lodged a notice of intention to defend and the period of notice had expired on the date on which the decree in absence was recalled.

(4) A reponing note, when duly lodged with the sheriff clerk and served upon the pursuer, shall have effect to sist diligence.

[^{F106}(4A) Where an initial writ has been served on a defender furth of the United Kingdom under rule 5.5(1)(b) (service on persons furth of Scotland) and decree in absence has been pronounced against him as a result of his failure to enter appearance, the court may, on the defender applying to be reponed in accordance with paragraph (1) above, recall the decree and allow defences to be received if—

- (a) without fault on his part, he did not have knowledge of the initial writ in sufficient time to defend;
- (b) he has disclosed *prima facie* defence to the action on the merits; and
- (c) the reponing note is lodged within a reasonable time after he had knowledge of the decree or in any event before the expiry of one year from the date of decree.]

(5) Any interlocutor or order recalling, or incidental to the recall of, a decree in absence shall be final and not subject to appeal.

Textual Amendments

F106 Sch. 1 rule 8.1(4A) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(2)

CHAPTER 9

STANDARD PROCEDURE IN DEFENDED CAUSES

Notice of intention to defend

9.1. (1) Subject to rules 33.34 (notice of intention to defend and defences in family action) and 35.8 (lodging of notice of appearance in action of multiplepinding), where the defender intends to—

- (a) challenge the jurisdiction of the court,
- (b) state a defence, or
- (c) make a counterclaim,

he shall, before the expiry of the period of notice, lodge with the sheriff clerk a notice of intention to defend in Form O7 [^{F107}and, at the same time, send a copy to the pursuer].

(2) The lodging of a notice of intention to defend shall not imply acceptance of the jurisdiction of the court.

[^{F108}(3) This Chapter shall not apply to a commercial action within the meaning of Chapter 40.]

Textual Amendments

F107 Words in rule 9.1(1) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 2

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F108 Rule 9.1(3) inserted (1.3.2001) by S.S.I. 2001/8, para. 2(1)(3)

Fixing date for Options Hearing

9.2. (1) ^{F109}Subject to paragraph (1A),] On the lodging of a notice of intention to defend, the sheriff clerk shall fix a date and time for an Options Hearing which date shall be on the first suitable court day occurring not sooner than 10 weeks after the expiry of the period of notice.

^{F110}(1A) Where in a family action—

- (i) the only matters in dispute are an order in terms of section 11 of the ^{M21}Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.); or
- (ii) the matters in dispute include an order in terms of section 11 of that Act, there shall be no requirement to fix an Options Hearing in terms of paragraph (1) above insofar as the matters in dispute relate to an order in terms of section 11(2) of the Children (Scotland) Act 1995.

^{F110}(1B) In paragraph (1A) above, “family action” has the meaning given to it in rule 33.1(1).]

(2) On fixing the date for the Options Hearing, the sheriff clerk shall—

- (a) forthwith intimate to the parties in Form G5—
 - (i) the last date for lodging defences;
 - (ii) the last date for adjustment; and
 - (iii) the date of the Options hearing; and
- (b) prepare and sign an interlocutor recording those dates.

(3) The fixing of the date for the Options Hearing shall not affect the right of ^{F111}a party] to make any incidental application to the court.

Textual Amendments

F109 Words in Sch. 1 rule 9.2(1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(3)(a)

F110 Sch. 1 rule 9.2(1A)(1B) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(3)(b)

F111 Words in rule 9.2(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(12)

Marginal Citations

M21 1995 c.36.

Second or subsequent Options Hearing

^{F112}9.2(A) Where for any reason a second or subsequent Options Hearing requires to be fixed and an Options Hearing has already been fixed but has not yet taken place, the sheriff shall fix a second or subsequent Options Hearing and discharge that earlier hearing.

(2) The sheriff clerk shall forthwith intimate to all parties—

- (a) that the original Options Hearing has been discharged;
- (b) the last date for lodging defences, if appropriate;
- (c) the last date for adjustment; and
- (d) the date and time fixed for the second or subsequent Options Hearing.

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- (3) Any reference in these Rules to an Options Hearing or a continuation of it shall include a reference to a second or subsequent Options Hearing ordered under this rule.]

Textual Amendments

F112 Rule 9.2A inserted (1.11.1996) by S.I. 1996/2445, para. 3(13)

Return of initial writ

- 9.3. Subject to rule 9.4 (lodging of pleadings before Options Hearing), the pursuer shall return the initial writ, unbacked and unfolded, to the sheriff clerk within 7 days after the expiry of the period of notice.

Lodging of pleadings before Options Hearing

- 9.4. Where any hearing, whether by motion or otherwise, is fixed before the Options Hearing, each party shall lodge in process a copy of his pleadings, or, where the pleadings have been adjusted, the pleadings as adjusted, not later than 2 days before the hearing.

Process folder

- 9.5. (1) On receipt of the notice of intention to defend, the sheriff clerk shall prepare a process folder which shall include—
- (a) interlocutor sheets;
 - (b) duplicate interlocutor sheets;
 - (c) a production file;
 - (d) a motion file; and
 - (e) an inventory of process.
- (2) Any production or part of process lodged in a cause shall be placed in the process folder.

Defences

- 9.6. (1) Where a notice of intention to defend has been lodged, the defender shall ^{F113}(subject to paragraph (3)) lodge defences within 14 days after the expiry of the period of notice.
- (2) Subject to rule 19.1(3) (form of defences where counterclaim included), defences shall be in the form of answers in numbered paragraphs corresponding to the articles of the condescence and shall have appended a note of the pleas-in-law of the defender.
- ^{F114}(3) In a family action (within the meaning of rule 33.1(1)), neither a crave nor averments need be made in the defences which relate to any order under section 11 of the Children (Scotland) Act 1995.]

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Textual Amendments

F113 Words in rule 9.6(1) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 3(a)

F114 Rule 9.6(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 3(b)

Implied admissions

- 9.7. Every statement of fact made by a party shall be answered by every other party, and if such a statement by one party within the knowledge of another party is not denied by that other party, that other party shall be deemed to have admitted that statement of fact.

Adjustment of pleadings

- 9.8. (1) Parties may adjust their pleadings until 14 days before the date of the Options Hearing or any continuation of it.
- (2) Any adjustments shall be exchanged between parties and not lodged in process.
- (3) Parties shall be responsible for maintaining a record of adjustments made during the period for adjustment.
- (4) No adjustments shall be permitted after the period mentioned in paragraph (1) except with leave of the sheriff.

Effect of sist on adjustment

- 9.9. (1) Where a cause has been sisted, any period for adjustment before the sist shall be reckoned as a part of the period for adjustment.
- (2) On recall of the sist of a cause, the sheriff clerk shall—
- (a) fix a new date for the Options Hearing;
- (b) prepare and sign an interlocutor recording that date; and
- (c) intimate that date to each party.

Open record

- 9.10. The sheriff may, at any time before the closing of the record in a cause to which this Chapter applies, of his own motion or on the motion of a party, order any party to lodge a copy of the pleadings in the form of an open record containing any adjustments and amendments made as at the date of the order.

Record for Options Hearing

- 9.11. (1) The pursuer shall, at the end of the period for adjustment referred to in rule 9.8(1) and before the Options Hearing, make a copy of the pleadings and any adjustments and amendments in the form of a record.
- (2) Not later than 2 days before the Options Hearing, the pursuer shall lodge a certified copy of the record in process.
- [^{F115}(3) Where the Options Hearing is continued under rule 9.12(5), and further adjustment or amendment is made to the pleadings, a copy of the pleadings as adjusted or amended,

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certified by the pursuer, shall be lodged in process not later than 2 days before the Options Hearing so continued.]

Textual Amendments

F115 Rule 9.11(3) inserted (1.11.1996) by S.I. 1996/2445, para. 3(14)

Options Hearing

- 9.12 (1) At the Options Hearing the sheriff shall seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).
- (2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.
- (3) At the Options Hearing the sheriff shall, except where the cause is ordered to proceed under the procedure in Chapter 10 (additional procedure), close the record and—
- (a) appoint the cause to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit;
 - (b) after having heard parties and considered any note lodged under rule 22.1 (note of basis of preliminary plea), appoint the cause to a proof before answer and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit; or
 - (c) after having heard parties and considered any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of law which justifies a debate.
- (4) At the Options Hearing the sheriff may, having heard parties—
- (a) of his own motion or on the motion of any party, and
 - (b) on being satisfied that the difficulty or complexity of the cause makes it unsuitable for the procedure under this Chapter,
- order that the cause proceed under the procedure in Chapter 10 (additional procedure).
- (5) The sheriff may, on cause shown, of his motion or on the motion of any party, allow a continuation of the Options Hearing on one occasion only for a period not exceeding 28 days or to the first suitable court day thereafter.
- (6) On closing the record—
- (a) where there are no adjustments made since the lodging of the record under rule 9.11.(2), that record shall become the closed record; and
 - (b) where there are such adjustments, the sheriff may order that a closed record including such adjustments be lodged within 7 days after the date of the interlocutor closing the record.
- (7) For the purposes of rules 16.2 (decrees where party in default) and 33.37 (decree by default in family action), an Options Hearing shall be a diet in accordance with those rules.

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Inspection and recovery of documents

- 9.13. (1) Each party shall, within 14 days after the date of the interlocutor allowing proof or proof before answer, intimate to every other party a list of the 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) A party who seeks to use or put in evidence at a proof a document not on his list intimated under paragraph (1) shall, if any other party objects to such document being used or put in evidence, seek leave of the sheriff to do so; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.
- (4) 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 28.2 for a commission and diligence for recovery of documents or an order under section 1 of the ^{M22}Administration of Justice (Scotland) Act 1972

Marginal Citations

M22 1972 c.59; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73); section 19 and Schedule 2, paragraph 15.

Exchange of lists of witnesses

- 9.1^{F116}(1) Within 28 days after the date of the interlocutor allowing a proof or proof before answer, each party shall—
- (a) intimate to every other party a list of witnesses, including any skilled witnesses, on whose evidence he intends to rely at proof; and
 - (b) lodge a copy of that list in process.]
- (2) A party who seeks to [^{F117}rely on the evidence of] a person not on his list intimated under paragraph (1) shall, if any other party objects to such [^{F118}evidence being admitted], seek leave of the sheriff to [^{F119}admit that evidence whether it is to be given orally or not]; 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.

Textual Amendments

F116 Sch. 1 rule 9.14(1) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(4)(a)

F117 Words in Sch. 1 rule 9.14(2) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(4)(b)(i)

F118 Words in Sch. 1 rule 9.14(2) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(4)(b)(ii)

F119 Words in Sch. 1 rule 9.14(2) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(4)(b)(iii)

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Applications for time to pay directions

- 9.15. An application for a time to pay direction under section 1(1) of the ^{M23}Debtors (Scotland) Act 1987 or for the recall or restriction of an arrestment under section 2(3) or 3(1) of that Act in a cause which is defended shall be made by motion lodged before the sheriff grants decree.

Marginal Citations

M23 1987 c.18.

VALID FROM 21/05/2004

[^{F120}CHAPTER 9A

DOCUMENTS AND WITNESSES

Textual Amendments

F120 Sch. 1 Chapter 9A inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), **art. 2(8)**

Application of this Chapter

- 9A.1. This Chapter applies to any cause proceeding under Chapters 9 and 10.

Inspection and recovery of documents

- 9A.2. (1) Each party shall, within 14 days after the date of the interlocutor allowing proof or proof before answer, intimate to every other party a list of the documents, which are or have been in his possession or control and 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) A party who seeks to use or put in evidence at a proof a document not on his list intimated under paragraph (1) shall, if any other party objects to such document being used or put in evidence, seek leave of the sheriff to do so; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.
- (4) 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 28.2 for a commission and diligence for recovery of documents or an order under section 1 of the Administration of Justice (Scotland) Act 1972 ^{F121}.

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Textual Amendments

F121 1972 c. 59; section 1 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73\)](#); section 19 and Schedule 2, paragraph 15.

Applications in respect of time to pay directions, and arrestments

- 9A.4. An application for a time to pay direction under section 1(1) of the Debtors (Scotland) Act 1987 ^{F122}, or for the recall or restriction of an arrestment under section 2(3) or 3(1) of that Act, in a cause which is defended, shall be made by motion lodged before the sheriff grants decree.]

Textual Amendments

F122 1987 c. 18; section 1 was repealed in part by the [Social Security Act 1998 \(c. 14\)](#) (“the 1998 Act”), Schedule 8 and by the [Abolition of Poindings and Warrant Sales \(Scotland\) Act 2001 \(asp 1\)](#) (now repealed), Schedule, Part 1 and was amended by the [Child Support Act 1991 \(c. 48\)](#), [Schedule 5](#), paragraph 8, the [Local Government Finance Act 1992 \(c. 14\)](#), [Schedule 13](#), paragraph 53, the [Local Government etc. \(Scotland\) Act 1994 \(c. 39\)](#), [Schedule 13](#), paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), [Schedule 9](#), paragraph 1, and the [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), [schedule 7](#), paragraph 17.

CHAPTER 10

ADDITIONAL PROCEDURE

Additional period for adjustment

- 10.1. (1) Where, under rule 9.12(4) (order at Options Hearing to proceed under Chapter 10), the sheriff orders that a cause shall proceed in accordance with the procedure in this Chapter, he shall continue the cause for adjustment for a period of 8 weeks.
- (2) Paragraphs (2) and (3) of rule 9.8 (exchange and record of adjustments) shall apply to a cause in which a period for adjustment under paragraph (1) of this rule has been allowed as they apply to the period for adjustment under that rule.

Effect of sist on adjustment period

- 10.2. Where a cause has been sisted, any period for adjustment before the sist shall be reckoned as part of the period for adjustment.

Variation of adjustment period

- 10.3. (1) At any time before the expiry of the period for adjustment the sheriff may close the record if parties, of consent or jointly, lodge a motion seeking such an order.
- (2) The sheriff may, if satisfied that there is sufficient reason for doing so, extend the period for adjustment for such period as he thinks fit, if any party—
- (a) lodges a motion seeking such an order; and

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- (b) lodges a copy of the record adjusted to the date of lodging of the motion.
- (3) A motion lodged under paragraph (2) shall set out—
 - (a) the reasons for seeking an extension of the period for adjustment; and
 - (b) the period for adjustment sought.

Order for open record

- 10.4. The sheriff may, at any time before the closing of the record in a cause to which this Chapter applies, of his own motion or on the motion of a party, order any party to lodge a copy of the pleadings in the form of an open record containing any adjustments and amendments made as at the date of the order.

Closing record

- 10.5. (1) On the expiry of the period for adjustment, the record shall be closed and, without the attendance of parties, the sheriff clerk shall forthwith—
- (a) prepare and sign an interlocutor recording the closing of the record and fixing the date of the Procedural Hearing under rule 10.6, which date shall be on the first suitable court day occurring not sooner than 21 days after the closing of the record; and
 - (b) intimate the date of the hearing to each party.
- (2) The pursuer shall, within 14 days after the date of the interlocutor closing the record, lodge a certified copy of the closed record in process.
- (3) The closed record shall contain only the pleadings of the parties.

Procedural Hearing

- 10.6. (1) At the Procedural Hearing, the sheriff shall seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).
- (2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.
- (3) At the Procedural Hearing the sheriff shall—
- (a) appoint the cause to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit;
 - (b) after having heard the parties and considered any note lodged under rule 22.1 (note of basis of preliminary plea), appoint the cause to a proof before answer and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit; or
 - (c) after having heard the parties and considered any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of law which justifies a debate.
- (4) For the purposes of rule 33.37 (decree by default in family action), a Procedural Hearing shall be a diet in accordance with that rule.

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CHAPTER 11

THE PROCESS

Form and lodging of parts of process

- 11.1. All parts of process shall be written, typed or printed on A4 size paper of durable quality and shall be lodged, unbacked and unfolded, with the sheriff clerk.

Custody of process

- 11.2. (1) The initial writ, and all other parts of process lodged in a cause, shall be placed by the sheriff clerk in the process folder.
- (2) The initial writ, interlocutor sheets, borrowing receipts and the process folder shall remain in the custody of the sheriff clerk.
- (3) The sheriff [^{F123}clerk may,] on cause shown, authorise the initial writ to be borrowed by the pursuer, his solicitor or the solicitor's authorised clerk.

Textual Amendments

F123 Words in rule 11.2(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(15)

Borrowing and returning of process

- 11.3. (1) Subject to paragraph (3), a process, or any part of a process which may be borrowed, may be borrowed only by a solicitor or by his authorised clerk.
- (2) All remedies competent to enforce the return of a borrowed process may proceed on the warrant of the court from the custody of which the process was obtained.
- (3) A party litigant—
- (a) may borrow a process only—
- (i) with leave of the sheriff; and
- (ii) subject to such conditions as the sheriff may impose; or
- (b) may inspect a process and obtain copies, where practicable, from the sheriff clerk.
- (4) The sheriff may, on the motion of any party, ordain any other party who has borrowed a part of process to return it within such time as the sheriff thinks fit.

Failure to return parts of process

- 11.4. (1) Where a solicitor or party litigant has borrowed any part of process and fails to return it for any diet or hearing at which it is required, the sheriff may impose on such solicitor or party litigant a fine not exceeding £50, which shall be payable to the sheriff clerk; but an order imposing a fine may, on cause shown, be recalled by the sheriff.
- (2) An order made under this rule shall not be subject to appeal.

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Replacement of lost documents

- 11.5. Where any part of process is lost or destroyed, a copy of it, authenticated in such manner as the sheriff thinks fit, may be substituted for and shall, for the purposes of the cause to which the process relates, be treated as having the same force and effect as the original.

Intimation of parts of process and adjustments

- 11.6. (1) After a notice of intention to defend has been lodged, any party lodging a part of process or making an adjustment to his pleadings shall [^{F124}, at the same time,] intimate such lodging or adjustment to every other party who has entered the process by delivering to every other party a copy of each part of process or adjustment, including, where practicable, copies of any documentary production.
- (2) Unless otherwise provided in these Rules, the party required to give intimation under paragraph (1) shall deliver to every other party who has entered the process a copy of the part of process or adjustment or other document, as the case may be, by—
- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
 - (b) where intimation is to a party represented by a solicitor—
 - (i) personal delivery,
 - (ii) facsimile transmission,
 - (iii) first class ordinary post,
 - (iv) delivery to a document exchange,
 to that solicitor.
- (3) Subject to paragraph (4), where intimation is given under—
- (a) paragraph (2)(b)(i) or (ii), it shall be deemed to have been given—
 - (i) on the day of transmission or delivery where it is given before 5.00 pm on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 pm on any day; or
 - (b) paragraph (2)(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.
- (4) Where intimation is given [^{F125}or, but for this paragraph, would be deemed to be given] on a Saturday, Sunday or public or court holiday, it shall be deemed to have been given on the next day on which the sheriff clerk's office is open for civil court business.

Textual Amendments

F124 Words in rule 11.6(1) inserted (1.11.1996) by S.I. 1996/2445, para. 3(16)(a)

F125 Words in rule 11.6(4) inserted (1.11.1996) by S.I. 1996/2445, para. 3(16)(b)

Retention and disposal of parts of process by sheriff clerk

- 11.7. (1) Where any cause has been finally determined and the period for marking an appeal has expired without an appeal having been marked, the sheriff clerk shall—
- (a) retain—

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- (i) the initial writ;
 - (ii) any closed record;
 - (iii) the interlocutor sheets;
 - (iv) any joint minute;
 - (v) any offer and acceptance of tender;
 - (vi) any report from a person of skill;
 - (vii) any affidavit; and
 - (viii) any extended shorthand notes of the proof; and
- (b) dispose of all other parts of process (except productions) in such a manner as seems appropriate.
- (2) Where an appeal has been marked on the final determination of the cause, the sheriff clerk shall exercise his duties mentioned in paragraph (1) after the final disposal of the appeal and any subsequent procedure.

Uplifting of productions from process

- 11.8. (1) Each party who has lodged productions in a cause shall—
- (a) within 14 days after the final determination of the cause, where no subsequent appeal has been marked, or
 - (b) within 14 days after the disposal of any appeal marked on the final determination of the cause,
- uplift the productions from process.
- (2) Where any production has not been uplifted as required by paragraph (1), 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 a manner as the sheriff directs.

CHAPTER 12

THE PROCESS

Signature of interlocutors by sheriff clerk

- 12.1. In accordance with any directions given by the sheriff principal, any interlocutor other than a final interlocutor may be written and signed by the sheriff clerk and—
- (a) any interlocutor written and signed by a sheriff clerk shall be treated for all purposes as if it had been written and signed by the sheriff; and
 - (b) any extract of such an interlocutor shall not be invalid by reason only of its being written and signed by a sheriff clerk.

Further provisions in relation to interlocutors

- 12.2. (1) The sheriff may sign an interlocutor when furth of his sheriffdom.

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- (2) At any time before extract, the sheriff may correct any clerical or incidental error in an interlocutor or note attached to it.
- [^{F126}(3) In any cause, other than a family action within the meaning of rule 33.1(1) which has proceeded as undefended, where at any stage evidence has been led, the sheriff shall—
- (a) in the interlocutor, make findings in fact and law; and
 - (b) append to that interlocutor a note setting out the reasons for his decision.
- (4) In any other interlocutor, the sheriff may, and shall when requested by a party, append a note setting out the reasons for his decision.]
- (5) Where the sheriff reserves his decision and gives his decision at a date later than the date of the hearing outwith the presence of the parties—
- (a) the date of the interlocutor of the sheriff shall be the date on which it is received by the sheriff clerk; and
 - (b) the sheriff clerk shall—
 - (i) enter that date in the interlocutor; and
 - (ii) forthwith send a copy of the interlocutor and any note attached to it free of charge to each party.

Textual Amendments

F126 Rule 12.2(3)(4) substituted (1.11.1996) by S.I. 1996/2445, para. 3(17)

CHAPTER 13

PARTY MINUTER PROCEDURE

Person claiming title and interest to enter process as defender

- 13.1. (1) A person who has not been called as a defender or third party may apply by minute for leave to enter a process as a party minuter and to lodge defences.
- (2) A minute under paragraph (1) shall specify—
- (a) the applicant's title and interest to enter the process; and
 - (b) the grounds of the defence he proposes to state.
- (3) Subject to paragraph (4), after hearing the applicant and any party, the sheriff may—
- (a) if he is satisfied that the applicant has shown title and interest to enter the process, grant the applicant leave to enter the process as a party minuter and to lodge defences; and
 - (b) make such order as to expenses or otherwise as he thinks fit.
- (4) Where an application under paragraph (1) is made after the closing of the record, the sheriff shall only grant leave under paragraph (3) if he is satisfied as to the reason why earlier application was not made.

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Procedure following leave to enter process

- 13.2. (1) Where a party minuter lodges [^{F127}defences], the sheriff clerk shall fix a date and time under rule 9.2 for a hearing under rule 9.12 (Options Hearing) as if the party minuter had lodged a notice of intention to defend and the period of notice had expired on the date for lodging answers.
- (2) At the Options Hearing, or at any time thereafter, the sheriff may grant such decree or other order as he thinks fit.
- (3) A decree or other order against the party minuter shall have effect and be extractable in the same way as a decree or other order against a defender.

Textual Amendments

F127 Word in rule 13.2(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(18)

VALID FROM 01/07/2008

[^{F128}CHAPTER 13A

INTERVENTIONS BY THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

Textual Amendments

F128 Sch. 1 Chapters 13A 13B inserted (1.7.2008) by Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2008 (S.S.I. 2008/223), para. 4(2)

Interpretation

- 13A.1. In this Chapter “the CEHR” means the Commission for Equality and Human Rights.

Interventions by the CEHR

- 13A.2.(1) The CEHR may apply to the sheriff for leave to intervene in any cause in accordance with this Chapter.
- (2) This Chapter is without prejudice to any other entitlement of the CEHR by virtue of having title and interest in relation to the subject matter of any proceedings by virtue of section 30(2) of the Equality Act 2006 ^{F129} or any other enactment to seek to be sisted as a party in those proceedings.
- (3) Nothing in this Chapter shall affect the power of the sheriff to make such other direction as he considers appropriate in the interests of justice.
- (4) Any decision of the sheriff in proceedings under this Chapter shall be final and not subject to appeal.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F129 2006 c. 3.

Applications to intervene

- 13A.3.(1) An application for leave to intervene shall be by way of minute of intervention in Form O7A and the CEHR shall–
- (a) send a copy of it to all the parties; and
 - (b) lodge it in process, certifying that subparagraph (a) has been complied with.
- (2) A minute of intervention shall set out briefly–
- (a) the CEHR's reasons for believing that the proceedings are relevant to a matter in connection with which the CEHR has a function;
 - (b) the issue in the proceedings which the CEHR wishes to address; and
 - (c) the propositions to be advanced by the CEHR and the CEHR's reasons for believing that they are relevant to the proceedings and that they will assist the sheriff.
- (3) The sheriff may–
- (a) refuse leave without a hearing;
 - (b) grant leave without a hearing unless a hearing is requested under paragraph (4);
 - (c) refuse or grant leave after such a hearing.
- (4) A hearing, at which the applicant and the parties may address the court on the matters referred to in paragraph (6)(c), may be held if, within 14 days of the minute of intervention being lodged, any of the parties lodges a request for a hearing.
- (5) Any diet in pursuance of paragraph (4) shall be fixed by the sheriff clerk who shall give written intimation of the diet to the CEHR and all the parties.
- (6) The sheriff may grant leave only if satisfied that–
- (a) the proceedings are relevant to a matter in connection with which the CEHR has a function;
 - (b) the propositions to be advanced by the CEHR are relevant to the proceedings and are likely to assist him; and
 - (c) the intervention will not unduly delay or otherwise prejudice the rights of the parties, including their potential liability for expenses.
- (7) In granting leave the sheriff may impose such terms and conditions as he considers desirable in the interests of justice, including making provision in respect of any additional expenses incurred by the parties as a result of the intervention.
- (8) The sheriff clerk shall give written intimation of a grant or refusal of leave to the CEHR and all the parties.

Form of intervention

- 13A.4.(1) An intervention shall be by way of a written submission which (including any appendices) shall not exceed 5000 words.

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- (2) The CEHR shall lodge the submission and send a copy of it to all the parties by such time as the sheriff may direct.
- (3) The sheriff may in exceptional circumstances—
 - (a) allow a longer written submission to be made;
 - (b) direct that an oral submission is to be made.
- (4) Any diet in pursuance of paragraph (3)(b) shall be fixed by the sheriff clerk who shall give written intimation of the diet to the CEHR and all the parties.

VALID FROM 01/07/2008

CHAPTER 13B

INTERVENTIONS BY THE SCOTTISH COMMISSION FOR HUMAN RIGHTS

Interpretation

- 13B.1. In this Chapter—
- “the Act of 2006” means the Scottish Commission for Human Rights Act 2006; and
 - “the SCHR” means the Scottish Commission for Human Rights.

Application to intervene

- 13B.2.(1) An application for leave to intervene under section 14(2)(a) of the Act of 2006 shall be by way of minute of intervention in Form O7B and the SCHR shall—
- (a) send a copy of it to all the parties; and
 - (b) lodge it in process, certifying that subparagraph (a) has been complied with.
- (2) In granting leave the sheriff may impose such terms and conditions as he considers desirable in the interests of justice, including making provision in respect of any additional expenses incurred by the parties as a result of the intervention.
- (3) The sheriff clerk shall give written intimation of a grant or refusal of leave to the SCHR and all the parties.
- (4) Any decision of the sheriff in proceedings under this Chapter shall be final and not subject to appeal.

Invitation to intervene

- 13B.3.(1) An invitation to intervene under section 14(2)(b) of the Act of 2006 shall be in Form O7C and the sheriff clerk shall send a copy of it to the SCHR and all the parties.
- (2) An invitation under paragraph (1) shall be accompanied by—
- (a) a copy of the pleadings in the proceedings; and
 - (b) such other documents relating to those proceedings as the sheriff thinks relevant.

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (3) In issuing an invitation under section 14(2)(b) of the Act of 2006, the sheriff may impose such terms and conditions as he considers desirable in the interests of justice, including making provision in respect of any additional expenses incurred by the parties as a result of the intervention.

Form of intervention

- 13B.4.(1) An intervention shall be by way of a written submission which (including any appendices) shall not exceed 5000 words.
- (2) The SCHR shall lodge the submission and send a copy of it to all the parties by such time as the sheriff may direct.
- (3) The sheriff may in exceptional circumstances—
- (a) allow a longer written submission to be made;
 - (b) direct that an oral submission is to be made.
- (4) Any diet in pursuance of paragraph (3)(b) shall be fixed by the sheriff clerk who shall give written intimation of the diet to the SCHR and all the parties.]

CHAPTER 14

APPLICATIONS BY MINUTE

Application of this Chapter

- 14.1. (1) Where an application may be made by minute, the form of the minute and the procedure to be adopted shall, unless otherwise provided in these Rules, be in accordance with this Chapter.
- (2) This Chapter shall not apply to—
- (a) a minute of amendment; ^{F130} . . .
 - (b) a minute of abandonment [^{F131}; or]
 - ^{F132}(c) a joint minute.]

Textual Amendments

F130 Word in rule 14.1(2)(a) omitted (1.11.1996) by S.I. 1996/2445, para. 3(19)(a)

F131 Rule 14.1(2)(b): “; or” substituted for the full-stop (1.11.1996) by S.I. 1996/2445, para. 3(19)(b)

F132 Rule 14.1(2)(c) inserted (1.11.1996) by S.I. 1996/2445, para. 3(19)(c)

Form of minute

- 14.2. A minute to which this Chapter applies shall contain—
- (a) a crave;
 - (b) where appropriate, a condensation in the form of a statement of facts supporting the crave; and
 - (c) where appropriate, pleas-in-law.

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Lodging of minutes

- [^{F133}14(3)] Before intimating any minute, the minuter shall lodge the minute in process.
- (2) On the lodging of a minute, and any document under rule 21.1(1)(b) (lodging documents founded on or adopted), the sheriff—
 - (a) may make an order for answers to be lodged;
 - (b) may order intimation of the minute without making an order for answers; or
 - (c) where he considers it appropriate for the expeditious disposal of the minute or for any other specified reason, may fix a hearing.
 - (3) Any answers ordered to be lodged under paragraph (2)(a) shall, unless otherwise ordered by the sheriff, be lodged within 14 days after the date of intimation of the minute.
 - (4) Where the sheriff fixes a hearing under paragraph (2)(c), the interlocutor fixing that hearing shall specify whether—
 - (a) answers are to be lodged;
 - (b) the sheriff will hear evidence at that hearing; and
 - (c) the sheriff will allow evidence by affidavit.
 - (5) Any answers or affidavit evidence ordered to be lodged under paragraph (4) shall be lodged within such time as shall be specified in the interlocutor of the sheriff.
 - (6) The following rules shall not apply to any hearing fixed under paragraph (2)(c):—
 - rule 14.7 (opposition where no order for answers made),
 - rule 14.8 (hearing of minutes where no opposition or no answers lodged),
 - rule 14.10 (notice of opposition or answers lodged).
 - (7) The sheriff clerk shall forthwith return the minute to the minuter with any interlocutor pronounced by the sheriff.]

Textual Amendments

F133 Rule 14.3 substituted (1.11.1996) by S.I. 1996/2445, para. 3(20)

Intimation of minutes

- [^{F134}14(4)] The party lodging a minute shall, on receipt from the sheriff clerk of the minute, intimate to every other party including any person referred to in rule 14.13(1)—
 - (a) a notice in Form G7A, G7B or G7C, as the case may be, by any of the methods provided for in rule 14.5 (methods of intimation); and
 - (b) a copy of—
 - (i) the minute;
 - (ii) any interlocutor; and
 - (iii) any document referred to in the minute.

(2) The sheriff may, on cause shown, dispense with intimation.]

Textual Amendments

F134 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

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Methods of intimation

- ^{F135}14.4(1) Intimation of a minute may be given by–
- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
 - (b) where intimation is to a party represented by a solicitor, by–
 - (i) personal delivery,
 - (ii) facsimile transmission,
 - (iii) first class ordinary post, or
 - (iv) delivery to a document exchange,
 to that solicitor.
- (2) Where intimation is given–
- (a) under paragraph (1)(b)(i) or (ii), it shall be deemed to have been given–
 - (i) on the day of transmission or delivery where it is given before 5.00 p.m. on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 p.m. on any day; or
 - (b) under paragraph 1(b)(iii) or (iv), it shall be deemed to have been given on the day after the date of posting or delivery.

Textual Amendments

F135 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, **para. 3(21)**

Return of minute with evidence of intimation

- ^{F136}14.6. Where intimation of any minute has been given, the minute and a certificate of intimation in Form G8 shall be returned to the sheriff clerk within 5 days after the date of intimation.

Textual Amendments

F136 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, **para. 3(21)**

Opposition where no order for answers made

- ^{F137}14.7(1) Where a party seeks to oppose a minute lodged under rule 14.3 (lodging of minutes) in which no order for answers has been made under paragraph (2)(a) of that rule, that party shall, within 14 days after the date of intimation of the minute to him–
- (a) complete a notice of opposition in Form G9;
 - (b) lodge the notice with the sheriff clerk; and
 - (c) intimate a copy of that notice to every other party.
- (2) Rule 14.5 (methods of intimation) and rule 14.6 (return of minute with evidence of intimation) shall apply to intimation of opposition to a minute under paragraph (1) (c) of this rule as they apply to intimation of a minute.
- (3) The sheriff may, on cause shown, reduce or dispense with the period for lodging the notice mentioned in paragraph (1)(b).

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Textual Amendments

F137 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, **para. 3(21)**

Hearing of minutes where no opposition or no answers lodged

^{F138}14.8(1) Where no notice of opposition is lodged or where no answers have been lodged to the minute within the time allowed, the minute shall be determined by the sheriff in chambers without the attendance of parties, unless the sheriff otherwise directs.

- (2) Where the sheriff requires to hear a party on a minute, the sheriff clerk shall–
- (a) fix a date, time and place for the party to be heard; and
 - (b) inform that party–
 - (i) of that date, time and place; and
 - (ii) of the reasons for the sheriff wishing to hear him.

Textual Amendments

F138 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, **para. 3(21)**

Intimation of interlocutor

^{F139}14.9. Where a minute has been determined in accordance with rule 14.8 (hearing of minutes where no opposition or no answers lodged), the sheriff clerk shall intimate the interlocutor determining that minute to the parties forthwith.

Textual Amendments

F139 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, **para. 3(21)**

Notice of opposition or answers lodged

^{F140}14.10(1) Where a notice of opposition has, or answers have, been lodged to the minute, the sheriff clerk shall–

- (a) assign a date, time and place for a hearing on the first suitable court day after the date of the lodging of the notice of opposition or answers, as the case may be; and
- (b) intimate that date, time and place to the parties.

- (2) The interlocutor fixing a hearing under paragraph (1) shall specify whether the sheriff will hear evidence at the hearing or receive evidence by affidavit.

Textual Amendments

F140 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, **para. 3(21)**

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Procedure for hearing

- ^{F141}14. (1) A certified copy of the interlocutor assigning a hearing under this Chapter and requiring evidence to be led shall be sufficient warrant to a sheriff officer to cite a witness on behalf of a party.
- (2) At the hearing, the sheriff shall hear parties on the minute and any answers lodged, and may determine the minute or may appoint such further procedure as he considers necessary.

Textual Amendments

F141 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

Consent to minute

- ^{F142}14.12. Subject to paragraph (2) of rule 14.8 (hearing of minutes where no opposition or no answers lodged), where all parties to the action indicate to the sheriff, by endorsement of the minute or otherwise in writing, their intention to consent to the minute, the sheriff may forthwith determine the minute in chambers without the appearance of parties.

Textual Amendments

F142 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

Procedure following grant of minute

- ^{F143}14. (1) Where the minute includes a crave seeking leave—
- (a) for a person—
 - (i) to be sisted as a party to the action, or
 - (ii) to appear in the proceedings, or
 - (b) for the cause to be transferred against the representatives of a party who has died or is under a legal incapacity,
- the sheriff, on granting the minute, may order a hearing under rule 9.12 (Options Hearing) to be fixed or may appoint such further procedure as he thinks fit.
- (2) Where an Options Hearing is ordered under paragraph (1), the sheriff clerk shall—
- (a) fix a date and time for such hearing, which date, unless the sheriff otherwise directs, shall be on the first suitable court day occurring not sooner than 10 weeks after the date of the interlocutor of the sheriff ordering such hearing be fixed;
 - (b) forthwith intimate to the parties in Form G5—
 - (i) where appropriate, the last date for lodging defences;
 - (ii) where appropriate, the last date for adjustment; and
 - (iii) the date of the Options Hearing; and
 - (c) prepare and sign an interlocutor recording those dates.
- (3) For the purpose of fixing the date for the Options Hearing referred to in paragraph (1), the date of granting the minute shall be deemed to be the date of expiry of the period of notice.

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Textual Amendments

F143 Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

[^{F144}CHAPTER 15

MOTIONS]

Textual Amendments

F144 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

Modifications etc. (not altering text)

C17 Sch. 1 Chapter 15 applied (with modifications) (28.9.2009) by Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009 (S.I. 2009/284), para. 2, {Sch. rule 52(2)};

^{F145} Lodging of motions

[^{F144}15(1) A motion may be made—

- (a) orally with leave of the court during any hearing of a cause; or
- (b) by lodging a written motion in Form G6.

(2) Subject to paragraph (3), a written motion shall be lodged with the sheriff clerk within 5 days after the date of intimation of the motion required by rule 15.2 (intimation of motions) with—

- (a) a certificate of intimation in Form G8; and
- (b) so far as practicable any document referred to in the written motion and not already lodged in process.

(3) Where the period for lodging opposition to the motion is varied under rule 15.2(4) (variation of and dispensing with period of intimation) to a period of 5 days or less, the written motion and certificate to be lodged in terms of paragraph (2) shall be lodged no later than the day on which the period for lodging opposition expires.

Textual Amendments

F145 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

^{F146} Intimation of motions

15.2. (1) Subject to paragraphs (4) and (7), a party intending to lodge a motion in accordance with rule 15.1(1)(b) (lodging written motion) shall intimate the motion in Form G7, and a copy of any document referred to in the motion, to every other party.

(2) Intimation of a motion may be given by—

- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or

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- (b) where intimation is to a party represented by a solicitor, by–
 - (i) personal delivery,
 - (ii) facsimile transmission,
 - (iii) first class ordinary post, or
 - (iv) delivery to a document exchange,
 to that solicitor.
- (3) Where intimation is given–
 - (a) under paragraph (2)(b)(i) or (ii), it shall be deemed to have been given–
 - (i) on the day of transmission or delivery where it is given before 5.00 p.m. on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 p.m. on any day; or
 - (b) under paragraph (2)(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.
- (4) The sheriff may, on the application of a party intending to lodge a written motion, vary the period of 7 days specified in rule 15.3(1)(c) for lodging opposition to the motion or dispense with intimation.
- (5) An application under paragraph (4) shall be made in the written motion, giving reasons for such variation or dispensation.
- (6) Where the sheriff varies the period within which notice of opposition is to be lodged under rule 15.3(1)(c), the form of intimation required under rule 15.2(1) (intimation of motion in Form G7) shall state the date by which such notice requires to be lodged.
- (7) A joint motion by all parties lodged in Form G6 need not be intimated.

Textual Amendments

F146 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

Opposition to motions

- ^{F147}15.3(1) Where a party seeks to oppose a motion made in accordance with rule 15.1(1)(b) (written motion), he shall–
- (a) complete a notice of opposition in Form G9;
 - (b) intimate a copy of that notice to every other party; and
 - (c) lodge the notice with the sheriff clerk within 7 days after the date of intimation of the motion or such other period as the sheriff may have determined under rule 15.2(6).
- (2) Paragraphs (2) and (3) of rule 15.2 (methods and time of intimation of motions) shall apply to the intimation of opposition to a motion under paragraph (1)(b) of this rule as they apply to intimation under that rule.

Textual Amendments

F147 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

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F148 Consent to motions

- 15.4. Where a party consents to a written motion, he shall endorse the motion, or give notice to the sheriff clerk in writing, of his consent.

Textual Amendments

F148 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

F149 Hearing of motions

- 15.5. (1) Subject to paragraph (2), where no notice of opposition is lodged with the sheriff clerk within the period specified in rule 15.3(1)(c), or ordered by virtue of rule 15.2(4), the motion shall be determined by the sheriff in chambers without the appearance of parties, unless the sheriff otherwise directs.
- (2) In accordance with any directions given by the sheriff principal, the sheriff clerk may determine any motion other than a motion which seeks a final interlocutor.
- (3) Where the sheriff clerk considers that a motion dealt with by him under paragraph (2) should not be granted, he shall refer that motion to the sheriff who shall deal with it in accordance with paragraph (1).
- (4) Where the sheriff requires to hear a party on a motion which is not opposed, the sheriff clerk shall—
- (a) fix a date, time and place for the party to be heard, and
 - (b) inform that party—
 - (i) of that date, time and place; and
 - (ii) of the reasons for the sheriff wishing to hear him.
- (5) Where a notice of opposition is lodged in accordance with rule 15.3(1), the sheriff clerk shall—
- (a) assign a date, time and place, on the first suitable court day after the lodging of the notice of opposition, for the motion to be heard; and
 - (b) intimate that date, time and place to the parties.
- (6) Where a motion has been determined under paragraph (1) or (2), the sheriff clerk shall intimate the interlocutor determining that motion to all parties forthwith.
- (7) Where the sheriff, under paragraph (4) of rule 15.2, dispenses with intimation required by paragraph (1) of that rule, he shall make such order as he thinks fit for intimation of his determination of the motion to every party to the action in respect of whom intimation has been so dispensed with.
- (8) Subject to paragraph (4), where all parties consent to a written motion, the sheriff may determine the motion in chambers without the appearance of parties.
- (9) Subject to paragraph (4) where a joint motion of all parties in Form G6 is lodged with the sheriff clerk, the sheriff may determine the motion in chambers without the appearance of parties.

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Textual Amendments

F149 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

Motions to sist

- [^{F150} 15.6. (1) Where a motion to sist is made, either orally or in writing in accordance with rule 15.1(1)(a) or (b)—
- (a) the reason for the sist shall be stated by the party seeking the sist; and
 - (b) that reason shall be recorded in the interlocutor.
- (2) Where a cause has been sisted, the sheriff may, after giving parties an opportunity to be heard, recall the sist.]

Textual Amendments

F150 Sch. 1 rule 15.6 inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(5)

^{F151} *Lodging of motions*

- 15.1. (1) A motion may be made—
- (a) orally with leave of the court during any hearing of a cause; or
 - (b) by lodging a written motion in Form G6.
- (2) Any document referred to in the motion and not already lodged in process shall, so far as practicable, be lodged with the written motion.
- (3) On the lodging of a motion in accordance with paragraph (1)(b), the sheriff clerk shall fix a hearing of the motion and shall advise the party lodging the motion of the date, time and place of the hearing.

Textual Amendments

F151 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

^{F152} *Intimation of motions*

- 15.2. (1) Subject to paragraph (7), the party lodging a motion in accordance with rule 15.1(1)(b) shall intimate the motion in Form G7, and a copy of any document referred to in the motion, to every other party.
- (2) Unless a period of intimation of a motion is otherwise specified in these Rules, intimation under paragraph (1) shall be made not less than 7 days before the date fixed for the hearing of the motion.
- (3) Subject to paragraph (4), intimation of a motion may be given by—
- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
 - (b) where intimation is to a party represented by a solicitor, by—
 - (i) personal delivery,

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- (ii) facsimile transmission,
 - (iii) first class ordinary post, or
 - (iv) delivery to a document exchange, to that solicitor.
- (4) Subject to paragraph (5), where intimation is given—
- (a) under paragraph (3)(b)(i) or (ii), it shall be deemed to have been given—
 - (i) on the day of transmission or delivery where it is given before 5.00 pm on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 pm on any day; or
 - (b) under paragraph 3(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.
- (5) Where intimation is given on a Saturday, Sunday or public or court holiday, it shall be deemed to have been given on the next day on which the sheriff clerk’s office is open for civil court business.
- (6) Where intimation has been given, a certificate of intimation of the motion in Form G8 shall be returned to the sheriff clerk not later than 2 days, or such other period as the sheriff has determined, before the date fixed for the hearing of that motion.
- (7) The sheriff may, on cause shown, dispense with or reduce the period of intimation specified in paragraph (2) or the period specified in paragraph (6).

Textual Amendments

F152 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

CHAPTER 16

DECREES BY DEFAULT

Application of this Chapter

- 16.1. This [^{F153}Chapter] applies to any cause other than—
- (a) an action to which rule 33.37 (decree by default in family action) applies;
 - (b) an action of multiplepoinding; ^{F154} . . .
 - (c) a cause under the Presumption of Death (Scotland) Act 1977 ^{F155}. [^{F156}; or
 - ^{F156}(d) a commercial action within the meaning of Chapter 40.]

Textual Amendments

F153 Word in rule 16.1 substituted (1.3.2001) by S.S.I. 2001/8, para. 2(1)(4)(a)

F154 Word in rule 16.1(b) omitted (1.3.2001) by virtue of S.S.I. 2001/8, para. 2(1)(4)(b)

F155 1977 c.27.

F156 Rule 16.1(d) and the preceding word “or” inserted (1.3.2001) by S.S.I. 2001/8, para. 2(1)(4)(c)

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Decrees where party in default

- 16.2. (1) In a cause to which this Chapter applies, where a party fails—
- (a) to lodge, or intimate the lodging of, any production or part of process within the period required under a provision in these Rules or an order of the sheriff,
 - (b) to implement an order of the sheriff within a specified period, or
 - (c) to appear or be represented at any diet,
- that party shall be in default.
- (2) Where a party is in default, the sheriff may grant decree as craved, decree of absolvitor or dismiss the cause, as the case may be, with expenses.
- (3) Where no party appears at a diet, the sheriff may dismiss the cause.
- (4) In this rule, “diet” includes—
- (a) a hearing under rule 9.12 (Options Hearing);
 - (b) a hearing under rule 10.6 (Procedural Hearing);
 - (c) a proof or proof before answer; and
 - (d) a debate.

Prorogation of time where party in default

- 16.3. In an action to which this Chapter applies, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process or for giving intimation or for implementing any order.

CHAPTER 17

SUMMARY DECREES

Application of this Chapter

- 17.1. This Chapter applies to any action other than—
- (a) a family action within the meaning of rule 33.1(1);
 - (b) an action of multiplepounding; or
 - (c) a cause under the Presumption of Death (Scotland) Act 1977.

Applications for summary decree

- 17.2. (1) Subject to paragraphs (2) to (5) of this rule, a pursuer may, at any time after a defender has lodged defences, apply by motion for summary decree against that defender on the ground that there is no defence to the action, or part of it, disclosed in the defences.
- (2) In applying for summary decree, the pursuer may move the sheriff—
- (a) to grant decree in terms of all or any of the craves of the initial writ;
 - (b) to pronounce an interlocutor sustaining or repelling a plea-in-law; or
 - (c) to dispose of the whole or part of the subject-matter of the cause.
- ^{F157}(3)
- (4) On a motion under paragraph (1), the sheriff may—

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- (a) if satisfied that there is no defence to the action or to any part of it to which the motion relates, grant the motion for summary decree in whole or in part, as the case may be; or
 - (b) ordain any party, or a partner, director, officer or office-bearer of, any party—
 - (i) to produce any relevant document or article; or
 - (ii) to lodge an affidavit in support of any assertion of fact made in the pleadings or at the hearing of the motion.
- (5) Notwithstanding the refusal of all or part of a motion for summary decree, a subsequent motion may be made where there has been a change of circumstances.

Textual Amendments

F157 Sch. 1 rule 17.2(3) omitted (2.10.2000) by virtue of S.S.I. 2000/239, para. 3(1)(6)

Application of summary decree to counterclaims, etc.

- 17.3. (1) Where a defender has lodged a counterclaim—
- (a) he may apply by motion for summary decree against the pursuer on that counterclaim on the ground that there is no defence to the counterclaim, or a part of it, disclosed in the answers to it; and
 - (b) paragraphs (2) to (5) of rule 17.2 shall, with the necessary modifications, apply to a motion by a defender under this paragraph as they apply to a motion by a pursuer under paragraph (1) of that rule.
- (2) Where a defender or third party has made a claim against another defender or third party who has lodged defences or answers, as the case may be—
- (a) he may apply by motion for summary decree against that other defender or third party on the ground that there is no defence to the claim, or a part of it, disclosed in the defences or answers, as the case may be; and
 - (b) paragraphs (2) to (5) of rule 17.2 shall, with the necessary modifications, apply to a motion by a defender or third party under this paragraph as they apply to a motion by a pursuer under paragraph (1) of that rule.

CHAPTER 18

AMENDMENT OF PLEADINGS

Alteration of sum sued for

- 18.1. (1) In a cause in which all other parties have lodged defences or answers, the pursuer may, before the closing of the record, alter any sum sued for by amending the crave of the initial writ, ^{F158} . . . and any record.
- (2) The pursuer shall forthwith intimate any such amendment in writing to every other party.

Textual Amendments

F158 Words in rule 18.1(1) omitted (1.11.1996) by S.I. 1996/2445, para. 3(23)

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Powers of sheriff to allow amendment

18.2. (1) The sheriff may, at any time before final judgment, allow an amendment mentioned in paragraph (2).

(2) Paragraph (1) applies to the following amendments:—

- (a) an amendment of the initial writ which may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that in consequence of such amendment—
 - (i) the sum sued for is increased or restricted after the closing of the record; or
 - (ii) a different remedy from that originally craved is sought;
- (b) an amendment which may be necessary—
 - (i) to correct or supplement the designation of a party to the cause;
 - (ii) to enable a party who has sued or has been sued in his own right to sue or be sued in a representative capacity;
 - (iii) to enable a party who has sued or has been sued in a representative capacity to sue or be sued in his own right or in a different representative capacity;
 - (iv) to add the name of an additional pursuer or person whose concurrence is necessary;
 - (v) where the cause has been commenced or presented in the name of the wrong person, or it is doubtful whether it has been commenced or presented in the name of the right person, to allow any other person to be sisted in substitution for, or in addition to, the original person; or
 - (vi) to direct a crave against a third party brought into an action under Chapter 20 (third party procedure);
- (c) an amendment of a condescendence, defences, answers, pleas-in-law or other pleadings which may be necessary for determining the real question in controversy between the parties; and
- (d) where it appears that all parties having an interest have not been called or that the cause has been directed against the wrong person, an amendment inserting in the initial writ an additional or substitute party and directing existing or additional craves, averments and pleas-in-law against that party.

Applications to amend

18.3. (1) A party seeking to amend shall lodge a minute of amendment in process setting out his proposed amendment and, at the same time, lodge a motion—

- (a) to allow the minute of amendment to be received; and
- (b) to allow—
 - (i) amendment in terms of the minute of amendment and, where appropriate, to grant an order under rule 18.5(1)(a) (service of amendment for additional or substitute party); or
 - (ii) where the minute of amendment may require to be answered, any other person to lodge answers within a specified period.

(2) Where the sheriff has pronounced an interlocutor allowing a minute of amendment to be received and answered, he may allow a period for adjustment of the minute of

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amendment and answers and, on so doing, shall fix a date for parties to be heard on the minute of amendment and answers as adjusted.

- [^{F159}(3) Any adjustment to any minute of amendment or answers shall be exchanged between parties and not lodged in process.
- ^{F159}(4) Parties shall be responsible for maintaining a record of adjustment made and the date of their intimation.
- ^{F159}(5) No adjustments shall be permitted after the period of adjustment allowed, except with leave of the sheriff.
- ^{F159}(6) Each party shall, no later than 2 days before the hearing fixed in terms of paragraph (2), lodge in process a copy of their minute of amendment or answers with all adjustments made thereto in italic or bold type, or underlined.]

Textual Amendments

F159 Sch. 1 rule 18.3(3)-(6) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(7)

Applications for diligence on amendment

- 18.4. (1) Where a minute of amendment is lodged by a pursuer under rule 18.2(2)(d) (all parties not, or wrong person, called), he may apply by motion for warrant to use any form of diligence which could be used on the dependence of a separate action.
- (2) A copy certified by the sheriff clerk of the interlocutor granting warrant for diligence on the dependence applied for under paragraph (1) shall be sufficient authority for the execution of that diligence.

Service of amended pleadings

- 18.5. (1) Where an amendment under rule [^{F160}18.2(b)(iv), (v) or (vi) (additional or substitute defenders added by amendment) or rule] 18.2(2)(d) (all parties not, or wrong person, called) has been made—
- (a) the sheriff shall order that a copy of the initial writ or record, as the case may be, as so amended be served by the party who made the amendment on that additional or substitute party with—
- (i) in a cause in which a time to pay direction under the ^{M24}Debtors (Scotland) Act 1987 may be applied for, a notice in Form O8 specifying the date by which a notice of intention to defend must be lodged in process, a notice in Form O3 and a notice of intention to defend in Form O7; or
- (ii) in any other cause, a notice in Form O9 specifying the date by which a notice of intention to defend must be lodged in process and a notice of intention to defend in Form O7; and
- (b) the party who made the amendment shall lodge in process—
- (i) a copy of the initial writ or record as amended;
- (ii) a copy of the notice sent in Form O8 or Form O9; and
- (iii) a certificate of service.
- (2) When paragraph (1) has been complied with, the cause as so amended shall proceed in every respect as if that party had originally been made a party to the cause.

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- (3) Where a notice of intention to defend is lodged by virtue of paragraph (1)(a), the sheriff clerk shall fix a date and time for a hearing under rule 9.12 (Options Hearing).

Textual Amendments

F160 Words in rule 18.5(1) inserted (1.11.1996) by S.I. 1996/2445, para. 3(24)

Marginal Citations

M24 1987 c.18.

Expenses and conditions of amendment

- 18.6. The sheriff shall find the party making an amendment liable in the expenses occasioned by the amendment unless it is shown that it is just and equitable that the expenses occasioned by the amendment should be otherwise dealt with, and may attach such other conditions as he thinks fit.

Effect of amendment on diligence

- 18.7. Where an amendment has been allowed, the amendment—
- (a) shall not validate diligence used on the dependence of a cause so as to prejudice the rights of ^{F161}creditors of] the party against whom the diligence has been executed, who are interested in defeating such diligence; and
 - (b) shall preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.

Textual Amendments

F161 Words in rule 18.7(a) substituted (1.11.1996) by S.I. 1996/2445, para. 3(25)

Preliminary pleas inserted on amendment

- 18.8. (1) Where a party seeks to add a preliminary plea by amendment or answers to an amendment, or by adjustment thereto, a note of the basis for the plea shall be lodged at the same time as the minute, answers or adjustment, as the case may be.
- (2) If a party fails to comply with paragraph (1), that party shall be deemed to be no longer insisting on the preliminary plea and the plea shall be repelled by the sheriff.

CHAPTER 19

COUNTERCLAIMS

Counterclaims

- 19.1. (1) In any action other than a family action within the meaning of rule 33.1(1) or an action of multiplepounding, a defender may counterclaim against a pursuer—

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- (a) where the counterclaim might have been made in a separate action in which it would not have been necessary to call as defender any person other than the pursuer; and
 - (b) in respect of any matter—
 - (i) forming part, or arising out of the grounds, of the action by the pursuer;
 - (ii) the decision of which is necessary for the determination of the question in controversy between the parties; or
 - (iii) which, if the pursuer had been a person not otherwise subject to the jurisdiction of the court, might have been the subject-matter of an action against that pursuer in which jurisdiction would have arisen by reconviction.
- (2) A counterclaim shall be made in the defences—
- (a) when the defences are lodged or during the period for adjustment;
 - (b) by amendment at any other stage, with the leave of the sheriff and subject to such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.
- (3) Defences which include a counterclaim shall commence with a crave setting out the counterclaim in such form as, if the counterclaim had been made in a separate action, would have been appropriate in the initial writ in that separate action and shall include—
- (a) answers to the condescendence of the initial writ as required by rule 9.6(2) (form of defences);
 - (b) a statement of facts in numbered paragraphs setting out the facts on which the counterclaim is founded, incorporating by reference, if necessary, any matter contained in the defences; and
 - (c) appropriate pleas-in-law.

Warrants for diligence on counterclaims

- 19.2. (1) A defender who makes a counterclaim may apply for a warrant for arrestment on the dependence which would have been permitted had the warrant been sought in an initial writ in a separate action.
- (2) An application for a warrant under paragraph (1) shall be made—
- (a) at the time of making the counterclaim, by inserting [^{F162}after] the crave of the counterclaim the words “Warrant for arrestment on the dependence applied for.”; or
 - (b) after the counterclaim has been made, for a precept of arrestment.
- (3) An application for a warrant under paragraph (2)(a) may be granted by the sheriff clerk writing on the defences, defences as adjusted or minute of amendment, as the case may be, the words “Warrant granted as craved.” after the warrant sought, and adding his signature and the date below those words.
- (4) A warrant granted under paragraph (3) shall have the same effect as if the warrant had been in an initial writ.

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Textual Amendments

F162 Word in rule 19.2(2)(a) substituted (1.11.1996) by S.I. 1996/2445, para. 3(26)

Form of record where counterclaim lodged

[^{F163}19.2A. Where, under rule 9.10 (open record), 9.11 (record for Options Hearing), 10.4 (open record), or 10.5 (closed record), a record requires to be lodged in an action in which a counterclaim is included in the defences, the pleadings of the parties shall be set out in the record in the following order:—

- (a) the crave of the initial writ;
- (b) the condescendence and answers relating to the initial writ;
- (c) the pleas-in-law of the parties relating to the crave of the initial writ;
- (d) the crave of the counterclaim;
- (e) the statement of facts and answers relating to the counterclaim; and
- (f) the pleas-in-law of the parties relating to the counterclaim.]

Textual Amendments

F163 Rule 19.2A inserted (1.11.1996) by S.I. 1996/2445, para. 3(27)

Effect of abandonment of cause

19.3. (1) The right of a pursuer to abandon a cause under rule 23.1 shall not be affected by a counterclaim; and any expenses for which the pursuer is found liable as a condition of, or in consequence of, such abandonment shall not include the expenses of the counterclaim.

(2) Notwithstanding abandonment by the pursuer, a defender may insist in his counterclaim; and the proceedings in the counterclaim shall continue in dependence as if the counterclaim were a separate action.

Disposal of counterclaims

19.4. The sheriff may—

- (a) deal with a counterclaim as if it had been stated in a separate action;
- (b) regulate the procedure in relation to the counterclaim as he thinks fit; and
- (c) grant decree for the counterclaim in whole or in part or for the difference between it and the sum sued for by the pursuer.

CHAPTER 20

THIRD PARTY PROCEDURE

Applications for third party notice

20.1. (1) Where, in an action, a defender claims that—

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- (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 a claim arising from or in connection with the liability, if any, of the defender to the pursuer,

he may apply by motion for an order for service of a third party notice on that other person in Form O10 for the purpose of convening that other person as a third party to the action.

(2) Where—

- (a) a pursuer against whom a counterclaim has been 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 motion for an order for service of a third party notice in Form O10 in the same manner as a defender under that paragraph; and rules 20.2 to [F16420.6] shall, with the necessary modifications, apply to such a claim as they apply in relation to such a claim by a defender.

Textual Amendments

F164 Word in rule 20.1(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(28)

Averments where order for service of third party notice sought

- 20.2. (1) Where a defender intends to apply by motion for an order for service of a third party notice before the closing of the record, he shall, before lodging the motion, set out in his defences, by adjustment to those defences, or in a separate statement of facts annexed to those defences—
- (a) averments setting out the grounds on which he maintains that the proposed third party is liable to him by contribution, relief or indemnity or should be made a party to the action; and
 - (b) appropriate pleas-in-law.
- (2) Where a defender applies by motion for an order for service of a third party notice after the closing of the record, he shall, on lodging the motion, lodge a minute of amendment containing—
- (a) averments setting out the grounds on which he maintains that the proposed third party is liable to him by contribution, relief or indemnity or should be made a party to the action, and
 - (b) appropriate pleas-in-law,
- unless those grounds and pleas-in-law have been set out in the defences in the closed record.
- (3) A motion for an order for service of a third party notice shall be lodged before the commencement of the hearing of the merits of the cause.

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Warrants for diligence on third party notice

- 20.3. (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 an initial writ in a separate action.
- (2) Averments in support of the application for such a warrant shall be included in the defences or the separate statement of facts referred to in rule 20.2(1).
- (3) An application for a warrant under paragraph (1) shall be made by motion—
- (a) at the time of applying for the third party notice; or
 - (b) if not applied for at that time, at any stage of the cause thereafter.
- (4) A certified copy of the interlocutor granting warrant for diligence applied for under paragraph (2) shall be sufficient authority for execution of the diligence.

Service on third party

- 20.4. (1) A third party notice shall be served on the third party within 14 days after the date of the interlocutor allowing service of that notice.
- (2) Where service of a third party notice has not been made within the period specified in paragraph (1), the order for service of it shall cease to have effect; and no service of the notice may be made unless a further order for service of it has been applied for and granted.
- [^{F165}(3) There shall be served with a third party notice—
- (a) a copy of the pleadings (including any amendments or adjustments); and
 - (b) where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, a copy of that minute.]
- (4) A copy of the third party notice, with a certificate of service attached to it, shall be lodged in process by the defender.

Textual Amendments

F165 Sch. 1 rule 20.4(3) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(5)

Answers to third party notice

- 20.5. (1) An order for service of a third party notice shall specify 28 days, or such other period as the sheriff on cause shown may specify, as the period within which the third party may lodge answers.
- (2) Answers for a third party shall be headed “Answers for [E.F.], Third Party in the action at the instance of [A.B.], Pursuer against [C.D.], Defender” and shall include—
- (a) answers to the averments of the defender against him in the form of numbered paragraphs corresponding to the numbered articles of the condescendence in the initial writ and incorporating, if the third party so wishes, answers to the averments of the pursuer; or

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- (b) where a separate statement of facts has been lodged by the defender under rules 20.2(1), answers to the statement of facts in the form of numbered paragraphs corresponding to the numbered paragraphs of the statement of facts; and
- (c) appropriate pleas-in-law.

Consequences of failure to amend pleadings

[^{F166}20.5A. Where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, no motion for a finding, order or decree against a third party may be enrolled by the defender unless, at or before the date on which he enrolls the motion, he enrolls a motion to amend the pleadings in accordance with that minute.]

Textual Amendments

F166 Sch. 1 rule 20.5A inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(6)

Procedure following answers

- 20.6 (1) Where a third party lodges answer, the sheriff clerk shall fix a date and time under rule 9.2 for a hearing under rule 9.12 (Options Hearing) as if the third party had lodged a notice of intention to defend and the period of notice had expired on the date for lodging answers.
- (2) At the Options Hearing, or at any time thereafter, the sheriff may grant such decree or other order as he thinks fit.
- (3) A decree or other order against the third party shall have effect and be extractable in the same way as a decree or other order against a defender.

CHAPTER 21

DOCUMENTS FOUNDED ON OR ADOPTED IN PLEADINGS

Lodging documents founded on or adopted

- 21.1. (1) Subject to any other provision in these Rules, any document founded on by a party, or adopted as incorporated, in his pleadings shall, so far as in his possession or within his control, be lodged in process as a production by him—
- (a) when founded on or adopted in an initial writ, at the time of returning the initial writ under rule 9.3;
 - (b) when founded on or adopted in a minute, defences, counterclaim or answers, at the time of lodging that part of process; and
 - (c) when founded on or adopted in an adjustment to any pleadings, at the time when such adjustment is intimated to any other party.
- (2) Paragraph (1) shall be without prejudice to any power of the sheriff to order the production of any document or grant a commission and diligence for recovery of it.

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Consequences of failure to lodge documents founded on or adopted

- 21.2. Where a party fails to lodge a document in accordance with rule 21.1(1), he may be found liable in the expenses of any order for production or recovery of it obtained by any other party.

Objection to documents founded on

- 21.3. (1) Where a deed or writing is founded on by a party, any objection to it by any other party may be stated and maintained by exception without its being reduced.
- (2) Where an objection is stated under paragraph (1) and an action of reduction would otherwise have been competent, the sheriff may order the party stating the objection to find caution or give such other security as the sheriff thinks fit.

CHAPTER 22

PRELIMINARY PLEAS

Note of basis of preliminary plea

- 22.1. (1) A party intending to insist on a preliminary plea shall, not later than 3 days before the Options Hearing under rule 9.12 or the Procedural Hearing under rule 10.6—
- (a) lodge in process a note of the basis for the plea; and
 - (b) intimate a copy of it to every other party.
- [^{F167}(2) Where the Options Hearing is continued under rule 9.12(5) and a preliminary plea is added by adjustment, a party intending to insist on that plea shall, not later than 3 days before the date of the Options Hearing so continued—
- (a) lodge in process a note of the basis for the plea; and
 - (b) intimate a copy of it to every other party.]
- [^{F168}(3)] If a party fails to comply with paragraph (1) [^{F169}or (2)], he shall be deemed to be no longer insisting on the preliminary plea; and the plea shall be repelled by the sheriff at the Options Hearing or Procedural Hearing.
- [^{F168}(4)] At any proof before answer or debate, parties may [^{F170}on cause shown] raise matters in addition to those set out in the note mentioned in paragraph (1) [^{F169}or (2)].
- [^{F171}(5) Where a note of the basis of a preliminary plea has been lodged under paragraph (1), and the Options Hearing is continued under rule 9.12(5), unless the basis of the plea has changed following further adjustment, it shall not be necessary for a party who is insisting on the plea to lodge a further note before the Options Hearing so continued.]

Textual Amendments

F167 Rule 22.1(2) inserted (1.11.1996) by S.I. 1996/2445, para. 3(29)(b)

F168 Rule 22.1(2)(3) renumbered as rule 22.1(3)(4) (1.11.1996) by S.I. 1996/2445, para. 3(29)(a)

F169 Words in rule 22.1(3)(4) (as renumbered) inserted (1.11.1996) by S.I. 1996/2445, para. 3(29)(c)

F170 Words in Sch. 1 rule 22.1(4) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(8)

F171 Rule 22.1(5) inserted (1.11.1996) by S.I. 1996/2445, para. 3(29)(d)

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CHAPTER 23

ABANDONMENT

Abandonment of causes

- 23.1. (1) A pursuer may abandon a cause at any time before decree of absolvitor or dismissal by lodging a minute of abandonment and—
- (a) consenting to decree of absolvitor; or
 - (b) seeking decree of dismissal.
- (2) The sheriff shall not grant decree of dismissal under paragraph (1)(b) unless full judicial expenses have been paid to the defender, and any third party against whom [^{F172}the pursuer] has directed any crave, within 28 days after the date of taxation.
- (3) If the pursuer fails to pay the expenses referred to in paragraph (2) to the party to whom they are due within the period specified in that paragraph, that party shall be entitled to decree of absolvitor with expenses.

Textual Amendments

F172 Words in Sch. 1 rule 23.1(2) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(7)

Application of abandonment to counterclaims

- 23.2. Rule 23.1 shall, with the necessary modifications, apply to the abandonment by a defender of his counterclaim as it applies to the abandonment of a cause.

CHAPTER 24

WITHDRAWAL OF SOLICITORS

Intimation of withdrawal to court

- 24.1. (1) [^{F173}Subject to paragraph (3),]Where a solicitor withdraws from acting on behalf of a party, he shall intimate his withdrawal by letter to the sheriff clerk and to every other party.
- (2) The sheriff clerk shall [^{F174}forthwith] lodge such letter in process.
- [^{F175}(3) Where a solicitor withdraws from acting on behalf of a party in open court and in the presence of the other parties to the action or their representatives, paragraph (1) shall not apply.]

Textual Amendments

F173 Words in Sch. 1 rule 24.1(1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(9)(a)

F174 Word in Sch. 1 rule 24.1(2) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(9)(b)

F175 Sch. 1 rule 24.1(3) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(9)(c)

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Intimation to party whose solicitor has withdrawn

24.2. (1) [^{F176}Subject to paragraph (1A),] The sheriff shall, of his own motion, or on the motion of any other party, pronounce an interlocutor ordaining the party whose solicitor has withdrawn from acting to appear or be represented at a specified diet fixed by the sheriff to state whether or not he intends to proceed, under certification that if he fails to do so the sheriff may grant decree or make such other order or finding as he thinks fit.

[^{F177}(1A) Where any previously fixed diet is to occur within 14 days from the date when the sheriff first considers the solicitor's withdrawal, the sheriff may either–

- (a) pronounce an interlocutor in accordance with paragraph (1); or
- (b) consider the matter at the previously fixed diet.]

(2) The diet fixed in the interlocutor under paragraph (1) shall not be less than 14 days after the date of the interlocutor unless the sheriff otherwise orders.

(3) The party who has lodged the motion under paragraph (1), or any other party appointed by the sheriff, shall forthwith serve on the party whose solicitor has withdrawn a copy of the interlocutor and a notice in Form G10; and a certificate of service shall be lodged in process.

Textual Amendments

F176 Words in Sch. 1 rule 24.2(1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(10)(a)

F177 Sch. 1 rule 24.2(1A) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(10)(b)

Consequences of failure to intimate intention to proceed

24.3. Where a party on whom a notice and interlocutor has been served under rule 24.2(2) fails to appear or be represented at a diet fixed under rule 24.2(1) and to state his intention as required by that paragraph, the sheriff may grant decree or make such other order or finding as he thinks fit.

CHAPTER 25

WITHDRAWAL OF SOLICITORS

Minutes of sist

25.1 Where a party dies or comes under legal incapacity while a cause is depending, any person claiming to represent that party or his estate may apply by minute to be sisted as a party to the cause.

Minutes of transference

25.2. ^{F178} . . . Where a party dies or comes under legal incapacity while a cause is depending and the provisions of rule 25.1 are not invoked, any other party may apply by minute to have the cause transferred in favour of or against, as the case may be, any person who represents that party or his estate.

^{F179}(2)

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Textual Amendments

- F178** Rule 25.2: “-(1)” at the beginning of paragraph (1) is omitted (1.11.1996) by S.I. 1996/2445, para. 3(30)(a)
- F179** Rule 25.2(2) omitted (1.11.1996) by S.I. 1996/2445, para. 3(30)(b)

CHAPTER 26

TRANSFER AND REMIT OF CAUSES

Transfer to another sheriff court

- 26.1. (1) The sheriff may, on cause shown, remit any cause to another sheriff court.
- (2) Subject to paragraph (4), where a cause in which there are two or more defenders has been brought in the sheriff court of the residence or place of business of one of them, the sheriff may transfer the cause to any other sheriff court which has jurisdiction over any of the defenders.
- (3) Subject to paragraph (4), where a plea of no jurisdiction is sustained, the sheriff may transfer the cause to the sheriff court before which it appears to him the cause ought to have been brought.
- (4) The sheriff shall not transfer a cause to another sheriff court under paragraph (2) or (3) except—
- (a) on the motion of a party; and
 - (b) where he considers it expedient to do so having regard to the convenience of the parties and their witnesses.
- (5) On making an order under paragraph (1), (2) or (3), the sheriff—
- (a) shall state his reasons for doing so in the interlocutor; and
 - (b) may make the order on such conditions as to expenses or otherwise as he thinks fit.
- (6) The court to which a cause is transferred under paragraph (1), (2) or (3) shall accept the cause.
- (7) A transferred cause shall proceed in all respects as if it had been originally brought in the court to which it is transferred.
- (8) An interlocutor transferring a cause may, with leave of the sheriff, be appealed to the sheriff principal but shall not be subject to appeal to the Court of Session.

Remit to Court of Session

- 26.2. (1) The sheriff clerk shall, within four days after the sheriff has pronounced an interlocutor remitting a cause to the Court of Session, transmit the process to the Deputy Principal Clerk of Session.
- (2) The sheriff clerk shall, within the period specified in paragraph (1), send written notice of the remit to each party and certify on the interlocutor sheet that he has done so.

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- (3) Failure by a sheriff clerk to comply with paragraph (2) shall not affect the validity of a remit made under paragraph (1).

Remit from Court of Session

- 26.3. On receipt of the process in an action which has been remitted from the Court of Session under section 14 of the ^{M25}Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, the sheriff clerk shall—
- (a) record the date of receipt on the interlocutor sheet;
 - (b) fix a hearing to determine further procedure on the first suitable 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 subparagraph (b) to each party.

Marginal Citations

M25 1985 c.73.

CHAPTER 27

CAUTION AND SECURITY

Application of this Chapter

- 27.1. This Chapter applies to—
- (a) any cause in which the sheriff has power to order a person to find caution or give other security; and
 - (b) security for expenses ordered to be given by the election court or the sheriff under section 136(2)(i) of the ^{M26}Representation of the People Act 1983 in an election petition.

Marginal Citations

M26 1983 c.2; section 136 was amended by the [Representation of the People Act 1985 \(c.50\)](#), [Schedule 4](#), paragraph 48.

Form of applications

- 27.2. (1) An application for an order for caution or other security, or for variation or recall of such an order, shall be made by motion.
- (2) The grounds on which such an application is made shall be set out in the motion.

Orders

- 27.3. Subject to section 726(2) of the ^{M27}Companies Act 1985 (expenses by certain limited companies), an order to find caution or give other security shall specify the period within which such caution is to be found or such security given.

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Marginal Citations

M27 1985 c.6.

Methods of finding caution or giving security

27.4. (1) A person ordered—

- (a) to find caution, shall do so by obtaining a bond of caution; or
- (b) to consign a sum of money into court, shall do so by consignment under the ^{M28}Sheriff Court Consignations (Scotland) Act 1893 in the name of the sheriff clerk.

(2) The sheriff may approve a method of security other than one mentioned in paragraph (1), including a combination of two or more methods of security.

(3) Subject to paragraph (4), any document by which an order to find caution or give other security is satisfied shall be lodged in process.

(4) Where the sheriff approves a security in the form of a deposit of a sum of money in the joint names of the agents of parties, a copy of the deposit receipt, and not the principal, shall be lodged in process.

(5) Any document lodged in process, by which an order to find caution or give other security is satisfied, shall not be borrowed from process.

Modifications etc. (not altering text)

C18 Rule 27.4 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Marginal Citations

M28 1893 c.44.

Cautioners and ^{F180}guarantors]

27.5. A bond of caution or other security obtained from an insurance company shall be given only by a company authorised under section 3 or 4 of the ^{M29}Insurance Companies Act 1982 to carry on insurance business of class 15(b) in Schedule 2 to that Act.

Textual Amendments

F180 Word in rule 27.5 heading substituted (1.11.1996) by S.I. 1996/2445, para. 3(31)

Modifications etc. (not altering text)

C19 Rule 27.5 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Marginal Citations

M29 1982 c.50.

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Forms of bonds of caution and other securities

- 27.6. (1) A bond of caution shall oblige the cautioner, his heirs and executors to make payment of the sums for which he has become cautioner to the party to whom he is bound, as validity and in the same manner as the party and his heirs and successors, for whom he is cautioner, are obliged.
- (2) A bond of caution or other security document given by an insurance company shall state whether the company is authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on insurance business of class 15(b) in Schedule 2 to that Act.

Modifications etc. (not altering text)

C20 Rule 27.6 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Sufficiency of caution or security and objections

- 27.7. (1) The sheriff clerk shall satisfy himself that any bond of caution, or other document lodged in process under rule 27.4(3), is in proper form.
- (2) A party who is dissatisfied with the sufficiency or form of the caution or other security offered in obedience to an order of the court may apply by motion for an order under rule 27.9 (failure to find caution or give security).

Modifications etc. (not altering text)

C21 Rule 27.7 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Insolvency or death of cautioner or guarantor

- 27.8. Where caution has been found by bond of caution or security has been given by guarantee and the cautioner or guarantor, as the case may be—
- (a) becomes apparently insolvent within the meaning assigned by section 7 of the ^{M30}Bankruptcy (Scotland) Act 1985 (constitution of apparent insolvency),
 - (b) calls a meeting of his creditors to consider the state of his affairs,
 - (c) dies unrepresented, or
 - (d) is a company and—
 - (i) an administration or winding up order has been made, or a resolution for a voluntary winding up has been passed, with respect to it,
 - (ii) a receiver of all or any part of its undertaking has been appointed, or
 - (iii) a voluntary arrangement (within the meaning assigned by section 1(1) of the ^{M31}Insolvency Act 1986) has been approved under Part I of that Act,
- the party entitled to benefit from the caution or guarantee may apply by motion for a new security or further security to be given.

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Modifications etc. (not altering text)

C22 Rule 27.8 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Marginal Citations

M30 1985 c.66.

M31 1986 c.65.

Failure to find caution or give security

- 27.9. Where a party fails to find caution or give other security (in this rule referred to as “the party in default”), any other party may apply by motion—
- (a) where the party in default is a pursuer, for decree of absolvitor; or
 - (b) where the party in default is a defender or a third party, for decree by default or for such other finding or order as the sheriff thinks fit.

CHAPTER 28

RECOVERY OF EVIDENCE

Application and interpretation of this Chapter

- 28.1. (1) This Chapter applies to the recovery of any evidence in a cause depending before the sheriff.
- (2) In this Chapter, “the Act of 1972” means the ^{M32}Administration of Justice (Scotland) Act 1972.

Marginal Citations

M32 1972 c.59.

Applications for commission and diligence for recovery of documents or for orders under section 1 of the Act of 1972

- 28.2. (1) An application by a party for—
- (a) a commission and diligence for the recovery of a document, or
 - (b) an order under ^{M33}section 1 of the Act of 1972,
- shall be made by motion.
- (2) At the time of lodging a motion 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 on or with, 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,
- shall be lodged in process.

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- [^{F181}(3) A copy of the specification lodged under paragraph (2) and the motion made under paragraph (1) shall be intimated by the applicant to—
- (a) every other party;
 - (b) in respect of an application under section 1(1) of the ^{M34}Act of 1972, any third party haver; and
 - (c) where necessary, the Lord Advocate.]
- (4) Where the sheriff grants a motion made 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 Lord Advocate may appear at the hearing of any motion under paragraph (1).

Textual Amendments

F181 Rule 28.2(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(32)

Marginal Citations

M33 Section 1 of the Administration of Justice (Scotland) Act 1972 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 19 and Schedule 2, paragraph 15.

M34 1972 c.59.

Optional procedure before executing commission and diligence

- 28.3. (1) The party who has obtained a commission and diligence for the recovery of a document on an application made under rule 28.2(1)(a), may at any time before executing it against a haver, serve on the haver an order in Form G11 (in this rule referred to as “the order”); and if so, the provisions of this rule shall apply.
- (2) The order [^{F182}and a copy of the specification referred to in rule 28.2(2) as approved by the court] shall be served on the haver or his known solicitor and shall be complied with by the haver in the manner and within the period specified in the order.
- (3) Not later than the day after the date on which the order, [^{F183}the certificate appended to Form G11] and any document is received by the sheriff clerk from a haver, he shall intimate that fact to each party.
- (4) No party, other than the party who served the order, may uplift such a document until after the expiry of 7 days after the date of intimation under paragraph (3).
- (5) Where the party who served the order fails to uplift such a document within 7 days after the date of intimation under paragraph (3), the sheriff clerk shall intimate that failure to every other party.
- (6) Where no party has uplifted such a document within 14 days after the date of intimation under paragraph (5), the sheriff clerk shall return it to the haver who delivered it to him.
- (7) Where a party who has uplifted such a document does not wish to lodge it, he shall return it to the sheriff clerk who shall—
- (a) intimate the return of the document to every other party; and
 - (b) if no other party uplifts the document within 14 days after the date of intimation, return it to the haver.

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- (8) If the party who served the order is not satisfied—
 - (a) that full compliance has been made with the order, or
 - (b) that adequate reasons for non-compliance have been given,he may execute the commission and diligence under rule 28.4.
- (9) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the sheriff may, on the motion of the party who served the order, direct that that party shall be allowed to inspect the book and take copies of any entries falling within the specification.
- (10) Where any question of confidentiality arises in relation to a book directed to be inspected under paragraph (9), the inspection shall be made, and any copies shall be taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence.
- (11) The sheriff may, on cause shown, order the production of any book (not being a banker's book or book of public record) containing entries falling under a specification, notwithstanding the production of a certified extract [^{F184}from that book].

Textual Amendments

F182 Words in rule 28.3(2) inserted (1.11.1996) by S.I. 1996/2445, para. 3(33)(a)

F183 Words in rule 28.3(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(33)(b)

F184 Words in rule 28.3(11) inserted (1.11.1996) by S.I. 1996/2445, para. 3(33)(c)

Execution of commission and diligence for recovery of documents

- 28.4. (1) The party who seeks to execute a commission and diligence for recovery of a document obtained on an application made under rule 28.2(1)(a) shall—
- (a) provide the commissioner with a copy of the specification, a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment; and
 - (b) instruct the clerk and any shorthand writer considered necessary by the commissioner or any party; and
 - (c) be responsible for the fees of the commissioner and his clerk, and of any shorthand writer.
- (2) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission.
 - (3) The interlocutor granting such a commission and diligence shall be sufficient authority for citing a haver to appear before the commissioner.
 - (4) A citation in Form G13 shall be served on the haver with a copy of the specification and, where necessary for a proper understanding of the specification, a copy of the pleadings (including any adjustments and amendments) [^{F185}]; and the party citing the haver shall lodge a certificate in Form G12].
 - (5) The parties and the haver shall be entitled to be represented by a solicitor or person having a right of audience before the sheriff at the execution of the commission.
 - (6) At the commission, the commissioner shall—

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- (a) administer the oath de fideli administratione to any [^{F186}clerk and any] shorthand writer appointed for the commission; and
 - (b) administer to the haver the oath in Form G14, or, where the haver elects to affirm, the affirmation in Form G15.
- (7) The report of the execution of the commission and diligence, any document recovered and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.
- (8) Not later than the day after the date on which such a report, document and inventory, if any, are received by the sheriff clerk, he shall intimate to the parties that he has received them.
- (9) No party, other than the party who served the order, may uplift such a document until after the expiry of 7 days after the date of intimation under paragraph (8).
- (10) Where the party who served the order fails to uplift such a document within 7 days after the date of intimation under paragraph (8), the sheriff clerk shall intimate that failure to every other party.
- (11) Where no party has uplifted such a document within 14 days after the date of intimation under paragraph (10), the sheriff clerk shall return it to the haver.
- (12) Where a party who has uplifted such a document does not wish to lodge it, he shall return it to the sheriff clerk who shall—
- (a) intimate the return of the document to every other party; and
 - (b) if no other party uplifts the document within 14 days of the date of intimation, return it to the haver.

Textual Amendments

F185 Words in rule 28.4(4) inserted (1.11.1996) by S.I. 1996/2445, para. 3(34)(a)

F186 Words in rule 28.4(6)(a) inserted (1.11.1996) by S.I. 1996/2445, para. 3(34)(b)

Execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972

- 28.5. (1) An order under section 1(1) of the Act of 1972 for the production or recovery of a document or other property shall grant a commission and diligence for the production or recovery of that document or other property.
- (2) Rules 28.3 (optional procedure before executing commission and diligence) and 28.4 (execution of commission and diligence for recovery of documents) shall apply to an order to which paragraph (1) applies as they apply to a commission and diligence for the recovery of a document.

Execution of orders for inspection etc. of documents or other property under section 1(1) of the Act of 1972

- 28.6. (1) An order under section 1(1) of the Act of 1972 for the inspection or photographing of a document or other property, the taking of samples or the carrying out of any experiment thereon or therewith, shall authorise and appoint a specified person to photograph, inspect, take samples of, or carry out any experiment on or with any

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such document or other property, as the case may be, subject to such conditions, if any, as the sheriff thinks fit.

- (2) A certified copy of the interlocutor granting such an order shall be sufficient authority for the person specified to execute the order.
- (3) When such an order is executed, the party who obtained the order shall serve on the haver a copy of the interlocutor granting it, a copy of the specification and, where necessary for a proper understanding of the specification, a copy of the pleadings (including any adjustments and amendments).

Execution of orders for preservation etc. of documents or other property under section 1(1) of the Act of 1972

- 28.7. (1) An order under section 1(1) of the Act of 1972 for the preservation, custody and detention of a document or other property ^{F187} . . . shall grant a commission and diligence for the detention and custody of that document or other property.
- (2) The party who has obtained an order under paragraph (1) shall—
 - (a) provide the commissioner with a copy of the specification, a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
 - (b) be responsible for the fees of the commissioner and his clerk; and
 - (c) serve a copy of the order on the haver.
 - (3) The report of the execution of the commission and diligence, any document or other property taken by the commissioner and an inventory of such property, shall be sent by the commissioner to the sheriff clerk for the further order of the sheriff.

Textual Amendments

F187 Words in rule 28.7(1) omitted (1.11.1996) by S.I. 1996/2445, para. 3(35)

Confidentiality

- 28.8. (1) Where confidentiality is claimed for any evidence sought to be recovered under any of the following rules, such evidence shall [^{F188}, where practicable,] be enclosed in a sealed packet:—
- (28) (optional procedure before executing commission and diligence),
 - (28) (execution of commission and diligence for recovery of documents),
 - (28) (execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972),
 - (28) (execution of orders for preservation etc. of documents or other property under section 1(1) of the Act of 1972).
- (2) A motion to have such a sealed packet opened up [^{F189} or such recovery allowed] may be lodged by—
- (a) the party who obtained the commission and diligence; or
 - (b) any other party after the date of intimation by the sheriff clerk under rule 28.3(5) or 28.4(10) (intimation of failure to uplift documents).

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- (3) In addition to complying with rule 15.2 (intimation of motions), the party lodging such a motion shall intimate the terms of the motion to the haver by post by the first class recorded delivery service.
- (4) The person claiming confidentiality may oppose a motion made under paragraph (2).

Textual Amendments

F188 Words in rule 28.8(1) inserted (1.11.1996) by S.I. 1996/2445, para. 3(36)(a)

F189 Words in rule 28.8(2) inserted (1.11.1996) by S.I. 1996/2445, para. 3(36)(b)

Warrants for production of original documents from public records

- 28.9. (1) Where 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 a cause, he shall apply to the sheriff by motion.
- (2) Intimation of a motion under paragraph (1) shall be given to the keeper of the public record concerned at least 7 days before the motion 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, where it appears to the sheriff that it is necessary for the ends of justice that a motion under this rule should be granted, he shall pronounce an interlocutor containing a certificate to that effect; and 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 shall 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) shall 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 shall be met, in the first instance, by the party who applied by motion under paragraph (1).

Commissions for examination of witnesses

- 28.10. (1) This rule applies to a commission—
- (a) to take the evidence of a witness who—
 - (i) is resident beyond the jurisdiction of the court;
 - (ii) although resident within the jurisdiction of the court, resides at some place remote from that court; or
 - (iii) by reason of age, infirmity or sickness, is unable to attend the diet of proof; ^{F190} . . .
 - (b) in respect of the evidence of a witness which is in danger of being lost, to take the evidence to lie in retentis [^{F191}; or]

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- [^{F192}(c) on special cause shown, to take evidence of a witness on a ground other than one mentioned in sub-paragraph (a) or (b)]
- (2) An application by a party for a commission to examine a witness shall be made by motion; and that party shall specify in the motion the name and address of at least one proposed commissioner for approval and appointment by the sheriff.
 - (3) The interlocutor granting such a commission shall be sufficient authority for citing the witness to appear before the commissioner.
 - (4) At the commission, the commissioner shall—
 - (a) administer the oath de fideli administratione to any [^{F193}clerk and any] shorthand writer appointed for the commission; and
 - (b) administer to the witness the oath in Form G14, or where the witness elects to affirm, the affirmation in Form G15.
 - (5) Where a commission is granted for the examination of a witness, the commission shall proceed without interrogatories unless, on cause shown, the sheriff otherwise directs.

Textual Amendments

F190 Word in rule 28.10(1)(a)(iii) omitted (1.11.1996) by S.I. 1996/2445, para. 3(37)(a)(i)

F191 Rule 28.10(1)(b): “;or” substituted for the full-stop (1.11.1996) by S.I. 1996/2445, para. 3(37)(a)(ii)

F192 Rule 28.10(1)(c) inserted (1.11.1996) by S.I. 1996/2445, para. 3(37)(a)(iii)

F193 Words in rule 28.10(4)(a) inserted (1.11.1996) by S.I. 1996/2445, para. 3(37)(b)

Commissions on interrogatories

- 28.11. (1) Where interrogatories have not been dispensed with, the party who obtained the commission to examine a witness under rule 28.10 shall lodge draft interrogatories in process.
- (2) Any other party may lodge cross-interrogatories.
 - (3) The interrogatories and any cross-interrogatories, when adjusted, shall be extended and returned to the sheriff clerk for approval and the settlement of any dispute as to their contents by the sheriff.
 - (4) The party who has obtained the commission shall—
 - (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments), the approved interrogatories and any cross-interrogatories and a certified copy of the interlocutor of his appointment;
 - (b) instruct the clerk; and
 - (c) be responsible, in the first instance, for the fee of the commissioner and his clerk.
 - (5) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission to examine the witness.
 - (6) The executed interrogatories, any document produced by the witness and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.

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- (7) Not later than the day after the date on which the executed interrogatories, any document and an inventory of that document, are received by the sheriff clerk, he shall intimate to each party that he has received them.
- (8) The party who obtained the commission to examine the witness shall lodge in process—
 - (a) the report of the commission; and
 - (b) the executed interrogatories and any cross-interrogatories.

Commissions without interrogatories

- 28.12. (1) Where interrogatories have been dispensed with, the party who has obtained a commission to examine a witness under rule 28.10 shall—
- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
 - (b) fix a diet for the execution of the commission in consultation with the commissioner and every other party;
 - (c) instruct the clerk and any shorthand writer; and
 - (d) be responsible for the fees of the commissioner, his clerk and any shorthand writer.
- (2) All parties shall be entitled to be present and represented at the execution of the commission.
 - (3) The report of the execution of the commission, any document produced by the witness and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.
 - (4) Not later than the day after the date on which such a report, any document and an inventory of that document are received by the sheriff clerk, he shall intimate to each party that he has received them.
 - (5) The party who obtained the commission to examine the witness shall lodge the report in process.

Evidence taken on commission

- 28.13. (1) Subject to the following paragraphs of this rule and to all questions of relevancy and admissibility, evidence taken on commission under rule 28.11 or 28.12 may be used as evidence at any proof of the cause.
- (2) Any party may object to the use of such evidence at a proof; and the objection shall be determined by the sheriff.
 - (3) Such evidence shall not be used at a proof if the witness becomes available to attend the diet of proof.
 - (4) A party may use such evidence in accordance with the preceding paragraphs of this rule notwithstanding that it was obtained at the instance of another party.

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Letters of request

- 28.14. (1) [F194 Subject to paragraph (7), 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 purposes of a cause 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 [F195,]
 - (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 [F196,]
 - [F197](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 shall be made by minute in Form G16 together with a proposed letter of request in Form G17.
- (4) It shall be a condition of granting a letter of request that any solicitor for the applicant [F198, or a party litigant, as the case may be, shall 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 shall 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 shall, 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 adjusted as required by rule 28.11 and the translations (if any), shall 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.
- [F199(7) This rule does not apply to any request for the taking of evidence under Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.]

Textual Amendments

F194 Words in Sch. 1 rule 28.14(1) substituted (1.1.2004) by Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), art. 4(2)(a)

F195 Rule 28.14(2)(a): a comma is substituted for the semi-colon at the end (1.11.1996) by S.I. 1996/2445, para. 3(38)(a)(i)

F196 Rule 28.14(2)(b): a comma is substituted for the full-stop at the end (1.11.1996) by S.I. 1996/2445, para. 3(38)(a)(ii)

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F197 Rule 28.14(2)(c)-(e) inserted (1.11.1996) by S.I. 1996/2445, **para. 3(38)(a)(iii)**

F198 Words in rule 28.14(4) inserted (1.11.1996) by S.I. 1996/2445, **para. 3(38)(b)**

F199 Sch. 1 rule 28.14(7) inserted (1.1.2004) by Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), **art. 4(2)(b)**

Taking of evidence in the European Community

[^{F200}28(1A) This rule applies to any request—

- (a) for the competent court of another Member State to take evidence under Article 1.1(a) of the Council Regulation; or
 - (b) that the court shall take evidence directly in another Member State under Article 1.1(b) of the Council Regulation.
- (2) An application for a request under paragraph (1) shall be made by minute in Form G16, together with the proposed request in form A or I (as the case may be) in the Annex to the Council Regulation.
- (3) In this rule, “the Council Regulation” means Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.]

Textual Amendments

F200 Sch. 1 rule 28.14A inserted (1.1.2004) by Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), **rule 4(3)**

Citation of witnesses and havers

- 28.15. The following rules shall apply to the citation of a witness or haver to a commission under this Chapter as they apply to the citation of a witness for a proof:—
- rule 29.7 (citation of witnesses), except paragraph (4),
 - rule 29.9 (second diligence against a witness),
 - rule 29.10 (failure of witness to attend).

VALID FROM 18/08/2006

[^{F201}CHAPTER 28A

PRE-PROOF HEARING

Textual Amendments

F201 Sch. 1 Chapter 28A inserted (18.8.2006) by Act of Sederunt (Ordinary Cause and Summary Application Rules) Amendment (Miscellaneous) 2006 (S.S.I. 2006/410), **art. 2(6)**

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Pre-proof hearing

- 28A.1.(1) On the appointment of a cause to a proof or proof before answer or thereafter on the motion of any party or of his own motion, the sheriff may appoint the cause to a pre-proof hearing.
- (2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.
- (3) At a pre-proof hearing the sheriff shall ascertain, so far as is reasonably practicable, whether the cause is likely to proceed to proof on the date fixed for that purpose and, in particular—
- (a) the state of preparation of the parties; and
 - (b) the extent to which the parties have complied with their duties under rules 9A.2, 9A.3, 29.11 and 29.15 and any orders made by the sheriff under rules 9.12(3)(a) or (b) or 10.6(3)(a) or (b).
- (4) At a pre-proof hearing the sheriff may—
- (a) discharge the proof or proof before answer and fix a new date for such proof or proof before answer;
 - (b) adjourn the pre-proof hearing; or
 - (c) make such other order as he thinks fit to secure the expeditious progress of the cause.
- (5) For the purposes of rules 16.2 (decrees where party in default), 33.37 (decree by default in family action) and 33A.37 (decree by default in civil partnership action), a pre-proof hearing shall be a diet in accordance with those rules.]

CHAPTER 29

PROOF

Reference to oath

- 29.1. (1) Where a party intends to refer any matter to the oath of his opponent he shall lodge a motion to that effect.
- (2) If a party fails to appear at the diet for taking his deposition on the reference to his oath, the sheriff may hold him as confessed and grant decree accordingly.

Remit to person of skill

- 29.2. (1) The sheriff may, on a motion by any party or on a joint motion, remit to any person of skill, or other person, to report on any matter of fact.
- (2) Where a remit under paragraph (1) is made by joint motion or of consent of all parties, the report of such person shall be final and conclusive with respect to the subject-matter of the remit.
- (3) Where a remit under paragraph (1) is made—
- (a) on the motion of one of the parties, the expenses of the remit shall, in the first instance, be met by that party; and

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

^{F202}29.3.

Textual Amendments

F202 Sch. 1 rule 29.3 omitted (2.10.2000) by virtue of S.S.I. 2000/239, para. 3(1)(11)

Renouncing probation

- 29.4. (1) Where, on or at any time after, the closing of the record, the parties seek to renounce probation, they shall lodge in process a joint minute to that effect with or without a statement of admitted facts and any productions.
- (2) On the lodging of a joint minute under paragraph (1), the sheriff may order a debate.

Orders for proof

- 29.5 Where proof is necessary in any cause, the sheriff shall fix a date for taking the proof and may limit the mode of proof.

Hearing parts of proof separately

- 29.6. (1) [^{F203}In any cause], the sheriff may—
- (a) of his own motion, or
 - (b) on the motion of any party,
- order that proof on liability or any specified issue be heard separately from proof on the question of the amount for which decree may be pronounced 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 cause ordered to be heard in separate parts under paragraph (1).

Textual Amendments

F203 Words in rule 29.6(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(39)

Citation of witnesses

- 29.7. (1) A witness shall be cited for a proof—
- (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

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

- (2) Where service is executed under paragraph (1)(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.
- (3) A certified copy of the interlocutor allowing a proof shall be sufficient warrant to a sheriff officer to cite a witness on behalf of a party.
- (4) A witness shall be cited on a period of notice of 7 days in Form G13 and the party citing the witness shall lodge a certificate of citation in Form G12.
- (5) A solicitor who cites a witness shall be personally liable for his fees and expenses.
- (6) In the event of a solicitor intimating to a witness that his citation is cancelled, the solicitor shall advise him that the cancellation is not to affect any other citation which he may have received from another party.

Citation of witnesses by party litigants

- 29.8. (1) Where a party to a cause is a party litigant, he shall—
- (a) not later than 4 weeks before the diet of proof, apply to the sheriff by motion to fix caution 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 sheriff officer to cite a witness, find caution for such expenses as can reasonably be anticipated to be incurred by the witness in answering the citation.
- (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 motion for variation of the amount of caution.

Second diligence against a witness

- 29.9. (1) The sheriff may, on the motion of a party, grant a second diligence to compel the attendance of a witness under pain of arrest and imprisonment until caution can be found for his due attendance.
- (2) The warrant for a second diligence shall be effective without endorsement and the expenses of such a motion and diligence may be decreed for against the witness.

Failure of witness to attend

- 29.10. (1) Where a witness fails to answer a citation after having been duly cited, the sheriff may, on the motion of a party and on production of a certificate of citation, grant warrant for the apprehension of the witness and for bringing him to court; and the expenses of such a motion and apprehension may be decreed for against the witness.
- (2) Where a witness duly cited and after having demanded and been paid his travelling expenses fails to attend a diet, either before the sheriff or before a commissioner, the sheriff may—
- (a) ordain the witness to forfeit and pay a penalty not exceeding £250 unless a reasonable excuse be offered and sustained; and

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- (b) grant decree for that penalty in favour of the party on whose behalf the witness was cited.

Lodging productions

- 29.11. (1) Where a proof has been allowed, all productions [^{F204}and affidavits] which are intended to be used at the proof shall be lodged in process not later than 14 days before the diet of proof.
- (2) A production which is not lodged in accordance with paragraph (1) shall not be used or put in evidence at a proof unless—
- (a) by consent of parties; or
 - (b) with leave of the sheriff on cause shown and on such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.

Textual Amendments

F204 Words in [Sch. 1 rule 29.11\(1\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(12\)](#)

Copy productions

- 29.12. (1) A copy of every [^{F205}documentary] production, marked with the appropriate number of process of the principal production, shall 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 shall be securely fastened together by the party lodging it.

Textual Amendments

F205 Word in [Sch. 1 rule 29.12\(1\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(13\)](#)

Returning borrowed parts of process and productions before proof

- 29.13. All parts of process and productions which have been borrowed shall be returned to process before 12.30 pm on the day preceding the diet of proof.

Notices to admit and notices of non-admission

- 29.14. (1) At any time after [^{F206}the record has closed], a party may intimate to any other party a notice or notices calling on him to admit for the purposes of that cause only—
- (a) such facts relating to an issue averred in the pleadings as may be specified in the notice;
 - (b) that a particular document lodged in process and specified in the notice is—
 - (i) an original and properly authenticated document; or
 - (ii) a true copy of an original and properly authenticated document.
- (2) Where a party on whom a notice is intimated under paragraph (1)—
- (a) does not admit a fact specified in the notice, or

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- (b) does not admit, or seeks to challenge, the authenticity of a document specified in the notice,
he shall, within 21 days after the date of intimation of the notice under paragraph (1), intimate a notice of non-admission to the party intimating the notice to him under paragraph (1) stating that he does not admit the fact or document specified.
- (3) A party who fails to intimate a notice of non-admission under paragraph (2) shall be deemed to have admitted the fact or document specified in the notice intimated to him under paragraph (1); and such fact or document may be used in evidence at a proof if otherwise admissible in evidence, unless the sheriff, on special cause shown, otherwise directs.
- (4) A party who fails to intimate a notice of non-admission under paragraph (2) within 14 days after the notice to admit intimated to him under paragraph (1) shall be liable to the party intimating the notice to admit for the expenses of proving the fact or document specified in that notice unless the sheriff, on special cause shown, otherwise directs.
- (5) The party serving a notice under paragraph (1) or (2) shall lodge a copy of it in process.
- (6) A deemed admission under paragraph (3) shall not be used against the party by whom it was deemed to be made other than in the cause for the purpose for which it was deemed to be made or in favour of any person other than the party by whom the notice was given under paragraph (1).
- [^{F207}(7) The sheriff may, at any time, allow a party to amend or withdraw an admission made by him on such conditions, if any, as he thinks fit.
- ^{F207}(8) A party may, at any time, withdraw in whole or in part a notice of non admission by intimating a notice of withdrawal.]

Textual Amendments

F206 Words in Sch. 1 rule 29.14(1) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(14)(a)

F207 Sch. 1 rule 29.14(7)(8) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(14)(b)

Instruction of shorthand writer

- 29.15. Where a shorthand writer is to record evidence at a proof, the responsibility for instructing a shorthand writer shall lie with the pursuer.

Administration of oath or affirmation to witnesses

- 29.16. The sheriff shall administer the oath to a witness in Form G14 or, where the witness elects to affirm, the affirmation in Form G15.

Proof to be taken continuously

- 29.17. A proof shall be taken continuously so far as possible; but the sheriff may adjourn the diet from time to time.

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Recording of evidence

- 29~~F18~~^{F19}(1) Evidence in a cause shall be recorded by —
- (a) a shorthand writer, to whom the oath de fideli administratione in connection with the sheriff court service generally has been administered, or
 - (b) tape recording or other mechanical means approved by the court,
- unless the parties, by agreement and with the approval of the sheriff, dispense with the recording of evidence.
- (2) Where a shorthand writer is employed to record evidence, he shall, in the first instance, be paid by the parties equally.
 - (3) Where evidence is recorded by tape recording or other mechanical means, any fee payable shall, in the first instance, be paid by the parties in equal proportions.
 - (4) The solicitors for the parties shall be personally liable for the fees payable under paragraph (2) or (3), and the sheriff may make an order directing payment to be made.
 - (5) The record of the evidence at a proof shall include—
 - (a) any objection taken to a question or to the line of evidence;
 - (b) any submission made in relation to such an objection; and
 - (c) the ruling of the court in relation to the objection and submission.
 - (6) A transcript of the record of the evidence shall be made only on the direction of the sheriff; and the cost shall, in the first instance, be borne—
 - (a) in an undefended cause, by the solicitor for the pursuer; and
 - (b) in a defended cause, by the ^{F209}solicitors] for the parties in equal proportions.
 - (7) The transcript of the record of the evidence provided for the use of the court shall be certified as a faithful record of the evidence by—
 - (a) the shorthand writer who recorded the evidence; or
 - (b) where the evidence was recorded by tape recording or other mechanical means, by the persons who transcribed the record.
 - (8) The sheriff may make such alterations to the transcript of the record of the evidence as appear to him to be necessary after hearing the parties; and, where such alterations are made, the sheriff shall authenticate the alterations.
 - (9) Where a transcript of the record of the evidence has been made for the use of the sheriff, copies of it may be obtained by any party from the person who transcribed the record on payment of his fee.
 - (10) Except with leave of the sheriff, the transcript of the record of the evidence may be borrowed from process only for the purpose of enabling a party to consider whether to appeal against the interlocutor of the sheriff on the proof.
 - (11) Where a transcript of the record of the evidence is required for the purpose of an appeal but has not been directed to be transcribed under paragraph (6), the appellant—
 - (a) may request such a transcript from the shorthand writer or as the case may be, the cost of the transcript being borne by the solicitor for the appellant in the first instance; and
 - (b) shall lodge the transcript in process;

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and copies of it may be obtained by any party from the shorthand writer or as the case may be, on payment of his fee.

- (12) Where the recording of evidence has been dispensed with under paragraph (1), the sheriff, if called upon to do so, shall—
- (a) in the case of an objection to—
 - (i) the admissibility of evidence on the ground of confidentiality, or
 - (ii) the production of a document on any ground,note the terms in writing of such objections and his decisions on the objection; and
 - (b) in the case of any other objection, record, in the note to his interlocutor disposing of the merits of the cause, the terms of the objection and his decision on the objection.
- (13) This rule shall, with the necessary modifications, apply to the recording of evidence at a commission as it applies to the recording of evidence at a proof.

Textual Amendments

F208 Rule 29.18: “-(1)” inserted after “29.18” (1.11.1996) by S.I. 1996/2445, para. 3(40)(a)

F209 Word in rule 29.18(6)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(40)(b)

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

- 29.19. (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 cause from the sheriff who may proceed with the cause in relation to any issue which is not dependent on the ruling appealed against.

Parties to be heard at close of proof

- 29.20. At the close of the proof, or at an adjourned diet if for any reason the sheriff has postponed the hearing, the sheriff shall hear parties on the evidence and thereafter shall pronounce judgment with the least possible delay.

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

CHAPTER 30

DECREES, EXTRACTS AND EXECUTION

Interpretation of this Chapter

- 30.1. In this Chapter, “decree” includes any judgment, deliverance, interlocutor, act, order, finding or authority which may be extracted.

Taxes on money under control of the court

- 30.2. (1) Subject to paragraph (2), in a cause in which money has been consigned into court under the ^{M35}Sheriff Court Consignations (Scotland) Act 1893, 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 multiplepointing, 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.

Marginal Citations

M35 1893 c.44.

Decrees for payment in foreign currency

- 30.3. (1) Where decree has been granted for payment of a sum of money in a foreign currency or the sterling equivalent, a party requesting extract of the decree shall do so by minute endorsed on or annexed to the initial writ stating the rate of exchange prevailing on the date of the decree sought to be extracted or the date, or within 3 days before the date, on which the extract is ordered, and the sterling equivalent at that rate for the principal sum and interest decerned for.
- (2) A certificate in Form G18, from the Bank of England or a bank which is an institution authorised under the ^{M36}Banking Act 1987 certifying the rate of exchange and the sterling equivalent shall be lodged with the minute requesting extract of the decree.
- (3) The extract decree issued by the sheriff clerk shall mention any certificate referred to in paragraph (2).

Marginal Citations

M36 1987 c.22.

When decrees extractable

- 30.4. (1) Subject to the following paragraphs:—
- (a) [^{F210}subject to sub-paragraph (c),] a decree in absence may be extracted after the expiry of 14 days from the date of decree;

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- (b) ^[F210]subject to sub-paragraph (c),]any decree pronounced in a defended cause may be extracted at any time after whichever is the later of the following:—
- (i) the expiry of the period within which an application for leave to appeal may be made and no such application has been made;
 - (ii) the date on which leave to appeal has been refused and there is no right of appeal from such refusal;
 - (iii) the expiry of the period within which an appeal may be marked and no appeal has been marked; or
 - (iv) the date on which an appeal has been finally disposed of; and
- (c) where the sheriff has, in pronouncing decree, reserved any question of expenses, extract of that decree may be issued only after the expiry of 14 days from the date of the interlocutor disposing of the question of expenses unless the sheriff otherwise directs.
- (2) The sheriff may, on cause shown, grant a motion to allow extract to be applied for and issued earlier than a date referred to in paragraph (1).
- (3) In relation to a decree referred to in paragraph (1)(b) or (c), paragraph (2) shall not apply unless—
- (a) the motion under that paragraph is made in the presence of parties; or
 - (b) the sheriff is satisfied that proper intimation of the motion has been made in writing to every party not present at the hearing of the motion.
- (4) Nothing in this rule shall affect the power of the sheriff to supersede extract.

Textual Amendments

F210 Words in rule 30.4(1)(a)(b) inserted (1.11.1996) by S.I. 1996/2445, para. 3(41)(a)(b)

Extract of certain awards notwithstanding appeal

30.5. The sheriff clerk may issue an extract of an award of custody, access or aliment notwithstanding that an appeal had been made against an interlocutor containing such an award unless an order under rule 31.5 (appeals in connection with custody, access or aliment) has been made excusing obedience to or implement of that interlocutor.

Form of extract decree

30.6. (1) The extract of a decree mentioned in Appendix 2 shall be in the appropriate form for that decree in Appendix 2.

(2) In the case of a decree not mentioned in Appendix 2, the extract of the decree shall be modelled on a form in that Appendix with such variation as circumstances may require.

Form of warrant for execution

^[F21130]7. An extract of a decree on which execution may proceed shall include a warrant for execution in the following terms:— “This extract is warrant for all lawful execution hereon.”.

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Textual Amendments

F211 Rule 3.7 renumbered as rule 30.7 (1.11.1996) by S.I. 1996/2445, para. 3(42)

Date of decree in extract

- 30.8. (1) Where the sheriff principal has adhered to the decision of the sheriff following an appeal, the date to be inserted in the extract decree as the date of decree shall be the date of the decision of the sheriff principal.
- (2) Where a decree has more than one date it shall not be necessary to specify in an extract what was done on each date.

Service of charge where address of defender not known

- 30.9. (1) Where 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 shall display it on the walls of court and it shall 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 shall endorse a certificate on the charge certifying that it has been displayed in accordance with this rule and shall thereafter return it to the sheriff officer by whom service was executed.

CHAPTER 31

APPEALS

Time limit for appeal

- 31.1. Subject to the provisions of any other enactment, an interlocutor which may be appealed against may be appealed within 14 days after the date of the interlocutor unless it has been extracted following a motion under rule 30.4(2) (early extract).

Applications for leave to appeal

- 31.2. (1) Where leave to appeal is required, applications for leave to appeal against an interlocutor of a sheriff shall be made within 7 days after the date of the interlocutor against which it is sought to appeal unless the interlocutor has been extracted following a motion under rule 30.4(2) (early extract).
- (2) Subject to the provisions of any other enactment, where leave to appeal has been granted, an appeal shall be made within 7 days after the date on which leave was granted.

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- (3) An application for leave to appeal from a decision in relation to a time to pay direction made under section 1 of the ^{M37}Debtors (Scotland) Act 1987 or the recall or restriction of an arrestment made under section 3(4) of that Act shall specify the question of law on which the appeal is made.

Marginal Citations

M37 1987 c.18.

Form of appeal to Court of Session

- [^{F212}31(3)] An appeal to the Court of Session shall be marked by writing a note of appeal—
- (a) on the interlocutor sheet or other written record containing the interlocutor appealed against, or
 - (b) where the decision appealed against is not available or the proceedings appealed against are recorded in an official book, on a separate sheet lodged with the sheriff clerk,
- in the following terms:— “The pursuer [*or defender or as the case may be*] appeals to the Court of Session.”.
- (2) A note of appeal under paragraph (1) shall—
- (a) be signed by the appellant or his solicitor;
 - (b) bear the date on which it is signed; and
 - (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal.]

Textual Amendments

F212 Rule 31.3 substituted (1.11.1996) by S.I. 1996/2445, para. 3(43)(c)

Form of appeal to the sheriff principal

- [^{F213}31(4)] An appeal to the sheriff principal shall be marked by lodging a note of appeal in Form A1.
- (2) A note of appeal under paragraph (1) shall—
- (a) be signed by the appellant or his solicitor;
 - (b) bear the date on which it is signed;
 - (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal; and
 - (d) where a note has not been provided by the sheriff, request that the sheriff write a note setting out the reasons for his decision.
- (3) The grounds of appeal in a note of appeal shall consist of brief specific numbered propositions stating the grounds on which it is proposed to submit that the appeal should be allowed or as the case may be.
- (4) On marking or lodging a note of appeal, the appellant shall send a copy of the note of appeal to every other party.

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- (5) An appellant—
- (a) may amend the grounds of appeal at any time up to 14 days before the date assigned for the hearing of the appeal; and
 - (b) shall at the same time send or deliver a copy of such amendment to every other party.
- (6) Where any party wishes to cross-appeal, he shall—
- (a) lodge a note of the grounds of appeal in accordance with paragraph (1) not less than 7 days before the date assigned for the hearing of the appeal; and
 - (b) at the same time send a copy of the note to every other party.
- (7) The sheriff principal may, on cause shown, shorten or dispense with the time limits mentioned in paragraphs (5) and (6).
- (8) On a note of appeal being lodged, the sheriff clerk shall note on the interlocutor sheet that an appeal has been marked and the date of the appeal.]

Textual Amendments

F213 Rule 31.4 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Transmission of process and notice to parties

- [^{F214}31(3) Where an appeal is marked in terms of rule 31.3 (appeal to Court of Session) or 31.4 (appeal to sheriff principal), the sheriff clerk shall transmit the process of the cause—
- (a) in an appeal to the sheriff principal, to him; or
 - (b) in an appeal to the Court of Session, to the Deputy Principal Clerk of Session, within the period specified in rule 40.6 of the ^{M38}Rules of the Court of Session 1994.
- (2) On transmitting the process in terms of paragraph (1), the sheriff clerk shall—
- (a) send written notice of the appeal to every party; and
 - (b) certify on the interlocutor sheet that he has done so.
- (3) Failure of the sheriff clerk to comply with paragraph (2) shall not invalidate the appeal.]

Textual Amendments

F214 Rule 31.5 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Marginal Citations

M38 S.I. 1994/1443.

Record of pleadings etc.

- [^{F215}31.6. In an appeal to him, the sheriff principal may order the appellant to lodge a record of the pleadings containing all adjustments made in the cause with—
- (a) a copy of all relevant interlocutors;

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- (b) any other document lodged in process by any party or produced by order of the sheriff, whether or not pursuant to a commission and diligence for its recovery; and
- (c) any other document to which reference is intended to be made in the appeal, by any party.]

Textual Amendments

F215 Rule 31.6 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Determination of appeal

- [^{F216}31.7. In an appeal to him, the sheriff principal shall–
- (a) hear parties at an oral hearing; or
 - (b) on the motion of the parties, and if he thinks fit, dispose of the appeal without ordering an oral hearing.]

Textual Amendments

F216 Rule 31.7 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Fixing of Options Hearing or making other order following appeal

- [^{F217}31.8. On determination of an appeal from a decision of the sheriff made before or at an Options Hearing or any continuation of it, the sheriff principal may order the sheriff clerk to fix a new date for a hearing under rule 9.12 (options hearing) or may make such other order as he thinks fit.]

Textual Amendments

F217 Rule 31.8 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Appeals in connection with orders under section 11 of the Children (Scotland) Act 1995 or aliment

- [^{F218}31.9. Where an appeal is marked against an interlocutor making an order under section 11 of the ^{M39}Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.) or in respect of aliment, the marking of that appeal shall not excuse obedience to or implement of that order unless by order of the sheriff, the sheriff principal or the Court of Session, as the case may be.]

Textual Amendments

F218 Rule 31.9 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

Marginal Citations

M39 1995 c.36.

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Interim possession etc. pending appeal

[^{F219}31.10] Notwithstanding an appeal, the sheriff or sheriff principal from whose decision an appeal has been taken 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 provision for the preservation of evidence; or
- (d) to make any interim order which a due regard to the interests of the parties may require.

(2) An order made under paragraph (1) may be reviewed—

- (a) by the sheriff principal, on an appeal to him; or
- (b) the Court of Session, on an appeal to it.

Textual Amendments

F219 Rule 31.6 renumbered as rule 31.10 (1.11.1996) by S.I. 1996/2445, para. 3(43)(b)

Abandonment of appeal

[^{F220}31.11]. After an appeal to the sheriff principal has been marked, the appellant shall not be entitled to abandon his appeal unless—

- (a) of consent of all other parties; or
- (b) with leave of the sheriff principal.

Textual Amendments

F220 Rule 31.7 renumbered as rule 31.11 (1.11.1996) by S.I. 1996/2445, para. 3(43)(b)

CHAPTER 32

TAXATION OF EXPENSES

Taxation before decree for expenses

32.1. Expenses allowed in any cause, whether in absence or in foro contentioso, unless modified at a fixed amount, shall be taxed before decree is granted for them.

Decree for expenses in name of solicitor

32.2. The sheriff may allow a decree for expenses to be extracted in the name of the solicitor who conducted the cause.

Procedure for taxation

32.3. (1) Where an account of expenses awarded in a cause is lodged for taxation, the account and process shall be transmitted by the sheriff clerk to the auditor of court.

(2) The auditor of court shall—

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- (a) assign a diet of taxation not earlier than 7 days from the date he receives the account from the sheriff clerk; and
 - (b) intimate that diet forthwith to the party who lodged the account.
- (3) The party who lodged the account of expenses shall, on receiving intimation from the auditor of court under paragraph (2)—
 - (a) send a copy of the account, and
 - (b) intimate the date, time and place of the diet of taxation,to every other party.
- (4) After the account has been taxed, the auditor of court shall transmit the process with the account and his report to the sheriff clerk.
- (5) Where the auditor of court has reserved consideration of the account at the diet of taxation, he shall intimate his decision to the parties who attended the taxation.
- (6) Where no objections are lodged under rule 32.4 (objections to auditor's report), the sheriff may grant decree for the expenses as taxed.

Objections to auditor's report

- 32.4. (1) A party may lodge a note of objections to an account as taxed only where he attended the diet of taxation.
- (2) Such a note shall be lodged within 7 days after—
 - (a) the diet of taxation; or
 - (b) where the auditor of court reserved consideration of the account under paragraph (5) of rule 32.3, the date on which the auditor of court intimates his decision under that paragraph.
 - (3) The sheriff shall dispose of the objection in a summary manner, with or without answers.

VALID FROM 29/01/2007

[^{F221}CHAPTER32A

LIVE LINKS

Textual Amendments

F221 Sch. 1 Chapter 32A inserted (29.1.2007) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007 (S.S.I. 2007/6), **para. 2(13)**

- 32A.1.(1) On cause shown, a party may apply by motion for authority for the whole or part of—
 - (a) the evidence of a witness or the party to be given; or
 - (b) a submission to be made,through a live link.

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(2) In paragraph (1)–

“witness” means a person who has been or may be cited to appear before the court as a witness;

“submission” means any oral submission which would otherwise be made to the court by the party or his representative in person including an oral submission in support of a motion; and

“live link” means a live television link or such other arrangement as may be specified in the motion by which the witness, party or representative, as the case may be, is able to be seen and heard in the proceedings or heard in the proceedings and is able to see and hear or hear the proceedings while at a place which is outside the courtroom.]

SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES

CHAPTER 33

FAMILY ACTIONS

PART I

GENERAL PROVISIONS

Intepretation of this Chapter

33.1. (1) In this Chapter, “family action” means—

- (a) an action of divorce;
- (b) an action of separation;
- (c) an action of declarator of legitimacy;
- (d) an action of declarator of illegitimacy;
- (e) an action of declarator of parentage;
- (f) an action of declarator of non-parentage;
- (g) an action of declarator of legitimation;
- [^{F222}(h) an action or application for, or in respect of, an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.), except—
 - (i) an application for the appointment of a judicial factor mentioned in section 11(2)(g) of the Act of 1995 to which Part I of the Act of Sederunt (Judicial Factors Rules) 1992 applies; and
 - (ii) an application for the appointment or removal of a person as a guardian mentioned in section 11(2)(h) of the Act of 1995 to which paragraph 4 of the Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 applies;]
- (i) an action of affiliation and aliment;
- (j) an action of, or application for or in respect of, aliment;
- (k) an action or application for financial provision after a divorce or annulment in an overseas country within the meaning of Part IV of the ^{M40}Martimonial and Family Proceedings Act 1984;

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- (l) an action or application for an order under the Act of 1981;
 - (m) an application for the variation or recall of an order mentioned in section 8(1) of the ^{M41}Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.
- (2) In this Chapter, unless the context otherwise requires—
- “the Act of 1975” means the ^{M42}Children Act 1975;
 - “the Act of 1976” means the ^{M43}Divorce (Scotland) Act 1976;
 - “the Act of 1981” means the ^{M44}Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - “the Act of 1985” means the ^{M45}Family Law (Scotland) Act 1985;
 - [^{F223}“the Act of 1995” means the Children (Scotland) Act 1995;
 - “contact order” has the meaning assigned in section 11(2)(d) of the Act of 1995;]
 - ^{F224} . . .
 - [^{F225}“local authority” means a council constituted under section 2 of the ^{M46}Local Government etc. (Scotland) Act 1994;]
 - “mental disorder” means mental illness or mental handicap however caused or manifested;
 - “order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas divorce or annulment), an order mentioned in section 8(1) of the Act of 1985;
 - [^{F226}“parental responsibilities” has the meaning assigned in section 1(3) of the Act of 1995;
 - “parental rights” has the meaning assigned in section 2(4) of the Act of 1995;
 - “residence order” has the meaning assigned in section 11(2)(c) of the Act of 1995;
 - “section 11 order” means an order under section 11 of the Act of 1995.]
- (3) For the purposes of rules 33.2 (averments in actions of divorce or separation about other proceedings) and 33.3 (averments where [^{F227}section 11 order] sought) and, in relation to proceedings in another jurisdiction, Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 ^{F228} (sisting of consistorial actions in Scotland), proceedings are continuing at any time after they have commenced and before they are finally disposed of.

Textual Amendments

- F222** Rule 33.1(1)(h) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(a)
- F223** Rule 33.1(2): definitions of “the Act of 1995” and “contact order” inserted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(b)(i)
- F224** Rule 33.1(2): definition of “child” omitted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(b)(ii)
- F225** Rule 33.1(2): definition of “local authority” substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(b)(iii)
- F226** Rule 33.1(2): definitions of “parental responsibilities”, “parental”, “residence order” and “section 11 order” substituted for definition of “parental rights” (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 4(b)(iv)**
- F227** Words in rule 33.1(3) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(c)
- F228** 1973 c.45; Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), **Schedule 1**, paragraphs 19 and 20.

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- M40** 1984 c.42; Part IV was amended by the [Family Law \(Scotland\) Act 1985 \(c.37\)](#), [Schedule 1](#), paragraphs 12 and 13.
- M41** 1966 c.19; section 8(1) was amended by the [Guardianship Act 1973 \(c.29\)](#), [Schedule 5](#), the [Divorce \(Scotland\) Act 1976 \(c.39\)](#), [Schedule 1](#), the [Matrimonial and Family Proceedings Act 1984 \(c.42\)](#), [Schedule 1](#), paragraph 7 and the [Family Law \(Scotland\) Act 1985 \(c.37\)](#), [Schedule 1](#), paragraph 5.
- M42** 1975 c.72.
- M43** 1976 c.39.
- M44** 1981 c.59.
- M45** 1985 c.37.
- M46** 1994 c. 39; section 2(2) was amended by the [Environment Act 1995 \(c.25\)](#), [Schedule 22](#), paragraph 232(1)

Averments in actions of divorce or separation about other proceedings

- 33.2. (1) This rule applies to an action of divorce or separation.
- (2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—
- (a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the marriage to which the initial writ relates or are capable of affecting its validity or subsistence; and
 - (b) where such proceedings are continuing—
 - (i) the court, tribunal or authority before which the proceedings have been commenced;
 - (ii) the date of commencement;
 - (iii) the names of the parties;
 - (iv) the date, or expected date of any proof (or its equivalent) in the proceedings; and
 - (v) such other facts as may be relevant to the question of whether or not the action before the sheriff should be sisted under Schedule 3 to the [Domicile and Matrimonial Proceedings Act 1973](#) [^{F229}or Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses].
- (3) Where—
- (a) such proceedings are continuing;
 - (b) the action before the sheriff is defended; and
 - (c) either—
 - (i) the initial writ does not contain the statement referred to in paragraph (2)(a), or
 - (ii) the particulars mentioned in paragraph (2)(b) as set out in the initial writ are incomplete or incorrect,
- any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(b).

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Textual Amendments

F229 Words in Sch. 1 rule 33.2(2)(b)(v) inserted (2.4.2001) by S.S.I. 2001/144, para. 2(1)(2)

^{F230}Averments where section 11 order sought

- 33.3. (1) A party to a family action, who makes an application in that ^{F231}action for a section 11 order] in respect of a child shall include in his pleadings—
- (a) where that action is an action of divorce or separation, averments giving particulars of any other proceedings known to him, whether in Scotland or elsewhere and whether concluded or not, which relate to the child in respect of whom the ^{F232}section 11 order] is sought;
 - (b) in any other family action—
 - (i) the averments mentioned in paragraph (a); and
 - (ii) averments giving particulars of any proceedings known to him which are continuing, whether in Scotland or elsewhere, and which relate to the marriage of the parents of that child.
- (2) Where such other proceedings are continuing or have taken place and the averments of the applicant for such a ^{F232}section 11 order]—
- (a) do not contain particulars of the other proceedings, or
 - (b) contain particulars which are incomplete or incorrect,
- any defences or minute, as the case may be, lodged by any ^{F233}party] to the family action shall include such particulars or such further or correct particulars as are known to him.
- (3) In paragraph 1(b)(ii), “child” includes a child of the family within the meaning assigned in section 42(4) of the Family Law Act 1986.

Textual Amendments

F230 Words in rule 33.3 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 5(a)

F231 Words in rule 33.3(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 5(b)

F232 Words in rule 33.3(1)(a)(2) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 5(c)

F233 Word in rule 33.3(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(44)

Averments where identity or address of person not known

- 33.4. In a family action, where the identity or address of any person referred to in rule 33.7 as a person in respect of whom a warrant for intimation requires to be applied for is not known and cannot reasonably be ascertained, the party required to apply for the warrant shall include in his pleadings an averment of that fact and averments setting out what steps have been taken to ascertain the identity or address, as the case may be, of that person.

Averments about maintenance orders

- 33.5. In a family action in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall

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contain an averment stating whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the ^{M47}Debtors (Scotland) Act 1987) has been granted in favour of or against that party or of any other person in respect of whom the order is sought.

Marginal Citations

M47 1987 c.18; section 106 was amended by the [Child Support Act 1991 \(c.48\)](#), [Schedule 5](#), paragraph 8(7).

Averments where aliment or financial provision sought

33.6. (1) In this rule—

“the Act of 1991” means the ^{M48}Child Support Act 1991;

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

“crave relating to aliment” means—

- (a) for the purposes of paragraph (2), a crave for decree of aliment in relation to a child or for recall or variation of such a decree; and
- (b) for the purposes of paragraph (3), a crave for decree of aliment in relation to a child or for recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child;

“^{F234}“maintenance calculation”” has the meaning assigned in section ^{F235}54 of the Act of 1991.

(2) A family action containing a crave relating to aliment and to which section 8(6), (7), (8) or (10) of the Act of 1991 (top up maintenance orders) applies shall—

- (a) include averments stating, where appropriate—
 - (i) that a maintenance ^{F236}calculation] under section 11 of that Act (maintenance assessments) is in force;
 - (ii) the date of the maintenance ^{F236}calculation];
 - (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance ^{F236}calculation]; and
 - (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of that Act; and
- (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 ^{F236}calculation] referred to in sub-paragraph (a).

(3) A family action containing a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include averments stating—

- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom;
- (b) that the child is not a child within the meaning of section 55 of that Act; or
- (c) where the action is lodged for warranting before 7th April 1997, the grounds on which the sheriff retains jurisdiction.

(4) In an action for declarator of non-parentage or illegitimacy—

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- (a) the initial writ shall include an article of condescendence stating whether the pursuer previously has been alleged to be the parent in an application for a maintenance [^{F236}calculation] under section 4, 6 or 7 of the Act of 1991 (applications for maintenance [^{F236}calculation]); and
 - (b) where an allegation of paternity has been made against the pursuer, the Secretary of State shall be named as a defender in the action.
- (5) A family action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—
- (a) include averments stating that such a decision has been made and giving 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.

Textual Amendments

F234 Words in Sch. 1 rule 33.6(1) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(8)(a)(i)

F235 Word in Sch. 1 rule 33.6(1) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(8)(a)(ii)

F236 Words in Sch. 1 rule 33.6(2)(4) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(8)(b)

Marginal Citations

M48 1991 c.48.

Warrants and forms for intimation

- 33.7. (1) [^{F237}Subject to paragraphs (5) and (7), in the initial writ] in a family action, the pursuer shall include a crave 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 F1 shall be attached to the copy of the initial writ intimated to any such person;
 - (b) in an action where the pursuer alleges that the defender has committed adultery with another person, to that person, unless—
 - (i) that person is not named in the initial writ and, if the adultery is relied on for the purposes of section 1(2)(a) of the Act of 1976 (irretrievable breakdown of marriage by reason of adultery), the initial writ contains an averment that his or her identity is not known to the pursuer and cannot reasonably be ascertained, or

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- (ii) the pursuer alleges that the defender has been guilty of rape upon or incest with, that named person,
and a notice of intimation in Form F2 shall be attached to the copy of the initial writ intimated to any such person;
- (c) in an action where the defender is a person who is suffering from a mental disorder, to—
 - (i) those persons mentioned in sub-paragraph (a)(i) an (ii), unless the address of such person is not known to the pursuer and cannot reasonably be ascertained, and
 - (ii) the curator bonis to the defender, if one has been appointed,
and a notice of intimation in Form F3 shall be attached to the copy of the initial writ intimated to any such person;
- (d) in an action relating to a marriage which was entered into under a law which permits polygamy where—
 - (i) one of the decrees specified in section 2(2) of the ^{M49}Matrimonial Proceedings (Polygamous Marriages) Act 1972 is sought, and
 - (ii) either party to the marriage in question has any spouse additional to the other party,
to any such additional spouse, and a notice of intimation in Form F4 shall be attached to the initial writ intimated to any such person;
- (e) in an action of divorce or separation where the sheriff may make [a section 11 order] in respect of a child—
 - (i) who is in the care of a local authority, to that authority and a notice of intimation in Form F5 shall be attached to the initial writ intimated to that authority;
 - (ii) who, being a child of one party to the marriage, has been accepted as a child of the family by the other party to the marriage and who is liable to be maintained by a third party, to that third party, and a notice of intimation in Form F5 shall be attached to the initial writ intimated to that third party; or
 - (iii) in respect of whom a third party [^{F238}in fact exercises care or control], to that third party, and a notice of intimation in Form F6 shall be attached to the initial writ intimated to that third party;
- (f) in an action where the pursuer craves [^{F239}a section 11 order], to any parent or guardian of the child who is not a party to the action, and a notice of intimation in Form F7 shall be attached to the initial writ intimated to any such parent or guardian;
- (g) in an action where the pursuer craves [^{F240}a residence order in respect] of a child and he is—
 - (i) not a parent of that child, and
 - (ii) resident in Scotland when the initial writ is lodged,
to the local authority within which area the pursuer resides, and a notice of intimation in Form F8 shall be attached to the [^{F241}initial] writ intimated to that authority;
- [^{F242}(h) in an action which includes a crave for a section 11 order, to the child to whom such an order would relate if not a party to the action, and a notice of intimation in Form F9 shall be intimated to that child;]

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- (i) in an action where the pursuer makes an application for an order under section 8(1)(aa) of the ^{M50}Act of 1985 (transfer of property) and—
 - (i) the consent of a third party to such a transfer is necessary by virtue of an obligation, enactment or rule of law, or
 - (ii) the property is subject to a security,to the third party or creditor, as the case may be, and a notice of intimation in Form F10 shall be attached to the initial writ intimated to any such person;
 - (j) in an action where the pursuer makes an application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions), to—
 - (i) any third party in whose favour the transfer of, or transaction involving, the property is to be or was made, and
 - (ii) any other person having an interest in the transfer of, or transaction involving, the property,and a notice of intimation in Form F11 shall be attached to the initial writ intimated to any such person; ^{F243} . . .
 - (k) in an action where the pursuer makes an application for an order under the ^{M51}Act of 1981—
 - (i) where he is a non-entitled partner and the entitled partner has a spouse, to that spouse, or
 - (ii) where the application is under section 2(1)(e), 2(4)(a), 3(1), 3(2), 4, 7, 13 or 18 of that Act, and the entitled spouse or entitled partner is a tenant or occupies the matrimonial home by permission of a third party, to the landlord or the third party, as the case may be,and a notice of intimation in Form F12 shall be attached to the initial writ intimated to any such person [^{F244}; and]
 - [^{F245}(l) in an action where the pursuer makes an application for an order under section 8(1)(ba) of the ^{M52}Act of 1985 (orders under section 12A of the Act of 1985 for pension lump sum), to the trustees or managers of the pension scheme, and a notice of intimation in Form F12A shall be attached to the initial writ intimated to any such person.]
- (2) Expressions used in paragraph (1)(k) which are also used in the Act of 1981 have the same meaning as in that Act.
- (3) A notice of intimation under paragraph (1) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.
- (4) In a family action, where the pursuer—
 - [^{F246}(a) craves a residence order in respect of a child,
 - (b) is not a parent of the child, and
 - (c) is not resident in Scotland when the initial writ is lodged for warranting,]he shall include a crave for an order for intimation in form F8 to such local authority as the sheriff thinks fit.
- (5) Where the address of a person mentioned in paragraph (1)(b), (d), (e), (f), (h), (i), (j) [^{F247}, (k) or (l)] is not known and cannot reasonably be ascertained, the pursuer shall include a crave in the initial writ to dispense with intimation; and the sheriff may grant that crave or make such other order as he thinks fit.

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- (6) Where the identity or address of a person to whom intimation of a family action is required becomes known during the course of the action, the party who would have been required to insert a warrant for intimation to that person shall lodge a motion for a warrant for intimation to that person or to dispense with such intimation.
- [^{F248}(7) Where a pursuer considers that to order intimation to a child under paragraph (1)(h) is inappropriate, he shall—
- (a) include a crave in the initial writ to dispense with intimation to that child, and
 - (b) include in the initial writ averments setting out the reasons why such intimation is inappropriate;
- and the sheriff may dispense with such intimation or make such other order as he thinks fit.]

Extent Information

E1 Words in rule 33.7(1)(e) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(a)(ii)**

Textual Amendments

- F237** Words in rule 33.7(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 6(a)(i)
- F238** Words in rule 33.7(1)(e)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(a)(iii)**
- F239** Words in rule 33.7(1)(f) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(a)(iv)**
- F240** Words in rule 33.7(1)(g) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(a)(v)**
- F241** Word in rule 33.7(1)(g) substituted (1.11.1996) by S.I. 1996/2445, **para. 3(45)(a)(i)**
- F242** Rule 33.7(1)(h) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(a)(vi)**
- F243** Word in rule 33.7(1)(j) omitted (1.11.1996) by S.I. 1996/2445, **para. 3(45)(a)(ii)**
- F244** Rule 33.7(1)(k): “; and” substituted for the full-stop (1.11.1996) by S.I. 1996/2445, **para. 3(45)(a)(iii)**
- F245** Rule 33.7(1)(l) inserted (1.11.1996) by S.I. 1996/2445, **para. 3(45)(a)(iv)**
- F246** Rule 33.7(4)(a)-(c) substituted (1.11.1996) for rule 33.7(4)(a)(b) by S.I. 1996/2167, para. 2, **Sch. para. 6(b)**
- F247** Words in rule 33.7(5) substituted (1.11.1996) by S.I. 1996/2445, **para. 3(45)(b)**
- F248** Rule 33.7(7) inserted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(c)**

Marginal Citations

- M49** 1972 c.38; section 2(2) was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12), **Schedule 1**, paragraphs 13, the Law Reform (Husband and Wife) (Scotland) Act 1984 (c.15), **Schedule 1**, paragraph 6, the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 8 and the Statute Law (Repeals) Act 1986 (c.12), **Schedule 1**, Part I.
- M50** 1985 c.37; section 8(1)(aa) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), **Schedule 8**, paragraph 34.
- M51** 1981 c.59.
- M52** 1985 c.37; section 8(1)(ba) was inserted by the Pensions Act 1995 (c.26), **section 167(1)**.

Intimation where improper association

- 33.8. (1) In a family action where the pursuer alleges an improper association between the defender and another named person, the pursuer shall, immediately after the expiry of the period of notice, lodge a motion for an order for intimation to that person or to dispense with such intimation
- (2) In determining a motion under paragraph (1), the sheriff may—
- (a) make such order for intimation as he thinks fit; or

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- (b) dispense with intimation; and
 - (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.
- (3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form F13 shall be intimated to the named person.
- (4) In paragraph (1), “improper association” means sodomy, incest or any homosexual relationship.

Productions in action of divorce or where [F249]section 11 order] may be made

33.9. Unless the sheriff otherwise directs—

- (a) in an action of divorce, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of marriages or an equivalent document; and
- (b) [F250]in a family action which includes a crave for a section 11 order], a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of births or an equivalent document.

Textual Amendments

F249 Words in rule 33.9 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 7(a)

F250 Words in rule 33.9(b) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 7(b)

Warrant of citation

33.10. The warrant of citation in a family action shall be in Form F14.

Form of citation and certificate

33.11. (1) Subject to rule 5.6 (service where address of person is not known), citation of a defender shall be in Form F15, which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form F26.

- (2) The certificate of citation shall be in Form F16 which shall be attached to the initial writ.

Execution of service on, or intimation to, local authority

33.12. (1) Where a local authority referred to in rule 33.7(1)(g) ([F251]residence order] sought by non-parent resident in Scotland) or 33.7(4) ([F251]residence order] sought by pursuer not resident in Scotland) is named as a defender in an initial writ at the time it is lodged, service of the initial writ on that local authority shall be executed within 7 days after the date of granting of the warrant of citation.

- (2) Where in a family action—
- (a) to which rule 33.7(1)(g) applies, or
 - (b) in which a motion under rule 33.7(4) is required,

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the local authority referred to in that provision is named as a defender in the initial writ at the time it is lodged, a notice in Form F8 shall be attached to the copy of the initial writ served on that local authority.

[^{F252}(3) In any family action, the sheriff may, if he thinks fit, order intimation to a local authority; and such intimation shall be in Form F8.]

[^{F253}(4)] Where, by virtue of [^{F254}paragraph (3) of this rule or rule 33.7(1)(g) or 33.7(4), intimation of an application for a residence order] is to be made to a local authority, intimation to that local authority shall be given within 7 days after the date on which a warrant of citation, or an order for intimation, as the case may be, has been granted.

Textual Amendments

F251 Words in rule 33.12(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(a)

F252 Rule 33.12(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(c)

F253 Rule 33.12(3) renumbered as rule 33.12(4) (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(b)

F254 Words in rule 33.12(4) (as renumbered) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(d)

Service in cases of mental disorder of defender

33.13.(1) In a family action where the defender suffers or appears to suffer from mental disorder and is resident in a hospital or other similar institution, citation shall be executed by registered post or the first class recorded delivery service addressed to the medical officer in charge of that hospital or institution; and there shall be included with the copy of the initial writ—

- (a) a citation in Form F15;
- (b) any notice required by rule 33.14(1);
- (c) a request in Form F17;
- (d) a form of certificate in Form F18 requesting the medical officer to—
 - (i) deliver and explain the initial writ, citation and any notice or form of notice of consent required under rule 33.14(1) personally to the defender; or
 - (ii) certify that such delivery or explanation would be dangerous to the health or mental condition of the defender; and
- (e) a stamped envelope addressed for return of that certificate to the pursuer or his solicitor, if he has one.

(2) The medical officer referred to in paragraph (1) shall send the certificate in Form F18 duly completed to the pursuer or his solicitor, as the case may be.

(3) The certificate mentioned in paragraph (2) shall be attached to the certificate of citation.

(4) Where such a certificate bears that the initial writ has not been delivered to the defender, the sheriff may, at any time before decree—

- (a) order such further medical inquiry, and
- (b) make such order for further service or intimation, as he thinks fit.

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Notices in certain actions of divorce or separation

- 33.14. (1) In the following actions of divorce or separation there shall be attached to the copy of the initial writ served on the defender—
- (a) in an action relying on section 1(2)(d) of the ^{M53}Act of 1976 (no cohabitation for two years with consent of defender to decree)—
 - (i) which is an action of divorce, a notice in form F19 and a notice of consent in form F20;
 - (ii) which is an action of separation, a notice in Form F21 and a form of notice of consent in form F22;
 - (b) in an action relying on section 1(2)(e) of the Act of 1976 (no cohabitation for five years)—
 - (i) which is an action of divorce, a notice in Form F23;
 - (ii) which is an action of separation, a notice in Form F24.
- (2) The certificate of [^{F255}citation] of an initial writ in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been attached to the initial writ.

Textual Amendments

F255 Word in rule 33.14(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(46)

Marginal Citations

M53 1976 c.39.

Orders for intimation

- [^{F256}33(1)]. In any family action, the sheriff may, at any time—
- (a) subject to paragraph (2), order intimation to be made on such person as he thinks fit;
 - (b) postpone intimation, where he considers that such postponement is appropriate and, in that case, the sheriff shall make such order in respect of postponement of intimation as he thinks fit; or
 - (c) dispense with intimation, where he considers that such dispensation is appropriate.
- (2) Where the sheriff is considering whether to make a section 11 order by virtue of section 12 of the Act of 1995 (restrictions on decrees for divorce, separation or annulment affecting children), he shall, subject to paragraph (1)(c) and without prejudice to paragraph (1)(b) of this rule, order intimation in Form F9 to the child to whom the section 11 order would relate unless—
- (a) intimation has been given to the child under rule 33.7(1)(h); or
 - (b) the sheriff considers that the child is not of sufficient age or maturity to express his views.
- (3) Where a party makes a crave or averment in a family action which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, that party shall include a crave in his writ for a warrant for intimation or to dispense with such intimation; and rule 33.7 shall, with the necessary modifications, apply to a

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crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.]

Textual Amendments

F256 Rule 33.15 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 9

Appointment of curators ad litem to defenders

- 33.16. (1) This rule applies to an action of divorce or separation where it appears to the court that the defender is suffering from a mental disorder.
- (2) In an action to which this rule applies, the sheriff shall—
- (a) appoint a curator ad litem to the defender;
 - (b) where the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on—
 - (i) make an order for intimation of the ground of the action to the Mental Welfare Commission for Scotland; and
 - (ii) include in such an order a requirement that the Commission sends to the sheriff clerk a report indicating whether in its opinion the defender is capable of deciding whether or not to give consent to the granting of decree.
- (3) Within 7 days after the appointment of a curator ad litem under paragraph (2)(a), the pursuer shall send to him—
- (a) a copy of the initial writ and any defences (including any adjustments and amendments) lodged; and
 - (b) a copy of [^{F257}any notice] in Form G5 sent to him by the [^{F258}sheriff] clerk.
- (4) On receipt of a report required under paragraph (2)(b)(ii), the sheriff clerk shall—
- (a) lodge the report in process; and
 - (b) intimate that this has been done to—
 - (i) the pursuer;
 - (ii) the solicitor for the defender, if known; and
 - (iii) the curator ad litem.
- (5) The curator ad litem shall lodge in process one of the writs mentioned in paragraph (6)—
- (a) within 14 days after the report required under paragraph (2)(b)(ii) has been lodged in process; or
 - (b) where no such report is required, within 21 days after the date of his appointment under paragraph (2)(a).
- (6) The writs referred to in paragraph (5) are—
- (a) a notice of intention to defend;
 - (b) defences to the action;
 - (c) a minute adopting defences already lodged; and
 - (d) a minute stating that the curator ad litem does not intend to lodge defences.

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- (7) Notwithstanding that he has lodged a minute stating that he does not intend to lodge defences, a curator ad litem may appear at any stage of the action to protect the interests of the defender.
- (8) If, at any time, it appears to the curator ad litem that the defender is not suffering from mental disorder, he may report that fact to the court and seek his own discharge.
- (9) The pursuer shall be responsible, in the first instance, for payment of the fees and outlays of the curator ad litem incurred during the period from his appointment until—
 - (a) he lodges a minute stating that he does not intend to lodge defences;
 - (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
 - (c) being satisfied after investigation that the defender is not suffering from mental disorder, he is discharged.

Textual Amendments

F257 Words in [rule 33.16\(3\)\(b\)](#) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(47\)\(a\)](#)

F258 Word in [rule 33.16\(3\)\(b\)](#) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(47\)\(b\)](#)

Applications for sist

- 33.17. An application for a sist, or the recall of a sist, under Schedule 3 to the ^{M54}Domicile and Matrimonial Proceedings Act 1973 shall be made by written motion.

Marginal Citations

M54 1973 c.45; Schedule 3 was amended by the [Divorce Jurisdiction, Court Fees and Legal Aid \(Scotland\) Act 1983 \(c.12\)](#), [Schedule 1](#), paragraphs 19 and 20.

Notices of consent to divorce or separation

- 33.18. (1) Where, in an action of divorce or separation in which the facts in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree of divorce or separation he shall do so by giving notice in writing in Form F20 (divorce) or Form F22 (separation), as the case may be, to the sheriff clerk.
- (2) The evidence of one witness shall be sufficient for the purpose of establishing that the signature on a notice of consent under paragraph (1) is that of the defender.
 - (3) In an action of divorce or separation where the initial writ includes, for the purposes of section 1(2)(d) of the Act of 1976, an averment that the defender consents to the grant of decree, the defender may give notice by letter sent to the sheriff clerk stating that he has not so consented or that he withdraws any consent which he has already given.
 - (4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the pursuer.

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- (5) On receipt of any intimation under paragraph (4), the pursuer may, within 14 days after the date of the intimation, if none of the other facts mentioned in section 1(2) of the Act of 1976 is averred in the initial writ, lodge a motion for the action to be sisted.
- (6) If no such motion is lodged, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.
- (7) If a motion under paragraph (5) is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

Procedure in respect of children

[^{F259}33.19. –

- (1) In a family action, in relation to any matter affecting a child, where that child has—
 - (a) returned to the sheriff clerk Form F9, or
 - (b) otherwise indicated to the court a wish to express views on a matter affecting him,
 the sheriff shall not grant any order unless an opportunity has been given for the views of that child to be obtained or heard.
- (2) Where a child has indicated his wish to express his views, the sheriff shall order such steps to be taken as he considers appropriate to ascertain the views of that child.
- (3) The sheriff shall not grant an order in a family action, in relation to any matter affecting a child who has indicated his wish to express his views, unless due weight has been given by the sheriff to the views expressed by that child, having due regard to his age and maturity.]

Textual Amendments

F259 Rule 33.19 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 10

Recording of views of the child

[^{F260}33(2). This rule applies where a child expresses a view on a matter affecting him whether expressed personally to the sheriff or to a person appointed by the sheriff for that purpose or provided by the child in writing.

- (2) The sheriff, or the person appointed by the sheriff, shall record the views of the child in writing; and the sheriff may direct that such views, and any written views, given by a child shall—
 - (a) be sealed in an envelope marked “Views of the child—confidential”;
 - (b) be kept in the court process without being recorded in the inventory of process;
 - (c) be available to a sheriff only;
 - (d) not be opened by any person other than a sheriff; and
 - (e) not form a borrowable part of the process.]

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Textual Amendments

F260 Rule 33.20 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 10

Appointment of local authority or reporter to report on a child

- 33.21. (1) This rule applies where, at any stage of a family action, the sheriff appoints—
- [^{F261}(a) a local authority, whether under section 11(1) of the ^{M55}Matrimonial Proceedings (Children) Act 1958(reports as to arrangements for future care and upbringing of children) or otherwise, or]
 - (b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub-paragraph (a) or otherwise,
- to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.
- (2) On making an appointment referred to in paragraph (1), the sheriff shall direct that the party who sought the appointment or, where the court makes the appointment of its own motion, the pursuer or minuter, as the case may be, shall—
- (a) instruct the local authority or reporter; and
 - (b) be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.
- (3) Where a local authority or reporter is appointed—
- (a) the party who sought the appointment, or
 - (b) where the sheriff makes the appointment of his own motion, the pursuer or minuter, as the case may be,
- shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.
- (4) On completion of a report referred to in paragraph (1), the local authority or reporter, as the case may be, shall send the report, with a copy of it for each party, to the sheriff clerk.
- (5) On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.
- (6) Where a local authority or reporter has been appointed to investigate and report in respect of a child, an application for [^{F262}a section 11 order in respect] of that child shall not be determined until the report of the local authority or reporter, as the case may be, has been lodged.

Textual Amendments

F261 Rule 33.21(1)(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 11(a)

F262 Words in rule 33.21(6) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 11(b)

Marginal Citations

M55 1958 c.40; section 11(1) was amended by the Social Work (Scotland) Act 1968 (c.49), **Schedule 8**, paragraph 43, the Law Reform (Parent and Child) (Scotland) Act 1986 (c.9), **Schedule 2**, the Family

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Law Act 1986 (c.55), **Schedule 1**, paragraph 7 and by the Children (Scotland) Act 1995, Schedule 4, paragraph 9.

Referral to family mediation

[^{F263}33.22. In any family action in which an order in relation to parental responsibilities or parental rights is in issue, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation.]

Textual Amendments

F263 Rules 33.22, 33.22A substituted (1.11.1996) for rule 33.22 by S.I. 1996/2167, para. 2, **Sch.**, para. 12

Child Welfare Hearing

^{F264}33.22A Where—

- (a) on the lodging of a notice of intention to defend in a family action in which the initial writ seeks or includes a crave for a section 11 order, a defender wishes to oppose any such crave or order, or seeks the same order as that craved by the pursuer,
- (b) on the lodging of a notice of intention to defend in a family action, the defender seeks a section 11 order which is not craved by the pursuer, or
- (c) in any other circumstances in a family action, the sheriff considers that a Child Welfare Hearing should be fixed and makes an order (whether at his own instance or on the motion of a party) that such a hearing shall be fixed,

the sheriff clerk shall fix a date and time for a Child Welfare Hearing on the first suitable court date occurring not sooner than 21 days after the lodging of such notice of intention to defend, unless the sheriff directs the hearing to be held on an earlier date.

- (2) On fixing the date for the Child Welfare Hearing, the sheriff clerk shall intimate the date of the Child Welfare Hearing to the parties in Form F41.
- (3) The fixing of the date of the Child Welfare Hearing shall not affect the right of a party to make any other application to the court whether by motion or otherwise.
- (4) At the Child Welfare Hearing (which may be held in private), the sheriff shall seek to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute, and may—
 - (a) order such steps to be taken, or
 - (b) make such order, if any, or
 - (c) order further procedure,
 as he thinks fit.
- (5) All parties (including a child who has indicated his wish to attend) shall, except on cause shown, attend the Child Welfare Hearing personally.
- (6) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the Child Welfare Hearing.

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Textual Amendments

F264 Rules 33.22, 33.22A substituted (1.11.1996) for rule 33.22 by S.I. 1996/2167, para. 2, Sch., para. 12

Applications for orders to disclose whereabouts of children

- 33.23. (1) An application for an order under section 33(1) of the ^{M56}Family Law Act 1986 (which relates to the disclosure of the whereabouts of a child) shall be made by motion.
- (2) Where the sheriff makes an order under section 33(1) of the Family Law Act 1986, he may ordain the person against whom the order has been made to appear before him or to lodge an affidavit.

Marginal Citations

M56 1986 c.55.

Applications in relation to removal of children

- 33.24. (1) An application for leave under ^{M57}section 51(1) of the Act of 1975 (authority to remove a child from the care and possession of the applicant for [^{F265}a residence order]) or for an order under section 35(3) of the Family Law Act 1986 (application for interdict or interim interdict prohibiting removal of child from jurisdiction) shall be made—
- (a) by a party to the action, by motion; or
- (b) by a person who is not a party to the action, by minute.
- (2) An application under section 35(3) of the Family Law Act 1986 need not be served or intimated.
- (3) An application under section 23(2) of the ^{M58}Child Abduction and Custody Act 1985 (declarator that removal of child from United Kingdom was unlawful) shall be made—
- (a) in an action depending before the sheriff—
- (1) by a party, in the initial writ, defences or minute, as the case may be, or by motion; or
- (ii) by any other person, by minute; or
- (b) after final decree, by minute in the process of the action to which the application relates.

Textual Amendments

F265 Words in rule 33.24(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 13

Marginal Citations

M57 Section 51(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), **Schedule 2**, paragraph 25.

M58 1985 c.60.

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Intimation to local authority before supervised [F266 contact order]

- 33.25. Where the sheriff, [F267 at his own instance] or on the motion of a party, is considering making [F268 a contact order or an interim contact order] subject to supervision by the social work department of a local authority, he shall ordain the party moving [F269 for such an order] to intimate to the chief executive of that local authority (where not already a party to the action and represented at the hearing at which the issue arises)
-
- (a) the terms of any relevant motion;
 - (b) the intention of the sheriff to order that [F270 the contact order] be supervised by the social work department of that local authority; and
 - (c) that the local authority shall, within such period as the sheriff has determined—
 - (i) notify the sheriff clerk whether it intends to make representations to the sheriff; and
 - (ii) where it intends to make representations in writing, to do so within that period.

Textual Amendments

- F266** Words in rule 33.25 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(a)
- F267** Words in rule 33.25 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(b)
- F268** Words in rule 33.25 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(c)
- F269** Words in rule 33.25 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(d)
- F270** Words in rule 33.25(b) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 14(e)

Joint minutes

- 33.26. Where any parties have reached agreement in relation to—
- (a) [F271 a section 11 order],
 - (b) aliment for a child, or
 - (c) an order for financial provision,
- a joint minute may be entered into expressing that agreement; [F272 and, subject to rule 33.19(3) (no order before views of child expressed), the sheriff] may grant decree in respect of those parts of the joint minute in relation to which he could otherwise make an order, whether or not such a decree would include a matter for which there was no crave.

Textual Amendments

- F271** Words in rule 33.26(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 15(a)
- F272** Words in rule 33.26 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 15(b)

Affidavits

- 33.27. The sheriff may accept evidence by affidavit at any hearing for an order or interim order.

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Applications for European matrimonial certificates

^{F273}33(1) The sheriff shall, on the request of any interested party, issue a certificate in Form F42 or Form F43, pursuant to Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses.

- (2) Any request under paragraph (1) shall be made by the interested party by letter addressed to the sheriff clerk of the court where the decree to which the request relates was granted, and shall be accompanied by any execution of service or intimation of the judgment to the defender.]

Textual Amendments

F273 Sch. 1 rule 33.27A inserted (2.4.2001) by S.S.I. 2001/144, para. 2(1)(3)

PART II

UNDEFENDED FAMILY ACTIONS

Evidence in certain undefended family actions

33.28. (1) This rule—

- (a) subject to sub-paragraph (b), applies to all family actions in which no notice of intention to defend has been lodged, other than a family action—
- (i) for ^{F274}a section 11 order or for] aliment;
 - (ii) of affiliation and aliment;
 - (iii) for financial provision after an overseas divorce or annulment within the meaning of Part IV of the ^{M59}Matrimonial and Family Proceedings Act 1984; or
 - (iv) for an order under the ^{M60}Act of 1981;
- (b) applies to a family action in which a curator ad litem has been appointed under rule 33.16 where the curator ad litem to the defender has lodged a minute intimating that he does not intend to lodge defences;
- (c) applies to any family action which proceeds at any stage as undefended where the sheriff so directs;
- (d) applies to the merits of a family action which is undefended on the merits where the sheriff so directs, notwithstanding that the action is defended on an ancillary matter.

- (2) Unless the sheriff otherwise directs, evidence shall be given by affidavit.
- (3) Unless the sheriff otherwise directs, evidence relating to the welfare of a child shall be given by affidavit, at least one affidavit being emitted by a person other than a parent or party to the action.
- (4) Evidence in the form of a written statement bearing to be the professional opinion of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence by him.

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Textual Amendments

F274 Words in rule 33.28(1)(a)(i) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 16

Marginal Citations

M59 1984 c.42; Part IV was amended by the Act of 1985 (c.37), Schedule 1, paragraphs 12 and 13.

M60 1981 c.59.

Procedure for decree in actions under rule 33.28

- 33.29. (1) In an action to which rule 33.28 (evidence in certain undefended family actions) applies, the pursuer shall at any time after the expiry of the period for lodging a notice of intention to defend—
- (a) lodge in process the affidavit evidence; and
 - (b) endorse a minute in Form F27 on the initial writ.
- (2) The sheriff may, at any time after the pursuer has complied with paragraph (1), without requiring the appearance of parties—
- (a) grant decree in terms of the motion for decree; or
 - (b) remit the cause for such further procedure, if any, including proof by parole evidence, as the sheriff thinks fit.

Extracts of undefended decree

- 33.30. In an action to which rule 33.28 (evidence in certain undefended family actions) applies, the sheriff clerk shall, after the expiry of 14 days after the grant of decree under rule 33.29 (procedure for decree in actions under rule 33.28), issue to the pursuers and the defender an extract decree.

Procedure in undefended family actions for [F275 section 11 order]

- 33.31. (1) Where no notice of intention to defend has been lodged in a family action for [F276 a section 11 order], any proceedings in the cause shall be dealt with by the sheriff in chambers.
- (2) In an action to which paragraph (1) applies, decree may be pronounced after such inquiry as the sheriff thinks fit.

Textual Amendments

F275 Words in rule 33.31 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 17(a)

F276 Words in rule 33.31(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 17(b)

No recording of evidence

- 33.32. It shall not be necessary to record the evidence in any proof in a family action which is not defended.

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Disapplication of Chapter 15

- 33.33. [F277 Other than rule 15.1(1),]Chapter 15 (motions) shall not apply to a family action in which no notice of intention to defend has been lodged [F278], or to a family action in so far as it proceeds as undefended].

Textual Amendments

F277 Words in rule 33.33 inserted (1.11.1996) by S.I. 1996/2445, para. 3(48)(a)

F278 Words in rule 33.33 inserted (1.11.1996) by S.I. 1996/2445, para. 3(48)(b)

PART III

DEFENDED FAMILY ACTIONS

Notice of intention to defend and defences

- 33.34. (1) This rule applies where the defender in a family action seeks—
- (a) to oppose any crave in the initial writ;
 - (b) to make a claim for—
 - (i) aliment;
 - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
 - (iii) [F279 a section 11 order]; or
 - (c) an order—
 - (i) under section 16(1)(b) or (3) of the ^{M61}Act of 1985 (setting aside or varying agreement as to financial provision);
 - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
 - (iii) under the Act of 1981; or
 - (d) to challenge the jurisdiction of the court.
- (2) In an action to which this rule applies, the defender shall—
- (a) lodge a notice of intention to defend in Form F26 before the expiry of the period of notice; and
 - (b) make any claim or seek any order referred to in paragraph (1), as the case may be, in those defences by setting out in his defences—
 - (i) craves;
 - (ii) averments in the answers to the condescendence in support of those craves; and
 - (iii) appropriate pleas-in-law.
- [F280 (3) Where a defender intends to make an application for a section 11 order which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, the defender shall include a crave in his notice of intention to defend for a warrant for intimation or to dispense with such intimation; and rule 33.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.]

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Textual Amendments

F279 Words in rule 33.34(1)(b)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 18(a)

F280 Rule 33.34(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 18(b)

Marginal Citations

M61 1985 c.37.

Abandonment by pursuer

- 33.35. Notwithstanding abandonment by a pursuer, the court may allow a defender to pursue an order or claim sought in his defences; and the proceedings in relation to that order or claim shall continue in dependence as if a separate cause.

Attendance of parties at Options Hearing

- 33.36. All parties shall, except on cause shown, attend personally the hearing under rule 9.12 (Options Hearing).

Decree by default

- 33.37. (1) In a family action in which the defender has lodged a notice of intention to defend, where a party fails—
- (a) to lodge, or intimate the lodging of, any production or part of process,
 - (b) to implement an order of the sheriff within a specified period, or
 - (c) to appear [^{F281}or] be represented at any diet,
- that party shall be in default.
- (2) Where a party is in default under paragraph (1), the sheriff may—
- (a) where the family action is one mentioned in rule 33.1(1)(a) to (h), allow that action to proceed as undefended under Part II of this Chapter; or
 - (b) where the family action is one mentioned in rule 33.1(1)(i) to (m), grant decree as craved; or
 - (c) grant decree of absolvitor; or
 - (d) dismiss the family action or any claim made or order sought; and
 - (e) award expenses.
- (3) Where no party appears at a diet in a family action, the sheriff may dismiss that action.
- (4) In a family action, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process, or for intimating or implementing any order.

Textual Amendments

F281 Word in rule 33.37(1)(c) substituted (1.11.1996) by S.I. 1996/2445, para. 3(49)

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PART IV

APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS

Application and interpretation of this Part

33.38. ^{F282} . . . This Part applies to an action of divorce or separation.

^{F283}(2)

Textual Amendments

F282 Rule 33.38: “-(1)” at the beginning of paragraph (1) is omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 19(a)

F283 Rule 33.38(2) omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 19(b)

Applications in actions to which this Part applies

33.39. (1) An application for an order mentioned in paragraph (2) shall be made—

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

(2) The orders referred to in paragraph (1) are:—

- (a) an order for [^{F284}a section 11 order]; and
- (b) an order for aliment for a child.

Textual Amendments

F284 Words in rule 33.39(2)(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 20

^{F285}33.40.

Textual Amendments

F285 Rule 33.40 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 21

^{F286}33.41.

Textual Amendments

F286 Rule 33.41 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 22

^{F287}33.42.

Textual Amendments

F287 Rule 33.42 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 23

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Applications in depending actions by motion

- [^{F288}33.43. An application by a party in an action depending before the court to which this Part applies for, or for variation of, an order for—
- (a) interim aliment for a child under the age of 18, or
 - (b) a residence order or a contact order,
- shall be made by motion.]

Textual Amendments

F288 Rule 33.43 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 24

Applications after decree relating to [^{F289}a section 11 order]

- 33[^{F290}(1) An application after final decree for, or for the variation or recall of, a section 11 order [^{F291}or in relation to the enforcement of such an order] shall be made by minute in the process of the action to which the application relates.]
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for any interim order which may be made pending the determination of the application.

Textual Amendments

F289 Words in rule 33.44 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(a)

F290 Rule 33.44(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(b)

F291 Words Sch. 1 rule 33.44(1) inserted (2.10.2000) by S.S.I. 2000/239, Sch. para. 3(15)

Applications after decree relating to aliment

- 33.45. (1) An application after final decree for, or for the variation or recall of, an order for aliment for a child shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

Applications after decree by persons over 18 years for aliment

- 33.46. (1) A person—
- (a) to whom an obligation of aliment is owed under section 1 of the ^{M62}Act of 1985,
 - (b) in whose favour an order for aliment while under the age of 18 years was made in an action to which this Part applies, and
 - (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,
- shall apply by minute in the process of that action.
- (2) An application for interim aliment pending the determination of an application under paragraph (1) shall be made by motion.

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- (3) Where a decree has been pronounced in an application under paragraph (1) or (2), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

Marginal Citations

M62 1985 c.37.

PART V

ORDERS RELATING TO FINANCIAL PROVISION

Application and interpretation of this Part

33.47. (1) This Part applies to an action of divorce.

- (2) In this Part, “incidental order” has the meaning assigned in section 14(2) of the Act of 1985.

Applications in actions to which this Part applies

33.48. (1) An application for an order mentioned in paragraph (2) shall be made—

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

(2) The orders referred to in paragraph (1) are:—

- (a) an order for financial provision within the meaning of section 8(3) of the Act of 1985;
- (b) an order under section 16(1)(b) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision);
- (c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and
- (d) an order under section 13 of the ^{M63}Act of 1981 (transfer or vesting of tenancy).

Marginal Citations

M63 1981 c.59; section 13 was amended by the [Family Law \(Scotland\) Act 1985 \(c.37\)](#), [Schedule 1](#), paragraph 11 and the [Housing \(Scotland\) Act 1987 \(c.26\)](#), [Schedule 23](#), paragraph 26.

Applications in depending actions relating to incidental orders

33.49. (1) In an action depending before the sheriff to which this Part applies—

- (a) the pursuer or defender, notwithstanding rules 33.34(2) (application by defender for order for financial provision) and 33.48(1)(a) (application for order for financial provision in initial writ or defences), may apply by motion for an incidental order; and

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- (b) the sheriff shall not be bound to determine such a motion if he considers that the application should properly be by a crave in the initial writ or defences, as the case may be.
- (2) In an action depending before the sheriff to which this Part applies, an application under section 14(4) of the Act of 1985 for the variation or recall of an incidental order shall be made by minute in the process of the action to which the application relates.

Applications relating to interim aliment

33.50. An application for, or for the variation or recall of, an order for interim aliment for the pursuer or defender shall be made by motion.

Applications relating to orders for financial provision

33.51. (1) An application—

- (a) after final decree under any of the following provisions of the Act of 1985—
 - (i) section 8(1) for periodical allowance,
 - (ii) section 12(1)(b) (payment of capital sum or transfer of property),
 - (iii) section 12(4) (variation of date or method of payment of capital sum or date of transfer of property), or
 - (iv) section 13(4) (variation, recall, backdating or conversion of periodical allowance), or
- (b) after the grant or refusal of an application under—
 - (i) section 8(1) or 14(3) for an incidental order, or
 - (ii) section 14(4) (variation or recall of incidental order),
 shall be made by minute in the process of the action to which the application relates.

(2) Where a minute is lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

[^{F292}(3) An application under—

- (a) paragraph (5) of section 12A of the Act of 1985 ^{F293} (recall or variation of order in respect of a pension lump sum), ^{F294} . . .
 - (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers), [^{F295}or
 - (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999 ^{F296},]
- shall be made by minute in the process of the action to which the application relates.]

Textual Amendments

F292 Rule 33.51(3) inserted (1.11.1996) by S.I. 1996/2445, **para. 3(50)**

F293 Section 12A of the Family Law (Scotland) Act 1985 (c.37) was inserted by the Pensions Act 1995 (c.26), **section 167(3)**.

F294 Word in Sch. 1 rule 33.51(3)(a) omitted (24.1.2003) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), **art. 2(9)(a)**

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F295 Sch. 1 rule 33.51(3)(c) and word inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(9)(b)

F296 1999 c. 30.

Applications after decree relating to agreements and avoidance transactions

- 33.52. An application for an order—
- (a) under section 16(1)(a) or (3) of the Act of 1985 (setting aside or varying agreements as to financial provision), or
 - (b) under section 18 of the Act of 1985 (which relates to avoidance transactions),
- made after final decree shall be made by minute in the process of the action to which the application relates.

PART VI

APPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS

Form of applications

- 33.53. (1) An application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions) by a party to an action shall be made by including in the initial writ, defences or minute, as the case may be, appropriate craves, averments and pleas-in-law.
- (2) An application for an order under section 18 of the Act of 1985 after final decree in an action, shall be made by minute in the process of the action to which the application relates.

PART VII

FINANCIAL PROVISION AFTER OVERSEAS DIVORCE OR ANNULMENT

Interpretation of this Part

- 33.54. In this Part—
- “the Act of 1984” means the ^{M64}Matrimonial and Family Proceedings Act 1984;
 - “order for financial provision” has the meaning assigned in section 30(1) of the Act of 1984;
 - “overseas country” has the meaning assigned in section 30(1) of the Act of 1984.

Marginal Citations

M64 1984 c.42.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

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Applications for financial provision [F297 after overseas divorce or annulment]

- 33.55. (1) An application under ^{M65}section 28 of the Act of 1984 for an order for financial provision after a divorce or annulment in an overseas country shall be made by initial writ.
- (2) An application for an order in an action to which paragraph (1) applies made before final decree under—
- (a) section 13 of the ^{M66}Act of 1981 (transfer of tenancy of matrimonial home),
 - (b) section 29(4) of the Act of 1984 for interim periodical allowance, or
 - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by motion.
- (3) An application for an order in an action to which paragraph (1) applies made after final decree under—
- (a) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum or date of transfer of property),
 - (b) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion [F298 of] periodical allowance), or
 - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by minute in the process of the action to which the application relates.
- [F299] (4) An application under—
- (a) paragraph (5) of section 12A of the Act of 1985 (recall or variation of order in respect of a pension lump sum), or
 - (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers),
- shall be made by minute in the process of the action to which the application relates.]
- [F300] (5) Where a minute has been lodged under paragraph (3), any party may apply by motion for an interim order pending the determination of the application.

Textual Amendments

F297 Words in rule 33.55 heading inserted (1.11.1996) by S.I. 1996/2445, para. 3(51)(a)

F298 Word in rule 33.55(3)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(51)(b)

F299 Rule 33.55(4) inserted (1.11.1996) by S.I. 1996/2445, para. 3(51)(d)

F300 Rule 33.55(4) renumbered as rule 33.55(5) (1.11.1996) by S.I. 1996/2445, para. 3(51)(c)

Marginal Citations

M65 Section 28 was extended by section 29A (inserted by the Act of 1985, Schedule 1, paragraph 12) to an annulment.

M66 1981 c.51; section 13(2) was amended by the Act of 1985, Schedule 1, paragraph 11.

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PART VIII

ACTIONS OF ALIMENT

Interpretation of this Part

33.56. In this Part, “action of aliment” means a claim for aliment under section 2(1) of the Act of 1985.

Undefended actions of aliment

33.57. (1) Where a motion for decree in absence under Chapter 7 (undefended causes) is lodged in an action of aliment, the pursuer shall, on lodging the motion, lodge all documentary evidence of the means of the parties available to him in support of the amount of aliment sought.

(2) Where the sheriff requires the appearance of parties, the sheriff clerk shall fix a hearing.

Applications relating to aliment

33.58. (1) An application for, or for variation of, an order for interim aliment in a depending action of aliment shall be made by motion.

(2) An application after final decree for the variation or recall of an order for aliment in an action of aliment shall be made by minute in the process of the action to which the application relates.

(3) A person—

- (a) to whom an obligation of aliment is owed under section 1 of the ^{M67}Act of 1985,
- (b) in whose favour an order for aliment while under the age of 18 years was made in an action of aliment, or
- (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,

shall apply by minute in the process of that action.

(4) An application for interim aliment pending the determination of an application under paragraph (2) or (3) shall be made by motion.

(5) Where a decree has been pronounced in an application under paragraph (2) or (3), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

Marginal Citations

M67 1985 c.37.

Applications relating to agreements on aliment

33.59. (1) Subject to paragraph (2), an application under section 7(2) of the Act of 1985 (variation or termination of agreement on aliment) shall be made by summary application.

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- (2) In a family action in which a crave for aliment may be made, an application under section 7(2) of the Act of 1985 shall be made by a crave in the initial writ or in defences, as the case may be.

[^{F301}PART IX

APPLICATIONS FOR ORDERS UNDER SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995.]

Textual Amendments

F301 Chapter 33 Pt. IX (rules 33.60-33/65): heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 26

Application of this Part

[^{F302}33.60. This Part applies to an application for a section 11 order in a family action other than in an action of divorce or separation.]

Textual Amendments

F302 Rule 33.60 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 27

Form of applications

- 33.61. Subject to any other provision in this Chapter, an application for [^{F303}a section 11 order] shall be made—
- (a) by an action for [^{F304}a section 11 order];
 - (b) by a crave in the initial writ or defences, as the case may be, in any other family action to which this Part applies; or
 - (c) where the application is made by a person other than a party to an action mentioned in paragraph (a) or (b), by minute in that action.

Textual Amendments

F303 Words in rule 33.61 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 28(a)

F304 Words in rule 33.61(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 28(b)

Defences in action for a section 11 order

- [^{F305}~~33.62~~^{F305}33.62. In an action for a section 11 order, the pursuer shall call as a defender—
- (a) the parents or other parent of the child in respect of whom the order is sought;
 - (b) any guardian of the child;
 - (c) any person who has treated the child as a child of his family;
 - (d) any person who in fact exercises care or control in respect of the child; and
 - ^{F306}(e)]

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Textual Amendments

F305 Rule 33.62 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 29

F306 Sch. 1 rule 33.62(e) omitted (2.10.2000) by virtue of S.S.I. 2000/239, para. 3(16)

Applications relating to interim orders in depending actions

- 33.63. An application, in an action depending before the sheriff to which this Part applies, for, or for the variation or recall of, an order for [^{F307}an interim residence order or an interim contact order] shall be made—
- (a) by a party to the action, by motion; or
 - (b) by a person who is not a party to the action, by minute.

Textual Amendments

F307 Rule 33.63: the words “an interim residence order or an interim contact order” substituted for the words “interim custody or interim access” (1.11.1996) by virtue of S.I. 1996/2167, para. 2, Sch. para. 30

^{F308}33.64.

Textual Amendments

F308 Rule 33.64 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 31

Applications after decree

- 33.^{F309}(1) An application after final decree for variation or recall of a section 11 order shall be made by minute in the process of the action to which the application relates.]
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for an interim order pending the determination of the application.

Textual Amendments

F309 Rule 33.65(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 32

PART X

*ACTIONS UNDER THE MATRIMONIAL HOMES
(FAMILY PROTECTION) (SCOTLAND) ACT 1981*

Interpretation of this Part

- 33.66. Unless the context otherwise requires, words and expressions used in this Part which are also used in the ^{M68}Act of 1981 have the same meaning as in that Act.

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Marginal Citations

M68 1981 c.59.

Form of applications

- 33.67. (1) Subject to any other provision in this Chapter, an application for an order under the Act of 1981 shall be made—
- (a) by an action for such an order;
 - (b) by a crave in the initial writ or in defences, as the case may be, in any other family action; or
 - (c) where the application is made by a person other than a party to any action mentioned in paragraph (a) or (b), by minute in that action.
- (2) An application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing) or section 11 (application in relation to poinding) shall, unless made in a depending family action, be made by summary application.

Defenders

- 33.68. The applicant for an order under the Act of 1981 shall call as a defender—
- (a) where he is seeking an order as a spouse, the other spouse;
 - (b) where he is a third party making an application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing), or 8(1) (payment from non-entitled spouse in respect of loan), of the Act of 1981, both spouses; and
 - (c) where the application is made under section 18 of the Act of 1981 ^{M69} (occupancy rights of cohabiting couples), or is one to which that section applies, the other partner.

Marginal Citations

M69 Section 18 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 13(9).

Applications by motion

- 33.69. (1) An application under any of the following provisions of the Act of 1981 shall be made by motion in the process of the depending action to which the application relates:—
- (a) section 3(4) (interim order for regulation of rights of occupancy, etc.);
 - (b) section 4(6) (interim order suspending occupancy rights);
 - (c) section 7(1) (dispensing with consent of non-entitled spouse to a dealing);
 - (d) section 15(1) (order attaching power of arrest), if made after application for matrimonial interdict; and
 - (e) the proviso to section 18(1) ^{F310} (extension of period of occupancy rights).
- (2) Intimation of a motion under paragraph (1) shall be given—
- (a) to the other spouse or partner, as the case may be;

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- (b) where the motion is under paragraph (1)(a), (b) or (e) and the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

Textual Amendments

F310 Section 18(1) of the Act of 1981 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)\(a\)](#).

Applications by minute

33.70. (1) An application for an order under—

- (a) section 5 of the Act of 1981 (variation and recall of orders regulating occupancy rights and of exclusion order), or
- (b) section 15(2) and (5) of the Act of 1981 (variation and recall of matrimonial interdict and power of arrest),

shall be made by minute.

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

- (a) to the other spouse or partner, as the case may be;
- (b) where the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

Sist of actions to enforce occupancy rights

33.71. Unless the sheriff otherwise directs, the sist of an action by virtue of section 7(4) of the Act of 1981 (where action raised by non-entitled spouse to enforce occupancy rights) shall apply only to such part of the action as relates to the enforcement of occupancy rights by a non-entitled spouse.

Certificates of delivery of documents to chief constable

33.72. (1) Where an applicant is required to comply with section 15(4) or (5), as the case may be, of the Act of 1981 ^{F311} (delivery of documents to chief constable where power of arrest attached to matrimonial interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form F30.

(2) Where a [^{F312}matrimonial] interdict to which a power of arrest under section 15(1) of the Act of 1981 has been attached ceases to have effect by reason of a decree of divorce being pronounced by the sheriff, the pursuer shall send—

- (a) to the chief constable of the police area in which the matrimonial home is situated, and

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- (b) if the applicant spouse (within the meaning of section 15(6) of the Act 1981) resides in another police area, to the chief constable of that other police area, a copy of the interlocutor granting decree and lodge in process a certificate of delivery in Form F30.

Textual Amendments

F311 Section 15(4) was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c.40\)](#), [section 64\(b\)](#).

F312 Word in [rule 33.72\(2\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(53\)](#)

PART XI

SIMPLIFIED DIVORCE APPLICATIONS

Application and interpretation of this Part

- 33.73. (1) This Part applies to an application for divorce by a party to a marriage made in the manner prescribed in rule 33.74 (form of applications) if, but only if—
- (a) that party relies on the facts set out in section 1(2)(d) (no cohabitation for two years with consent of defender to decree), or section 1(2)(e) (no cohabitation for five years), of the ^{M70}Act of 1976;
 - (b) in an application under section 1(2)(d) of the Act of 1976, the other party consents to decree of divorce being granted;
 - (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
 - (d) there are no children of the marriage under the age of 16 years;
 - (e) neither party to the marriage applies for an order for financial provision on divorce; and
 - (f) neither party to the marriage suffers from mental disorder.
- (2) If an application ceases to be one to which this Part applies at any time before final decree, it shall be deemed to be abandoned and shall be dismissed.
- (3) In this Part “simplified divorce application” means an application mentioned in paragraph (1).

Marginal Citations

M70 [1976 c.39](#).

Form of applications

- 33.74. (1) A simplified divorce application in which the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form F31 and shall only be of effect if—
- (a) it is signed by the applicant; and
 - (b) the form of consent in Part 2 of Form ^{F313}F31] is signed by the party to the marriage giving consent.

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- (2) A simplified divorce application in which the facts set out in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on shall be made in Form F33 and shall only be of effect if it is signed by the applicant.

Textual Amendments

F313 Word in rule 33.74(1)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(54)

Lodging of applications

- 33.75. The applicant shall send a simplified divorce application to the sheriff clerk with—
- (a) an extract or certified copy of the marriage certificate; and
 - (b) the appropriate fee.

Citation and intimation

- 33.76. (1) This rule is subject to rule 33.77 (citation where address not known).
- (2) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application.
- (3) The form of citation—
- (a) in an application relying on the facts in section 1(2)(d) of the Act of 1976 shall be in Form F34; and
 - (b) in an application relying on the facts in section 1(2)(e) of the Act of 1976 shall be in Form F35.
- [^{F314}(4) The citation or intimation required by paragraph (2) shall be made—
- (a) by the sheriff clerk by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);
 - (b) on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or
 - (c) where necessary, by the sheriff clerk in accordance with rule 5.5 (service on persons furth of Scotland).]

[^{F315}(5) Where citation or intimation is made in accordance with paragraph (4)(c), the translation into an official language of the country in which service is to be executed required by rule 5.5(6) shall be provided by the party lodging the simplified divorce application.]

Textual Amendments

F314 Sch. 1 rule 33.76(4) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(17)(a)

F315 Sch. 1 rule 33.76(5) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(17)(b)

Citation where address not known

- 33.77. (1) In a simplified divorce application in which the facts in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on and the address of the other party to the marriage is not known and cannot reasonably be ascertained—

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (a) citation shall be executed by displaying a copy of the application and a notice in Form F36 on the walls of court on a period of notice of 21 days; and
 - (b) intimation shall be made 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 other party to the marriage who has reached that age, unless the address of such person is not known and cannot reasonably be ascertained.
- (2) Intimation to a person referred to in paragraph (1)(b) shall be given by intimating a copy of the application and a notice of intimation in Form F37.

Opposition to applications

- 33.78. (1) Any person on whom service or intimation of a simplified divorce application has been made may give notice by letter sent to the sheriff clerk that he challenges the jurisdiction of the court or opposes the grant of decree of divorce and giving the reasons for his opposition to the application.
- (2) Where opposition to a simplified divorce application is made under paragraph (1), the sheriff shall dismiss the application unless he is satisfied that the reasons given for the opposition are frivolous.
- (3) The sheriff clerk shall intimate the decision under paragraph (2) to the applicant and the respondent.
- (4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

Evidence

- 33.79. Parole evidence shall not be given in a simplified divorce application.

Decree

- 33.80. (1) The sheriff may grant decree in terms of the simplified divorce application on the expiry of the period of notice if such application has been properly served provided that, when the application has been served in a country to which the ^{M71}Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with.
- (2) The sheriff clerk shall, not sooner than 14 days after the granting of decree in terms of paragraph (1), issue to each party to the marriage an extract of the decree of divorce in Form F38.

Marginal Citations

M71 Cmnd. 3986 (1969).

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Appeals

- 33.81. Any appeal against an interlocutor granting decree of divorce under rule 33.80 (decree) may be made, within 14 days after the date of decree, by sending a letter to the court giving reasons for the appeal.

Applications after decree

- 33.82. Any application to the court after decree of divorce has been granted in a simplified divorce application which could have been made if it had been made in an action of divorce shall be made by minute.

PART XII

VARIATION OF COURT OF SESSION DECREES

Application and interpretation of this Part

- 33.83. (1) This Part applies to an application to the sheriff for variation or recall of any order to which section 8 of the ^{M72}Act of 1966 (variation of certain Court of Session orders) applies.
- (2) In this Part, the “Act of 1966” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.

Marginal Citations

M72 1966 c.19; section 8 was amended by the Guardianship Act 1973 (c.29), **Schedule 5**, the Divorce (Scotland) Act 1976 (c.39), **Schedule 1**, the Matrimonial and Family Proceedings Act 1984 (c.42), **Schedule 1**, paragraph 7, the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraph 5 and the Family Law Act 1986 (c.53), **Schedule 1**, paragraph 8 and Schedule 2.

Form of applications and intimation to Court of Session

- 33.84. (1) An application to which this Part applies shall be made by initial writ.
- (2) In such an application there shall be lodged with the initial writ a copy of the interlocutor, certified by a clerk of the Court of Session, which it is sought to vary.
- (3) Before lodging the initial writ, a copy of the initial writ certified by the pursuer or his solicitor shall be lodged, or sent by first class recorded delivery post to the Deputy Principal Clerk of Session to be lodged in the process of the cause in the Court of Session in which the original order was made.
- (4) The pursuer or his solicitor shall attach a certificate to the initial writ stating that paragraph (3) has been complied with.
- (5) The sheriff may, on cause shown, prorogate the time for lodging the certified copy of the interlocutor required under [F316 paragraph (2)].

Textual Amendments

F316 Words in rule 33.84(5) substituted (1.11.1996) by S.I. 1996/2445, para. 3(55)

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Defended actions

- 33.85. (1) Where a notice of intention to defend has been lodged and no request is made under rule 33.87 (remit of applications to Court of Session), the pursuer shall within 14 days after the date of the lodging of a notice of intention to defend or within such other period as the sheriff may order, lodge in process the following documents (or copies) from the process in the cause in the Court of Session in which the original order was made:—
- (a) the pleadings;
 - (b) the interlocutor sheets;
 - (c) any opinion of the court; and
 - (d) any productions on which he seeks to found.
- (2) The sheriff may, on the joint motion of parties made at any time after the lodging of the documents mentioned in paragraph (1)—
- (a) dispense with proof;
 - (b) whether defences have been lodged or not, hear the parties; and
 - (c) thereafter, grant decree or otherwise dispose of the cause as he thinks fit.

Transmission of process to Court of Session

- 33.86. (1) Where decree has been granted or the cause otherwise disposed of—
- (a) and the period for marking an appeal has elapsed without an appeal being marked, or
 - (b) after the determination of the cause on any appeal,
- the sheriff clerk shall transmit to the Court of Session the sheriff court process and the documents from the process of the cause in the Court of Session which have been lodged in the sheriff court process.
- (2) A sheriff court process transmitted under paragraph (1) shall form part of the process of the cause in the Court of Session in which the original order was made.

Remit of applications to Court of Session

- 33.87. (1) A request for a remit to the Court of Session under section 8(3) of the Act of 1966 shall be made by motion.
- (2) The sheriff shall, in respect of any such motion, order that the cause be remitted to the Court of Session; and, within four days after the date of such order, the sheriff clerk shall transmit the whole sheriff court process to the Court of Session.
- (3) A cause remitted to the Court of Session under paragraph (2) shall form part of the process of the cause in the Court of Session in which the original order was made.

PART XIII

CHILD SUPPORT ACT 1991

Interpretation of this Part

- 33.88. ^{F317} . . . In this Part—
- “the Act of 1991” means the ^{M73} Child Support Act 1991;

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“child” has the meaning assigned in section 55 of the Act of 1991;
[^{F318}“maintenance calculation”] has the meaning assigned in section [^{F319}54] of the Act of 1991.

Textual Amendments

- F317** Rule 33.88: “-(1)” at the beginning is omitted (1.11.1996) by S.I. 1996/2445, **para. 3(56)(a)**
- F318** Words in Sch. 1 rule 33.88 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), **art. 2(10)**
- F319** Word in rule 33.88 substituted (1.11.1996) by S.I. 1996/2445, **para. 3(56)(b)**

Marginal Citations

- M73** 1991 c.48.

Restriction of expenses

- 33.89. Where the Secretary of State is named as a defender in an action for declarator of nonparentage or illegitimacy, and the Secretary of State does not defend the action, no expenses shall be awarded against the Secretary of State.

Effect of maintenance [^{F320}calculations]

- 33.90. The sheriff clerk shall, on receiving notification that a maintenance [^{F321}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 Act of 1991, endorse on the interlocutor sheet relating to that order a certificate, in Form F39 or F40, as the case may be.

Textual Amendments

- F320** Word in Sch. 1 rule 33.90 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), **art. 2(11)(a)**
- F321** Word in Sch. 1 rule 33.90 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), **art. 2(11)(b)**

Effect of maintenance [^{F322}calculations] on extracts relating to aliment

- 33.91. (1) Where an order relating to aliment is affected by a maintenance [^{F323}calculation], any extract of that order issued by the sheriff clerk shall be endorsed with the following certificate:—

“A maintenance [^{F323}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 [^{F323}calculation] was made)”.

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- (2) Where an order relating to aliment has ceased to have effect on the making of a maintenance [^{F323}calculation], and that maintenance [^{F323}calculation] is later cancelled or ceases to have effect, any extract of that order issued by the sheriff clerk shall 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 from (insert date of termination of child support officer’s jurisdiction)”.

Textual Amendments

- F322** Word in Sch. 1 rule 33.91 heading substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(12)(a)
- F323** Word in Sch. 1 rule 33.91 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(12)(b)

^{F324}PART XIV

REFERRALS TO PRINCIPAL REPORTER

Textual Amendments

- F324** Pts. XIV (rules 33.92-33.94) and XV (rule 33.95) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 33

Application and interpretation of this Part

- 33.92. (1) This Part applies where a sheriff, in a family action, refers a matter to the Principal Reporter under section 54 of the Act of 1995 (reference to the Principal Reporter by court).
- (2) In this Part, “Principal Reporter” has the meaning assigned in section 93(1) of the Act of 1995.

Intimation to Principal Reporter

- 33.93. Where a matter is referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995, the interlocutor making the reference shall be intimated by the sheriff clerk forthwith to the Principal Reporter; and that intimation shall specify which of the conditions in paragraph (2)(a) to (h), (j), (k) or (l) of that section it appears to the sheriff has been satisfied.

Intimation of decision by Principal Reporter

- 33.94. (1) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such

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investigation as he thinks appropriate and having reached the view that compulsory measures of supervision are necessary, arranges a children’s hearing under section 69 of that Act (continuation or disposal of referral by children’s hearing), the Principal Reporter shall intimate to the court which referred the matter to him–

- (a) the decision to arrange such children’s hearing;
- (b) where there is no appeal made against the decision of that children’s hearing once the period for appeal has expired, the outcome of the children’s hearing; and
- (c) where such an appeal has been made, that an appeal has been made and, once determined, the outcome of that appeal.

- (2) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having considered whether compulsory measures of supervision are necessary, decides not to arrange a children’s hearing under section 69 of that Act, the Principal Reporter shall intimate that decision to the court which referred the matter to him.]

F325 PART XV

MANAGEMENT OF MONEY PAYABLE TO CHILDREN

Textual Amendments

F325 Pts. XIV (rules 33.92-33.94) and XV (rule 33.95) inserted (1.11.1995) by S.I. 1996/2167, para. 2, Sch., para. 33

- 33.95. Where the sheriff has made an order under section 13 of the Act of 1995 (awards of damages to children), an application by a person for an order by virtue of section 11(1)(d) of that Act (administration of child’s property) may be made in the process of the cause in which the order under section 13 of that Act was made.

VALID FROM 08/12/2005

CHAPTER 33A

CIVIL PARTNERSHIP ACTIONS

PART I

GENERAL PROVISIONS

Interpretation of this Chapter

- 33A.1.(1) In this Chapter, “civil partnership action” means–
- (a) an action of dissolution of civil partnership;
 - (b) an action of separation of civil partners;
 - (c) an action or application for an order under Chapter 3 or Chapter 4 of Part 3 of the Act of 2004;

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- (d) an application for a declarator or other order under section 127 of the Act of 2004;
- (e) an action or application for financial provision after overseas proceedings as provided for in Schedule 11 to the Act of 2004;

(2) In this Chapter, unless the context otherwise requires–

“the Act of 1985” means the Family Law (Scotland) Act 1985 ^{M74};

“the Act of 1995” means the Children (Scotland) Act 1995 ^{M75};

“the Act of 2004” means the Civil Partnership Act 2004 ^{M76};

“civil partnership” has the meaning assigned in section 1(1) of the Act of 2004;

“contact order” has the meaning assigned in section 11(2)(d) of the Act of 1995;

“Gender Recognition Panel” is to be construed in accordance with Schedule 1 to the Gender Recognition Act 2004 ^{M77};

“interim gender recognition certificate” means the certificate issued under section 4 of the Gender Recognition Act 2004;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 ^{M78};

“mental disorder” has the meaning assigned in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ^{M79};

“order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas proceedings as provided for in Schedule 11 to the Act of 2004), an order mentioned in section 8(1) of the Act of 1985;

“parental responsibilities” has the meaning assigned in section 1(3) of the Act of 1995;

“parental rights” has the meaning assigned in section 2(4) of the Act of 1995;

“relevant interdict” has the meaning assigned in section 113(2) of the Act of 2004;

“residence order” has the meaning assigned in section 11(2)(c) of the Act of 1995;

“section 11 order” means an order under section 11 of the Act of 1995

^{M80}.

(3) For the purposes of rules 33A.2 (averments in actions of dissolution of civil partnership or separation of civil partners about other proceedings) and 33A.3 (averments where section 11 order sought) and, in relation to proceedings in another jurisdiction, Part XIII of this Chapter (sisting of civil partnership actions in Scotland), proceedings are continuing at any time after they have commenced and before they are finally disposed of.

Marginal Citations

M74 1985 c. 37.

M75 1995 c. 36.

M76 2004 c. 33.

M77 2004 c. 7.

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M78 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).

M79 2003 asp 13.

M80 Section 11 was amended by S.S.I. 2005/42.

Averments in actions of dissolution of civil partnership or separation of civil partners about other proceedings

33A.2.(1) This rule applies to an action of dissolution of civil partnership or separation of civil partners.

(2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—

- (a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the civil partnership to which the initial writ relates or are capable of affecting its validity or subsistence; and
- (b) where such proceedings are continuing—
 - (i) the court, tribunal or authority before which the proceedings have been commenced;
 - (ii) the date of commencement;
 - (iii) the names of the parties;
 - (iv) the date, or expected date of any proof (or its equivalent) in the proceedings; and
 - (v) such other facts as may be relevant to the question of whether or not the action before the sheriff should be sisted under Part XIII of this Chapter.

(3) Where—

- (a) such proceedings are continuing;
- (b) the action before the sheriff is defended; and
- (c) either—
 - (i) the initial writ does not contain the statement referred to in paragraph (2)(a); or
 - (ii) the particulars mentioned in paragraph (2)(b) as set out in the initial writ are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(b).

Averments where section 11 order sought

33A.3.(1) A party to a civil partnership action who makes an application in that action for a section 11 order in respect of a child shall include in his pleadings—

- (a) where that action is an action of dissolution of civil partnership or separation of civil partners, averments giving particulars of any other proceedings known to him, whether in Scotland or elsewhere and whether concluded or not, which relate to the child in respect of whom the section 11 order is sought;
- (b) in any other civil partnership action—
 - (i) the averments mentioned in paragraph (a); and

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- (ii) averments giving particulars of any proceedings known to him which are continuing, whether in Scotland or elsewhere, and which relate to the civil partnership of either of the parents of that child.
- (2) Where such other proceedings are continuing or have taken place and the averments of the applicant for such a section 11 order—
- (a) do not contain particulars of the other proceedings, or
 - (b) contain particulars which are incomplete or incorrect,
- any defences or minute, as the case may be, lodged by any party to the civil partnership action shall include such particulars or such further or correct particulars as are known to him.
- (3) In paragraph 1(b)(ii), “child” includes a child of the family within the meaning assigned in section 101(7) of the Act of 2004.

Averments where identity or address of person not known

- 33A.4. In a civil partnership action, where the identity or address of any person referred to in rule 33A.7 as a person in respect of whom a warrant for intimation requires to be applied for is not known and cannot reasonably be ascertained, the party required to apply for the warrant shall include in his pleadings an averment of that fact and averments setting out what steps have been taken to ascertain the identity or address, as the case may be, of that person.

Averments about maintenance orders

- 33A.5. In a civil partnership action in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall contain an averment stating whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the Debtors (Scotland) Act 1987^{F326}) has been granted in favour of or against that party or of any other person in respect of whom the order is sought.

Textual Amendments

F326 1987 c. 18; section 106 was amended by the [Child Support, Pensions and Social Security Act 2000](#) (c. 19), [Schedule 3](#), paragraph 7(3).

Averments where aliment or financial provision sought

- 33A.6.(1) In this rule—
- “the Act of 1991” means the Child Support Act 1991^{F327};
- “child” has the meaning assigned in section 55 of the Act of 1991;
- “crave relating to aliment” means—
- (a) for the purposes of paragraph (2), a crave for decree of aliment in relation to a child or for recall or variation of such a decree; and
 - (b) for the purposes of paragraph (3), a crave for decree of aliment in relation to a child or for recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child;

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“maintenance calculation” has the meaning assigned in section 54 of the Act of 1991.

- (2) A civil partnership action containing a crave relating to aliment and to which section 8(6), (7), (8), or (10) of the Act of 1991 ^{F328} (top up maintenance orders) applies shall—
- (a) include averments stating, where appropriate—
 - (i) that a maintenance calculation under section 11 of that Act (maintenance calculations) 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 that Act; and
 - (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).
- (3) A civil partnership action containing a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include averments stating—
- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom; or
 - (b) that the child is not a child within the meaning of section 55 of that Act.
- (4) A civil partnership action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—
- (a) include averments stating that such a decision has been made and giving 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.

Textual Amendments

F327 1991 c. 48.

F328 Section 8 was amended by S.I. 2003/192.

Warrants and forms for intimation

- 33A.7.(1) Subject to paragraphs (5) and (7), in the initial writ in a civil partnership action, the pursuer shall include a crave 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 person who was a child of the family (within the meaning of section 101(7) of the Act of 2004) and who has reached the age of 16 years, and
 - (ii) one of the next of kin of the defender who has reached that age,

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- 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 CP1 shall be attached to the copy of the initial writ intimated to any such person;
- (b) in an action where the defender is a person who is suffering from a mental disorder, to—
- (i) those persons mentioned in sub paragraph (a)(i) and (ii), unless the address of such person is not known to the pursuer and cannot reasonably be ascertained; and
 - (ii) any person who holds the office of guardian, or continuing or welfare attorney to the defender under or by virtue of the Adults with Incapacity (Scotland) Act 2000^{M81},
- and a notice of intimation in Form CP2 shall be attached to the copy of the initial writ intimated to any such person;
- (c) in an action of dissolution of civil partnership or separation of civil partners where the sheriff may make a section 11 order in respect of a child—
- (i) who is in the care of a local authority, to that authority and a notice of intimation in Form CP3 shall be attached to the initial writ intimated to that authority;
 - (ii) who, being a child of one party to the civil partnership, has been accepted as a child of the family by the other party to the civil partnership and who is liable to be maintained by a third party, to that third party, and a notice of intimation in Form CP3 shall be attached to the initial writ intimated to that third party; or
 - (iii) in respect of whom a third party in fact exercises care or control, to that third party, and a notice of intimation in Form CP4 shall be attached to the initial writ intimated to that third party;
- (d) in an action where the pursuer craves a section 11 order, to any parent or guardian of the child who is not a party to the action, and a notice of intimation in Form CP5 shall be attached to the initial writ intimated to any such parent or guardian;
- (e) in an action where the pursuer craves a residence order in respect of a child and he is—
- (i) not a parent of that child; and
 - (ii) resident in Scotland when the initial writ is lodged,
- to the local authority within which area the pursuer resides, and a notice of intimation in Form CP6 shall be attached to the initial writ intimated to that authority;
- (f) in an action which includes a crave for a section 11 order, to the child to whom such an order would relate if not a party to the action, and a notice of intimation in Form CP7 shall be intimated to that child;
- (g) in an action where the pursuer makes an application for an order under section 8(1)(aa) of the Act of 1985^{M82} (transfer of property) and—
- (i) the consent of a third party to such a transfer is necessary by virtue of an obligation, enactment or rule of law, or
 - (ii) the property is subject to a security,
- to the third party or creditor, as the case may be, and a notice of intimation in Form CP8 shall be attached to the initial writ intimated to any such person;
- (h) in an action where the pursuer makes an application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions), to—

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- (i) any third party in whose favour the transfer of, or transaction involving, the property is to be or was made, and
 - (ii) any other person having an interest in the transfer of, or transaction involving, the property,
- and a notice of intimation in Form CP9 shall be attached to the initial writ intimated to any such person;
- (i) in an action where the pursuer makes an application for an order under Chapter 3 of Part 3 of the Act of 2004, where the application is under section 102(1)(e), 102(4)(a), 103(1), 103(2), 104, 107 or 112 of that Act, and the entitled civil partner is a tenant or occupies the family home by permission of a third party, to the landlord or the third party, as the case may be and a notice of intimation in Form CP10 shall be attached to the initial writ intimated to any such person;
 - (j) in an action where the pursuer makes an application for an order under section 8(1)(ba) of the Act of 1985 ^{M83} (orders under section 12A of the Act of 1985 for pension lump sum), to the person responsible for the pension arrangement, and a notice of intimation in Form CP11 shall be attached to the initial writ intimated to any such person; and
 - (k) in an action where a pursuer makes an application for an order under section 8(1)(baa) of the Act of 1985 ^{M84} (pension sharing orders), to the person responsible for the pension arrangement and a notice of intimation in Form CP12 shall be attached to the initial writ intimated to any such person.
- (2) Expressions used in paragraph (1)(i) which are also used in Chapter 3 of Part 3 of the Act of 2004 have the same meaning as in that Chapter.
- (3) A notice of intimation under paragraph (1) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.
- (4) In a civil partnership action, where the pursuer–
- (a) craves a residence order in respect of a child;
 - (b) is not a parent of the child, and
 - (c) is not resident in Scotland when the initial writ is lodged for warranting,
- he shall include a crave for an order for intimation in Form CP6 to such local authority as the sheriff thinks fit.
- (5) Where the address of a person mentioned in paragraph (1)(c), (d), (f), (g), (h), (i), (j) or (k) is not known and cannot reasonably be ascertained, the pursuer shall include a crave in the initial writ to dispense with intimation; and the sheriff may grant that crave or make such other order as he thinks fit.
- (6) Where the identity or address of a person to whom intimation of a civil partnership action is required becomes known during the course of the action, the party who would have been required to insert a warrant for intimation to that person shall lodge a motion for a warrant for intimation to that person or to dispense with such intimation.
- (7) Where a pursuer considers that to order intimation to a child under paragraph (1) (f) is inappropriate, he shall–
- (a) include a crave in the initial writ to dispense with intimation to that child; and

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- (b) include in the initial writ averments setting out the reasons why such intimation is inappropriate;
 and the sheriff may dispense with such intimation or make such other order as he thinks fit.

Marginal Citations

M81 2000 asp 4.

M82 Section 8(1)(aa) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), **section 74** and Schedule 8, paragraph 34(b).

M83 Section 8(1)(ba) was inserted by the Pensions Act 1995 (c. 26), **section 167(1)**.

M84 Section 8(1)(baa) was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), **section 20(1)**.

Intimation where alleged association

33A.8.(1) In a civil partnership action where the pursuer founds upon an alleged association between the defender and another named person, the pursuer shall, immediately after the expiry of the period of notice, lodge a motion for an order for intimation to that person or to dispense with such intimation.

- (2) In determining a motion under paragraph (1), the sheriff may—
- (a) make such order for intimation as he thinks fit; or
 - (b) dispense with intimation; and
 - (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.
- (3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form CP13 shall be intimated to the named person.
- (4) In paragraph (1), “association” means sodomy, incest, or any homosexual or heterosexual relationship.

Productions in action of dissolution of civil partnership or where section 11 order may be made

33A.9.(1) This rule applies unless the sheriff directs otherwise.

- (2) In an action of dissolution of civil partnership, a warrant for citation shall not be granted without there being produced with the initial writ—
- (a) an extract of the relevant entry in the civil partnership register or an equivalent document; and
 - (b) where the ground of action is that an interim gender recognition certificate has, after the date of registration of the civil partnership, been issued to either of the civil partners—
 - (i) where the pursuer is the subject of the interim gender recognition certificate, the interim gender recognition certificate or, failing that, a certified copy of the interim gender recognition certificate; or
 - (ii) where the defender is the subject of the interim gender recognition certificate, a certified copy of the interim gender recognition certificate.

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- (3) In a civil partnership action which includes a crave for a section 11 order, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of births or an equivalent document.
- (4) For the purposes of this rule, a certified copy of an interim gender recognition certificate shall be a copy of that certificate sealed with the seal of the Gender Recognition Panels and certified to be a true copy by an officer authorised by the President of Gender Recognition Panels.

Warrant of citation

33A.10. The warrant of citation in a civil partnership action shall be in Form CP14.

Form of citation and certificate

- 33A.11(1) Subject to rule 5.6 (service where address of person is not known), citation of a defender shall be in Form CP15, which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form CP16.
- (2) The certificate of citation shall be in Form CP17 which shall be attached to the initial writ.

Execution of service on, or intimation to, local authority

- 33A.12(1) Where a local authority referred to in rule 33A.7(1)(e) (residence order sought by non parent resident in Scotland) or rule 33A.7(4) (residence order sought by pursuer not resident in Scotland) is named as a defender in an initial writ at the time it is lodged, service of the initial writ on that local authority shall be executed within 7 days after the date of granting of the warrant of citation.
- (2) Where in a civil partnership action—
 - (a) to which rule 33A.7(1)(e) applies, or
 - (b) in which a crave under rule 33A.7(4) is required,the local authority referred to in that provision is named as a defender in the initial writ at the time it is lodged, a notice in Form CP6 shall be attached to the copy of the initial writ served on that local authority.
 - (3) In any civil partnership action, the sheriff may, if he thinks fit, order intimation to a local authority; and such intimation shall be in Form CP6; and
 - (4) Where, by virtue of paragraph (3) of this rule, or rule 33A.7(1)(e), or rule 33A.7(4), intimation of an application for a residence order is to be made to a local authority, intimation to that local authority shall be given within 7 days after the date on which a warrant of citation, or an order for intimation, as the case may be, has been granted.

Service in cases of mental disorder of defender

- 33A.13(1) In a civil partnership action where the defender suffers or appears to suffer from mental disorder and is resident in a hospital or other similar institution, citation shall be executed by registered post or the first class recorded delivery service addressed to the medical officer in charge of that hospital or institution; and there shall be included with the copy of the initial writ—

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- (a) a citation in Form CP15;
 - (b) any notice required by rule 33A.14(1);
 - (c) a request in Form CP18;
 - (d) a form of certificate in Form CP19 requesting the medical officer to—
 - (i) deliver and explain the initial writ, citation and any notice or form of notice of consent required under rule 33A.14(1) personally to the defender; or
 - (ii) certify that such delivery or explanation would be dangerous to the health or mental condition of the defender; and
 - (e) a stamped envelope addressed for return of that certificate to the pursuer or his solicitor, if he has one.
- (2) The medical officer referred to in paragraph (1) shall send the certificate in Form CP19 duly completed to the pursuer or his solicitor, as the case may be.
- (3) The certificate mentioned in paragraph (2) shall be attached to the certificate of citation.
- (4) Where such a certificate bears that the initial writ has not been delivered to the defender, the sheriff may, at any time before decree—
- (a) order such further medical inquiry, and
 - (b) make such order for further service or intimation,
- as he thinks fit.

Notices in certain actions of dissolution of civil partnership or separation of civil partners

- 33A.14(1) In the following actions of dissolution of civil partnership or separation of civil partners there shall be attached to the copy of the initial writ served on the defender—
- (a) in an action relying on section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree)—
 - (i) which is an action of dissolution of civil partnership, a notice in Form CP20 and a notice of consent in Form CP21;
 - (ii) which is an action of separation of civil partners, a notice in Form CP22 and a form of notice of consent in Form CP23;
 - (b) in an action relying on section 117(3)(d) of the Act of 2004 (no cohabitation for five years)—
 - (i) which is an action of dissolution of civil partnership, a notice in Form CP24;
 - (ii) which is an action of separation of civil partners, a notice in Form CP25.
- (2) The certificate of citation of an initial writ in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been attached to the initial writ.

Orders for intimation

- 33A.15(1) In any civil partnership action, the sheriff may, at any time—
- (a) subject to paragraph (2), order intimation to be made on such person as he thinks fit;

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- (b) postpone intimation, where he considers that such postponement is appropriate and, in that case, the sheriff shall make such order in respect of postponement of intimation as he thinks fit; or
 - (c) dispense with intimation, where he considers that such dispensation is appropriate.
- (2) Where the sheriff is considering whether to make a section 11 order by virtue of section 12 of the Act of 1995 (restrictions on decrees for dissolution of civil partnership, separation or annulment affecting children), he shall, subject to paragraph (1)(c) and without prejudice to paragraph (1)(b) of this rule, order intimation in Form CP7 to the child to whom the section 11 order would relate unless—
- (a) intimation has been given to the child under rule 33A.7(1)(f); or
 - (b) the sheriff considers that the child is not of sufficient age or maturity to express his views.
- (3) Where a party makes a crave or averment in a civil partnership action which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, that party shall include a crave in his writ for a warrant for intimation or to dispense with such intimation; and rule 33A.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.

Appointment of curators ad litem to defenders

- 33A.1(1) This rule applies to an action of dissolution of civil partnership or separation of civil partners where it appears to the court that the defender is suffering from a mental disorder.
- (2) In an action to which this rule applies, the sheriff shall—
- (a) appoint a curator *ad litem* to the defender;
 - (b) where the facts set out in section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on—
 - (i) make an order for intimation of the ground of the action to the Mental Welfare Commission for Scotland; and
 - (ii) include in such an order a requirement that the Commission sends to the sheriff clerk a report indicating whether in its opinion the defender is capable of deciding whether or not to give consent to the granting of decree.
- (3) Within 7 days after the appointment of a curator *ad litem* under paragraph (2)(a), the pursuer shall send to him—
- (a) a copy of the initial writ and any defences (including any adjustments and amendments) lodged; and
 - (b) a copy of any notice in Form G5 sent to him by the sheriff clerk.
- (4) On receipt of a report required under paragraph (2)(b)(ii), the sheriff clerk shall—
- (a) lodge the report in process; and
 - (b) intimate that this has been done to—
 - (i) the pursuer;
 - (ii) the solicitor for the defender, if known; and

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(iii) the curator *ad litem*.

- (5) The curator *ad litem* shall lodge in process one of the writs mentioned in paragraph (6)–
- (a) within 14 days after the report required under paragraph (2)(b)(ii) has been lodged in process; or
 - (b) where no such report is required, within 21 days after the date of his appointment under paragraph (2)(a).
- (6) The writs referred to in paragraph (5) are–
- (a) a notice of intention to defend;
 - (b) defences to the action;
 - (c) a minute adopting defences already lodged; and
 - (d) a minute stating that the curator *ad litem* does not intend to lodge defences.
- (7) Notwithstanding that he has lodged a minute stating that he does not intend to lodge defences, a curator *ad litem* may appear at any stage of the action to protect the interests of the defender.
- (8) If, at any time, it appears to the curator *ad litem* that the defender is not suffering from mental disorder, he may report that fact to the court and seek his own discharge.
- (9) The pursuer shall be responsible, in the first instance, for payment of the fees and outlays of the curator *ad litem* incurred during the period from his appointment until–
- (a) he lodges a minute stating that he does not intend to lodge defences;
 - (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
 - (c) being satisfied after investigation that the defender is not suffering from mental disorder, he is discharged.

Applications for sist

- 33A.17. An application for a sist, or the recall of a sist, under Part XIII of this Chapter shall be made by written motion.

Notices of consent to dissolution of civil partnership or separation of civil partners

- 33A.18(1) Where, in an action of dissolution of civil partnership or separation of civil partners in which the facts in section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree of dissolution of civil partnership or separation of civil partners he shall do so by giving notice in writing in Form CP21 (dissolution) or Form CP23 (separation), as the case may be, to the sheriff clerk.
- (2) The evidence of one witness shall be sufficient for the purpose of establishing that the signature on a notice of consent under paragraph (1) is that of the defender.
 - (3) In an action of dissolution of civil partnership or separation of civil partners where the initial writ includes, for the purposes of section 117(3)(c) of the Act of 2004, an averment that the defender consents to the grant of decree, the defender may give

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notice by letter sent to the sheriff clerk stating that he has not so consented or that he withdraws any consent which he has already given.

- (4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the pursuer.
- (5) On receipt of any intimation under paragraph (4), the pursuer may, within 14 days after the date of the intimation, if none of the other facts mentioned in section 117(3) of the Act of 2004 is averred in the initial writ, lodge a motion for the action to be sisted.
- (6) If no such motion is lodged, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.
- (7) If a motion under paragraph (5) is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

Procedure in respect of children

33A.1(1) In a civil partnership action, in relation to any matter affecting a child, where that child has—

- (a) returned to the sheriff clerk Form CP7, or
 - (b) otherwise indicated to the court a wish to express views on a matter affecting him, the sheriff shall not grant any order unless an opportunity has been given for the views of that child to be obtained or heard.
- (2) Where a child has indicated his wish to express his views, the sheriff shall order such steps to be taken as he considers appropriate to ascertain the views of that child.
 - (3) The sheriff shall not grant an order in a civil partnership action, in relation to any matter affecting a child who has indicated his wish to express his views, unless due weight has been given by the sheriff to the views expressed by that child, having due regard to his age and maturity.

Recording of views of the child

33A.2(1) This rule applies where a child expresses a view on a matter affecting him whether expressed personally to the sheriff or to a person appointed by the sheriff for that purpose or provided by the child in writing.

- (2) The sheriff, or the person appointed by the sheriff, shall record the views of the child in writing; and the sheriff may direct that such views, and any written views, given by a child shall—
 - (a) be sealed in an envelope marked “Views of the child confidential”;
 - (b) be kept in the court process without being recorded in the inventory of process;
 - (c) be available to a sheriff only;
 - (d) not be opened by any person other than a sheriff; and
 - (e) not form a borrowable part of the process.

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Appointment of local authority or reporter to report on a child

33A.2(1) This rule applies where, at any stage of a civil partnership action, the sheriff appoints—

- (a) a local authority, whether under section 11(1) of the Matrimonial Proceedings (Children) Act 1958^{F329} (reports as to arrangements for future care and upbringing of children) or otherwise, or
- (b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub paragraph (a) or otherwise,

to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.

(2) On making an appointment referred to in paragraph (1), the sheriff shall direct that the party who sought the appointment or, where the court makes the appointment of its own motion, the pursuer or minuter, as the case may be, shall—

- (a) instruct the local authority or reporter; and
- (b) be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.

(3) Where a local authority or reporter is appointed—

- (a) the party who sought the appointment, or
- (b) where the sheriff makes the appointment of his own motion, the pursuer or minuter, as the case may be,

shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.

(4) On completion of a report referred to in paragraph (1), the local authority or reporter, as the case may be, shall send the report, with a copy of it for each party, to the sheriff clerk.

(5) On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.

(6) Where a local authority or reporter has been appointed to investigate and report in respect of a child, an application for a section 11 order in respect of that child shall not be determined until the report of the local authority or reporter, as the case may be, has been lodged.

Textual Amendments

F329 1958 c. 40; section 11(1) was amended by the [Children \(Scotland\) Act 1995 \(c. 36\)](#), [Schedule 4](#), paragraph 9.

Referral to family mediation

33A.22. In any civil partnership action in which an order in relation to parental responsibilities or parental rights is in issue, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation.

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Applications for orders to disclose whereabouts of children

- 33A.24(1) An application in a civil partnership action for an order under section 33(1) of the Family Law Act 1986^{F330} (which relates to the disclosure of the whereabouts of a child) shall be made by motion.
- (2) Where the sheriff makes an order under section 33(1) of the Family Law Act 1986, he may ordain the person against whom the order has been made to appear before him or to lodge an affidavit.

Textual Amendments

F330 1986 c. 55.

Applications in relation to removal of children

- 33A.25(1) An application in a civil partnership action for leave under section 51(1) of the Children Act 1975^{F331} (authority to remove a child from the care and possession of the applicant for a residence order) or for an order under section 35(3) of the Family Law Act 1986 (application for interdict or interim interdict prohibiting removal of child from jurisdiction) shall be made—
- (a) by a party to the action, by motion; or
- (b) by a person who is not a party to the action, by minute.
- (2) An application under section 35(3) of the Family Law Act 1986 need not be served or intimated.
- (3) An application in a civil partnership action under section 23(2) of the Child Abduction and Custody Act 1985^{F332} (declarator that removal of child from United Kingdom was unlawful) shall be made—
- (a) in an action depending before the sheriff—
- (i) by a party, in the initial writ, defences or minute, as the case may be, or by motion; or
- (ii) by any other person, by minute; or
- (b) after final decree, by minute in the process of the action to which the application relates.

Textual Amendments

F331 1975 c. 72.

F332 1985 c. 60.

Intimation to local authority before supervised contact order

- 33A.26. Where in a civil partnership action the sheriff, at his own instance or on the motion of a party, is considering making a contact order or an interim contact order subject to supervision by the social work department of a local authority, he shall ordain the party moving for such an order to intimate to the chief executive of that local authority (where not already a party to the action and represented at the hearing at which the issue arises)—
- (a) the terms of any relevant motion;

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- (b) the intention of the sheriff to order that the contact order be supervised by the social work department of that local authority; and
- (c) that the local authority shall, within such period as the sheriff has determined—
 - (i) notify the sheriff clerk whether it intends to make representations to the sheriff; and
 - (ii) where it intends to make representations in writing, do so within that period.

Joint minutes

33A.27. Where any parties in a civil partnership action have reached agreement in relation to—

- (a) a section 11 order;
- (b) aliment for a child; or
- (c) an order for financial provision,

a joint minute may be entered into expressing that agreement; and, subject to rule 33A.19(3) (no order before views of child expressed), the sheriff may grant decree in respect of those parts of the joint minute in relation to which he could otherwise make an order, whether or not such a decree would include a matter for which there was no crave.

Affidavits

33A.28. The sheriff in a civil partnership action may accept evidence by affidavit at any hearing for an order or interim order.

^{F333}PART II

UNDEFENDED CIVIL PARTNERSHIP ACTIONS

Textual Amendments

F333 Sch. 1 Ch. 33A inserted (8.12.2005) by Act of Sederunt (Ordinary Cause Rules) Amendment (Civil Partnership Act 2004) 2005 (S.S.I. 2005/638), art. 2(2)

Evidence in certain undefended civil partnership actions

33A.29(1) This rule—

- (a) subject to sub paragraph (b), applies to all civil partnership actions in which no notice of intention to defend has been lodged, other than a civil partnership action—
 - (i) for financial provision after overseas proceedings as provided for in Schedule 11 to the Act of 2004; or
 - (ii) for an order under Chapter 3 or Chapter 4 of Part 3 or section 127 of the Act of 2004;
- (b) applies to a civil partnership action in which a curator *ad litem* has been appointed under rule 33A.16 where the curator *ad litem* to the defender has lodged a minute intimating that he does not intend to lodge defences;

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- (c) applies to any civil partnership action which proceeds at any stage as undefended where the sheriff so directs;
 - (d) applies to the merits of a civil partnership action which is undefended on the merits where the sheriff so directs, notwithstanding that the action is defended on an ancillary matter.
- (2) Unless the sheriff otherwise directs, evidence shall be given by affidavits.
- (3) Unless the sheriff otherwise directs, evidence relating to the welfare of a child shall be given by affidavit, at least one affidavit being emitted by a person other than a parent or party to the action.
- (4) Evidence in the form of a written statement bearing to be the professional opinion of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence by him.

Procedure for decree in actions under rule 33A.29

- 33A.30(1) In an action to which rule 33A.29 (evidence in certain undefended civil partnership actions) applies, the pursuer shall at any time after the expiry of the period for lodging a notice of intention to defend—
- (a) lodge in process the affidavit evidence; and
 - (b) endorse a minute in Form CP27 on the initial writ.
- (2) The sheriff may, at any time after the pursuer has complied with paragraph (1), without requiring the appearance of parties—
- (a) grant decree in terms of the motion for decree; or
 - (b) remit the cause for such further procedure, if any, including proof by parole evidence, as the sheriff thinks fit.

Extracts of undefended decree

- 33A.31. In an action to which rule 33A.29 (evidence in certain undefended civil partnership actions) applies, the sheriff clerk shall, after the expiry of 14 days after the grant of decree under rule 33A.30 (procedure for decree in actions under rule 33A.29), issue to the pursuer and the defender an extract decree.

No recording of evidence

- 33A.32. It shall not be necessary to record the evidence in any proof in a civil partnership action which is not defended.

Disapplication of Chapter 15

- 33A.33. Other than rule 15.1(1), Chapter 15 (motions) shall not apply to a civil partnership action in which no notice of intention to defend has been lodged, or to a civil partnership action in so far as it proceeds as undefended.

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PART III

DEFENDED CIVIL PARTNERSHIP ACTIONS

Notice of intention to defend and defences

- 33A.34(1) This rule applies where the defender in a civil partnership action seeks—
- (a) to oppose any crave in the initial writ;
 - (b) to make a claim for—
 - (i) aliment;
 - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
 - (iii) a section 11 order; or
 - (c) an order—
 - (i) under section 16(1)(b) or (3) of the Act of 1985 ^{F334} (setting aside or varying agreement as to financial provision);
 - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
 - (iii) under Chapter 3 or Chapter 4 of Part 3 or section 127 of the Act of 2004; or
 - (d) to challenge the jurisdiction of the court.
- (2) In an action to which this rule applies, the defender shall—
- (a) lodge a notice of intention to defend in Form CP16 before the expiry of the period of notice; and
 - (b) make any claim or seek any order referred to in paragraph (1), as the case may be, in those defences by setting out in his defences—
 - (i) craves;
 - (ii) averments in the answers to the condescendence in support of those craves; and
 - (iii) appropriate pleas-in-law.
- (3) Where a defender intends to make an application for a section 11 order which, had it been made in an initial writ, would have required a warrant for intimation under rule 33A.7, the defender shall include a crave in his notice of intention to defend for a warrant for intimation or to dispense with such intimation; and rule 33A.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.

Textual Amendments

F334 Section 16(3) was amended by the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [Schedule 3](#), paragraph 5.

Abandonment by pursuer

- 33A.35. Notwithstanding abandonment by a pursuer of a civil partnership action, the court may allow a defender to pursue an order or claim sought in his defences; and the proceedings in relation to that order or claim shall continue in dependence as if a separate cause.

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Attendance of parties at Options Hearing

33A.36. All parties to a civil partnership action shall, except on cause shown, attend personally the hearing under rule 9.12 (Options Hearing).

Decree by default

33A.37(1) In a civil partnership action in which the defender has lodged a notice of intention to defend, where a party fails–

- (a) to lodge, or intimate the lodging of, any production or part of process;
- (b) to implement an order of the sheriff within a specified period; or
- (c) to appear or be represented at any diet,

that party shall be in default.

(2) Where a party is in default under paragraph (1), the sheriff may–

- (a) where the civil partnership action is one mentioned in rule 33A.1(1) (a) or (b), allow that action to proceed as undefended under Part II of this Chapter; or
- (b) where the civil partnership action is one mentioned in rule 33A.1(1)(c) to (e), grant decree as craved; or
- (c) grant decree of absolvitor; or
- (d) dismiss the civil partnership action or any claim made or order sought; and
- (e) award expenses.

(3) Where no party appears at a diet in a civil partnership action, the sheriff may dismiss that action.

(4) In a civil partnership action, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process, or for intimating or implementing any order.

PART IV

APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS

Application and interpretation of this Part

33A.38. This Part applies to an action of dissolution of civil partnership or separation of civil partners.

Applications in actions to which this Part applies

33A.39(1) An application for an order mentioned in paragraph (2) shall be made–

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

(2) The orders referred to in paragraph (1) are:–

- (a) an order for a section 11 order; and
- (b) an order for aliment for a child.

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Applications in depending actions by motion

- 33A.40. An application by a party in an action depending before the court to which this Part applies for, or for variation of, an order for—
- (a) interim aliment for a child under the age of 18; or
 - (b) a residence order or a contact order,
- shall be made by motion.

Applications after decree relating to a section 11 order

- 33A.41(1) An application after final decree for, or for the variation or recall of, a section 11 order or in relation to the enforcement of such an order shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for any interim order which may be made pending the determination of the application.

Applications after decree relating to aliment

- 33A.42(1) An application after final decree for, or for the variation or recall of, an order for aliment for a child shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

Applications after decree by persons over 18 years for aliment

- 33A.43(1) A person—
- (a) to whom an obligation of aliment is owed under section 1 of the Act of 1985;
 - (b) in whose favour an order for aliment while under the age of 18 years was made in an action to which this Part applies, and
 - (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,
- shall apply by minute in the process of that action.
- (2) An application for interim aliment pending the determination of an application under paragraph (1) shall be made by motion.
- (3) Where a decree has been pronounced in an application under paragraph (1) or (2), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

PART V

ORDERS RELATING TO FINANCIAL PROVISIONS

Application and interpretation of this Part

- 33A.44(1) This Part applies to an action of dissolution of civil partnership.

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(2) In this Part, “incidental order” has the meaning assigned in section 14(2) of the Act of 1985.

Applications in actions to which this Part applies

33A.45(1) An application for an order mentioned in paragraph (2) shall be made—

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

(2) The orders referred to in paragraph (1) are:—

- (a) an order for financial provision within the meaning of section 8(3) of the Act of 1985;
- (b) an order under section 16(1)(b) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision);
- (c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and
- (d) an order under section 112 of the Act of 2004 (transfer of tenancy).

Applications in depending actions relating to incidental orders

33A.46(1) In an action depending before the sheriff to which this Part applies—

- (a) the pursuer or defender, notwithstanding rules 33A.34(2) (application by defender for order for financial provision) and 33A.45(1)(a) (application for order for financial provision in initial writ or defences), may apply by motion for an incidental order; and
- (b) the sheriff shall not be bound to determine such a motion if he considers that the application should properly be by a crave in the initial writ or defences, as the case may be.

(2) In an action depending before the sheriff to which this Part applies, an application under section 14(4) of the Act of 1985 for the variation or recall of an incidental order shall be made by minute in the process of the action to which the application relates.

Applications relating to interim aliment

33A.47. An application for, or for the variation or recall of, an order for interim aliment for the pursuer or defender shall be made by motion.

Applications relating to orders for financial provision

33A.48(1) An application—

- (a) after final decree under any of the following provisions of the Act of 1985—
 - (i) section 8(1) for periodical allowance;
 - (ii) section 12(1)(b) (payment of capital sum or transfer of property);
 - (iii) section 12(4) (variation of date or method of payment of capital sum or date of transfer of property); or
 - (iv) section 13(4) (variation, recall, backdating or conversion of periodical allowance); or

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- (b) after the grant or refusal of an application under–
- (i) section 8(1) or 14(3) for an incidental order; or
 - (ii) section 14(4) (variation or recall of incidental order),
- shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute is lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.
- (3) An application under–
- (a) paragraph (5) of section 12A of the Act of 1985 ^{F335} (recall or variation of order in respect of a pension lump sum);
 - (b) paragraph (7) of that section ^{F336} (variation of order in respect of pension lump sum to substitute trustees or managers); or
 - (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999,
- shall be made by minute in the process of the action to which the application relates.

Textual Amendments

- F335** Section 12A(5) was inserted by the Pensions Act 1995 (c. 26), section 167(3) and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 84 and Schedule 12, Part 1, paragraph 9(1)(6).
- F336** Section 12A(7) was inserted by the Pensions Act 1995 (c. 26), section 167(3) and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 84 and Schedule 12, Part 1, paragraph 9(1)(8).

Applications after decree relating to agreements and avoidance transactions

- 33A.49. An application for an order–
- (a) under section 16(1)(a) or (3) of the Act of 1985 (setting aside or varying agreements as to financial provision), or
 - (b) under section 18 of the Act of 1985 (which relates to avoidance transactions),
- made after final decree shall be made by minute in the process of the action to which the application relates.

PART VI

APPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS

Form of applications

- 33A.50(1) An application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions) by a party to a civil partnership action shall be made by including in the initial writ, defences or minute, as the case may be, appropriate craves, averments and pleas in law.
- (2) An application for an order under section 18 of the Act of 1985 after final decree in a civil partnership action shall be made by minute in the process of the action to which the application relates.

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PART VII

FINANCIAL PROVISION AFTER OVERSEAS PROCEEDINGS

Interpretation of this Part

33A.51. In this Part–

“order for financial provision” has the meaning assigned in paragraph 4 of Schedule 11 to the Act of 2004;

“overseas proceedings” has the meaning assigned in paragraph 1(1)(a) of Schedule 11 to the Act of 2004.

Applications for financial provision after overseas proceedings

33A.52(1) An application under paragraph 2(1) of Schedule 11 to the Act of 2004 for an order for financial provision after overseas proceedings shall be made by initial writ.

(2) An application for an order in an action to which paragraph (1) applies made before final decree under–

- (a) section 112 of the Act of 2004 (transfer of tenancy of family home);
- (b) paragraph 3(4) of Schedule 11 to the Act of 2004 for interim periodical allowance; or
- (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),

shall be made by motion.

(3) An application for an order in an action to which paragraph (1) applies made after final decree under–

- (a) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum or date of transfer of property);
- (b) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion of periodical allowance); or
- (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),

shall be made by minute in the process of the action to which it relates.

(4) An application under–

- (a) paragraph (5) of section 12A of the Act of 1985 (recall or variation of order in respect of a pension lump sum); or
- (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers),

shall be made by minute in the process of the action to which the application relates.

(5) Where a minute has been lodged under paragraph (3), any party may apply by motion for an interim order pending the determination of the application.

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PART VIII

ACTIONS IN RESPECT OF ALIMENT

Applications relating to agreements on aliment

- 33A.53. In a civil partnership action in which a crave for aliment may be made, an application under section 7(2) of the Act of 1985 shall be made by a crave in the initial writ or in defences, as the case may be.

PART IX

APPLICATIONS FOR ORDERS UNDER SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995]

Application of this Part

- 33A.54. This Part applies to an application for a section 11 order in a civil partnership action other than in an action of dissolution of civil partnership or separation of civil partners.

Form of applications

- 33A.55. Subject to any other provision in this Chapter, an application for a section 11 order shall be made—
- (a) by a crave in the initial writ or defences, as the case may be, in a civil partnership action to which this Part applies; or
 - (b) where the application is made by a person other than a party to an action mentioned in paragraph (a), by minute in that action.

Applications relating to interim orders in depending actions

- 33A.56. An application, in an action depending before the sheriff to which this Part applies, for, or for the variation or recall of, an interim residence order or an interim contact order shall be made—
- (a) by a party to the action, by motion; or
 - (b) by a person who is not a party to the action, by minute.

Applications after decree

- 33A.57(1) An application after final decree for variation or recall of a section 11 order shall be made by minute in the process of the action to which the application relates.
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for an interim order pending the determination of the application.

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PART X

ACTIONS RELATING TO OCCUPANCY RIGHTS AND TENANCIES

Application of this Part

33A.58. This Part applies to an action or application for an order under Chapter 3 or Chapter 4 of Part 3 or section 127 of the Act of 2004.

Interpretation of this Part

33A.59. Unless the context otherwise requires, words and expressions used in this Part which are also used in Chapter 3 or Chapter 4 of Part 3 of the Act of 2004 have the same meaning as in Chapter 3 or Chapter 4, as the case may be.

Form of application

33A.60(1) Subject to any other provision in this Chapter, an application for an order under this Part shall be made—

- (a) by an action for such an order;
- (b) by a crave in the initial writ or defences, as the case may be, in any other civil partnership action;
- (c) where the application is made by a person other than a party to any action mentioned in paragraph (a) or (b), by minute in that action.

(2) An application under section 107(1) (dispensation with civil partner's consent to dealing) or section 127 (application in relation to attachment) of the Act of 2004 shall, unless made in a depending civil partnership action, be made by summary application.

Defenders

33A.61. The applicant for an order under this Part shall call as a defender—

- (a) where he is seeking an order as a civil partner, the other civil partner; and
- (b) where he is a third party making an application under section 107(1) (dispensation with civil partner's consent to dealing), or 108(1) (payment from non-entitled civil partner in respect of loan) of the Act of 2004, both civil partners.

Applications by motion

33A.62(1) An application under any of the following provisions of the Act of 2004 shall be made by motion in the process of the depending action to which the application relates:—

- (a) section 103(4) (interim order for regulation of rights of occupancy, etc.);
- (b) section 104(6) (interim order suspending occupancy rights);
- (c) section 107(1) (dispensation with civil partner's consent to dealing); and
- (d) section 114(1) (order attaching power of arrest), if made after application for relevant interdict.

(2) Intimation of a motion under paragraph (1) shall be given—

- (a) to the other civil partner;

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- (b) where the motion is under paragraph (1)(a) or (b) and the entitled civil partner is a tenant or occupies the family home by the permission of a third party, to the landlord or third party, as the case may be; and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33A.7(1)(i) (warrant for intimation to certain persons in actions for orders under Chapter 3 of Part 3 of the Act of 2004) or rule 33A.15 (order for intimation by sheriff).

Applications by minute

33A.63(1) An application for an order under section 105 of the Act of 2004 (variation and recall of orders made under section 103 or section 104 of the Act of 2004) shall be made by minute.

- (2) A minute under paragraph (1) shall be intimated–
 - (a) to the other civil partner;
 - (b) where the entitled civil partner is a tenant or occupies the family home by the permission of a third party, to the landlord or third party, as the case may be; and
 - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33A.7(1)(i) (warrant for intimation to certain persons in actions for orders under Chapter 3 of Part 3 of the Act of 2004) or rule 33A.15 (order for intimation by sheriff).

Sist of actions to enforce occupancy rights

33A.64. Unless the sheriff otherwise directs, the sist of an action by virtue of section 107(4) of the Act of 2004 (where action raised by non entitled civil partner to enforce occupancy rights) shall apply only to such part of the action as relates to the enforcement of occupancy rights by a non entitled civil partner.

Certificates of delivery of documents to chief constable

33A.65(1) Where an applicant is required to comply with section 114(5) or (6), as the case may be, of the Act of 2004 (delivery of documents to chief constable where power of arrest attached to relevant interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form CP28.

- (2) Where a relevant interdict to which a power of arrest under section 114(1) of the Act of 2004 has been attached ceases to have effect by reason of a decree of dissolution of civil partnership being pronounced by the sheriff, the pursuer shall send–
 - (a) to the chief constable of the police area in which the family home is situated; and
 - (b) if the applicant civil partner (within the meaning of section 114(7) of the Act of 2004) resides in another police area, to the chief constable of that other police area,

a copy of the interlocutor granting decree and lodge in process a certificate of delivery in Form CP28.

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PART XI

SIMPLIFIED DISSOLUTION OF CIVIL PARTNERSHIP APPLICATIONS

Application and interpretation of this Part

- 33A.66(1) This Part applies to an application for dissolution of civil partnership by a party to a civil partnership made in the manner prescribed in rule 33A.67 (form of applications) if, but only if—
- (a) that party relies on the facts set out in section 117(3)(c) (no cohabitation for two years with consent of defender to decree), section 117(3)(d) (no cohabitation for five years), or section 117(2)(b) (issue of interim gender recognition certificate) of the Act of 2004;
 - (b) in an application under section 117(3)(c) of the Act of 2004, the other party consents to decree of dissolution of civil partnership being granted;
 - (c) no other proceedings are pending in any court which could have the effect of bringing the civil partnership to an end;
 - (d) there is no child of the family (as defined in section 101(7) of the Act of 2004) under the age of 16 years;
 - (e) neither party to the civil partnership applies for an order for financial provision on dissolution of civil partnership; and
 - (f) neither party to the civil partnership suffers from mental disorder.
- (2) If an application ceases to be one to which this Part applies at any time before final decree, it shall be deemed to be abandoned and shall be dismissed.
- (3) In this Part “simplified dissolution of civil partnership application” means an application mentioned in paragraph (1).

Form of applications

- 33A.67(1) A simplified dissolution of civil partnership application in which the facts set out in section 117(3)(c) of the Act of 2004 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form CP29 and shall only be of effect if—
- (a) it is signed by the applicant; and
 - (b) the form of consent in Part 2 of Form CP29 is signed by the party to the civil partnership giving consent.
- (2) A simplified dissolution of civil partnership application in which the facts set out in section 117(3)(d) of the Act of 2004 (no cohabitation for five years) are relied on shall be made in Form CP30 and shall only be of effect if it is signed by the applicant.
- (3) A simplified dissolution of civil partnership application in which the facts set out in section 117(2)(b) of the Act of 2004 (issue of interim gender recognition certificate) are relied on shall be made in Form CP31 and shall only be of effect if it is signed by the applicant.

Lodging of applications

- 33A.68. The applicant shall send a simplified dissolution of civil partnership application to the sheriff clerk with—

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- (a) an extract or certified copy of the civil partnership certificate;
- (b) the appropriate fee; and
- (c) in an application under section 117(2)(b) of the Act of 2004, the interim gender recognition certificate or a certified copy, within the meaning of rule 33A.9(4).

Citation and intimation

33A.69(1) This rule is subject to rule 33A.70 (citation where address not known).

- (2) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified dissolution of civil partnership application.
- (3) The form of citation—
 - (a) in an application relying on the facts in section 117(3)(c) of the Act of 2004 shall be in Form CP32;
 - (b) in an application relying on the facts in section 117(3)(d) of the Act of 2004 shall be in Form CP33; and
 - (c) in an application relying on the facts in section 117(2)(b) of the Act of 2004 shall be in Form CP34.
- (4) The citation or intimation required by paragraph (2) shall be made—
 - (a) by the sheriff clerk by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);
 - (b) on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or
 - (c) where necessary, by the sheriff clerk in accordance with rule 5.5 (service on persons furth of Scotland).
- (5) Where citation or intimation is made in accordance with paragraph (4)(c), the translation into an official language of the country in which service is to be executed required by rule 5.5(6) shall be provided by the party lodging the simplified dissolution of civil partnership application.

Citation where address not known

33A.70(1) In a simplified dissolution of civil partnership application in which the facts in section 117(3)(d) (no cohabitation for five years) or section 117(2)(b) (issue of interim gender recognition certificate) of the Act of 2004 are relied on and the address of the other party to the civil partnership is not known and cannot reasonably be ascertained—

- (a) citation shall be executed by displaying a copy of the application and a notice in Form CP35 on the walls of court on a period of notice of 21 days; and
- (b) intimation shall be made to—
 - (i) every person who was a child of the family (within the meaning of section 101(7) of the Act of 2004) who has reached the age of 16 years, and
 - (ii) one of the next of kin of the other party to the civil partnership who has reached that age, unless the address of such person is not known and cannot reasonably be ascertained.

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- (2) Intimation to a person referred to in paragraph (1)(b) shall be given by intimating a copy of the application and a notice of intimation in Form CP36.

Opposition to applications

- 33A.71(1) Any person on whom service or intimation of a simplified dissolution of civil partnership application has been made may give notice by letter sent to the sheriff clerk that he challenges the jurisdiction of the court or opposes the grant of decree of dissolution of civil partnership and giving the reasons for his opposition to the application.
- (2) Where opposition to a simplified dissolution of civil partnership application is made under paragraph (1), the sheriff shall dismiss the application unless he is satisfied that the reasons given for the opposition are frivolous.
- (3) The sheriff clerk shall intimate the decision under paragraph (2) to the applicant and the respondent.
- (4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

Evidence

- 33A.72. Parole evidence shall not be given in a simplified dissolution of civil partnership application.

Decree

- 33A.73(1) The sheriff may grant decree in terms of the simplified dissolution of civil partnership application on the expiry of the period of notice if such application has been properly served provided that, when the application 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 15 November 1965 ^{F337} applies, decree shall 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) The sheriff clerk shall, not sooner than 14 days after the granting of decree in terms of paragraph (1), issue to each party to the civil partnership an extract of the decree of dissolution of civil partnership in Form CP37.

Textual Amendments

F337 Cmnd. 3986 (1969).

Appeals

- 33A.74. Any appeal against an interlocutor granting decree of dissolution of civil partnership under rule 33A.73 (decree) may be made, within 14 days after the date of decree, by sending a letter to the court giving reasons for the appeal.

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Applications after decree

- 33A.75. Any application to the court after decree of dissolution of civil partnership has been granted in a simplified dissolution of civil partnership application which could have been made if it had been made in an action of dissolution of civil partnership shall be made by minute.

PART XII

REFERRALS TO PRINCIPAL REPORTER

Application and interpretation of this Part

- 33A.76(1) This Part applies where a sheriff, in a civil partnership action, refers a matter to the Principal Reporter under section 54 of the Act of 1995 (reference to the Principal Reporter by court).
- (2) In this Part, “Principal Reporter” has the meaning assigned in section 93(1) of the Act of 1995.

Intimation to Principal Reporter

- 33A.77. Where a matter is referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995, the interlocutor making the reference shall be intimated by the sheriff clerk forthwith to the Principal Reporter; and that intimation shall specify which of the conditions in paragraph (2)(a) to (h), (j), (k) or (l) of section 52 of the Act of 1995 it appears to the sheriff has been satisfied.

Intimation of decision by Principal Reporter

- 33A.78(1) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having reached the view that compulsory measures of supervision are necessary, arranges a children's hearing under section 69 of that Act ^{M85}(continuation or disposal of referral by children's hearing), the Principal Reporter shall intimate to the court which referred the matter to him—
- (a) the decision to arrange such children's hearing;
 - (b) where there is no appeal made against the decision of that children's hearing once the period for appeal has expired, the outcome of the children's hearing; and
 - (c) where such an appeal has been made, that an appeal has been made and, once determined, the outcome of that appeal.
- (2) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having considered whether compulsory measures of supervision are necessary, decides not to arrange a children's hearing under section 69 of that Act, the Principal Reporter shall intimate that decision to the court which referred the matter to him.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Marginal Citations

M85 Section 69 was amended by the [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [Schedule 4](#), paragraph 4(5).

PART XIII

SISTING OF CIVIL PARTNERSHIP ACTIONS

Application and interpretation of this Part

33A.79(1) This Part applies to any action for—
dissolution of civil partnership;
separation of civil partners.

(2) In this Part—

“another jurisdiction” means any country outside Scotland.

“related jurisdiction” means any of the following countries, namely, England and Wales, Northern Ireland, Jersey, Guernsey and the Isle of Man (the reference to Guernsey being treated as including Alderney and Sark).

(3) For the purposes of this Part—

(a) neither the taking of evidence on commission nor a separate proof relating to any preliminary plea shall be regarded as part of the proof in the action; and

(b) an action is continuing if it is pending and not sisted.

(4) Any reference in this Part to proceedings in another jurisdiction is to proceedings in a court or before an administrative authority of that jurisdiction.

Duty to furnish particulars of concurrent proceedings

33A.80. While any action to which this Part applies is pending in a sheriff court and proof in that action has not begun, it shall be the duty of the pursuer, and of any other person who has entered appearance in the action, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be so prescribed of any proceedings which—

(a) he knows to be continuing in another jurisdiction; and

(b) are in respect of that civil partnership or capable of affecting its validity.

Mandatory sists

33A.81. Where before the beginning of the proof in any action for dissolution of civil partnership it appears to the sheriff on the application of a party to the civil partnership—

(a) that in respect of the same civil partnership proceedings for dissolution or nullity of civil partnership are continuing in a related jurisdiction; and

(b) that the parties to the civil partnership have resided together after the civil partnership was formed or treated as having been formed within the meaning of section 1(1) of the Act of 2004; and

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- (c) that the place where they resided together when the action was begun or, if they did not then reside together, where they last resided together before the date on which that action was begun is in that jurisdiction; and
- (d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which that action was begun;

it shall be the duty of the sheriff, subject to rule 33A.83(2) below, to sist the action before him.

Discretionary sists

33A.81(1) Where before the beginning of the proof in any action to which this Part applies, it appears to the sheriff—

- (a) that any other proceedings in respect of the civil partnership in question or capable of affecting its validity are continuing in another jurisdiction, and
- (b) that the balance of fairness (including convenience) as between the parties to the civil partnership is such that it is appropriate for those other proceedings to be disposed of before further steps are taken in the action,

the sheriff may then if he thinks fit sist that action.

(2) In considering the balance of fairness and convenience for the purposes of paragraph (1)(b), the sheriff shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being sisted, or not being sisted.

(3) Paragraph (1) is without prejudice to the duty imposed by rule 33A.81 above.

(4) If, at any time after the beginning of the proof in any action to which this Part applies, the sheriff is satisfied that a person has failed to perform the duty imposed on him in respect of the action and any such other proceedings as aforesaid by rule 33A.80, paragraph (1) shall have effect in relation to that action and to the other proceedings as if the words “before the beginning of the proof” were omitted; but no action in respect of the failure of a person to perform such a duty shall be competent.

Recall of sists

33A.82(1) Where an action is sisted in pursuance of rule 33A.81 or 33A.82, the sheriff may if he thinks fit, on the application of a party to the action, recall the sist if it appears to him that the other proceedings by reference to which the action was sisted are sisted or concluded or that a party to those other proceedings has delayed unreasonably in prosecuting those other proceedings.

(2) Where an action has been sisted in pursuance of rule 33A.82 by reference to some other proceedings, and the sheriff recalls the sist in pursuance of the preceding paragraph, the sheriff shall not again sist the action in pursuance of the said rule 33A.82.

Orders in sisted actions

33A.84(1) The provisions of paragraphs (2) and (3) shall apply where an action to which this Part applies is sisted by reference to proceedings in a related jurisdiction for any of those remedies; and in this rule—

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“the other proceedings”, in relation to any sisted action, means the proceedings in another jurisdiction by reference to which the action was sisted;

“relevant order” means an interim order relating to aliment or children; and

“sisted” means sisted in pursuance of this Part.

- (2) Where an action such as is mentioned in paragraph (1) is sisted, then, without prejudice to the effect of the sist apart from this paragraph—
- (a) the sheriff shall not have power to make a relevant order in connection with the sisted action except in pursuance of sub paragraph (c); and
 - (b) subject to the said sub paragraph (c), any relevant order made in connection with the sisted action shall (unless the sist or the relevant order has been previously recalled) cease to have effect on the expiration of the period of three months beginning with the date on which the sist comes into operation; but
 - (c) if the sheriff considers that as a matter of necessity and urgency it is necessary during or after that period to make a relevant order in connection with the sisted action or to extend or further extend the duration of a relevant order made in connection with the sisted action, the sheriff may do so, and the order shall not cease to have effect by virtue of sub paragraph (b).
- (3) Where any action such as is mentioned in paragraph (1) is sisted and at the time when the sist comes into operation, an order is in force, or at a subsequent time an order comes into force, being an order made in connection with the other proceedings and providing for any of the following matters, namely periodical payments for a party to the civil partnership in question, periodical payments for a child, the arrangements to be made as to with whom a child is to live, contact with a child, and any other matter relating to parental responsibilities or parental rights, then, as from the time when the sist comes into operation (in a case where the order is in force at that time) or (in any other case) on the coming into force of the order—
- (a) any relevant order made in connection with the sisted action shall cease to have effect in so far as it makes for a civil partner or child any provision for any of the said matters as respects which the same or different provision for that civil partner or child is made by the other order; and
 - (b) the sheriff shall not have power in connection with the sisted action to make a relevant order containing for a civil partner or child provision for any of the matters aforesaid as respects which any provision for that civil partner or child is made by the other order.
- (4) Nothing in this paragraph affects any power of a sheriff—
- (a) to vary or recall a relevant order in so far as the order is for the time being in force; or
 - (b) to enforce a relevant order as respects any period when it is or was in force; or
 - (c) to make a relevant order in connection with an action which was, but is no longer, sisted.

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VALID FROM 04/05/2006

[^{F338}CHAPTER 33B

FINANCIAL PROVISION FOR FORMER COHABITANTS

Textual Amendments

F338 Sch. 1 Ch. 33B inserted (4.5.2006) by Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 (S.S.I. 2006/207), {rule 2(58)}

Interpretation of this Chapter

33B.1. In this Chapter—

- “the Act” means the Family Law (Scotland) Act 2006 ^{M86};
- “cohabitant” has the meaning given in section 25 of the Act;
- “the deceased” means the cohabitant referred to in section 29(1)(a) of the Act;
- “net intestate estate” has the meaning given in section 29(10) of the Act;
- “the survivor” means the cohabitant referred to in section 29(1)(b) of the Act.

Marginal Citations

M86 2006 asp2.

33B.2.(1) An application under—

- (a) section 28(2) of the Act for an order for financial provision where cohabitation ends otherwise than by death; or
- (b) section 29(2) of the Act for an order for financial provision by the survivor on intestacy,

shall be made by initial writ.

(2) In an initial writ under paragraph (1)(b) the pursuer shall—

- (a) name the deceased's executor as the defender; and
- (b) include a crave for a warrant for intimation to any person having an interest in the deceased's net intestate estate, and a notice of intimation in Form CO1 shall be attached to the initial writ intimated to any such person.

(3) Where the identity or address of any person referred to in paragraph (2)(b) is not known and cannot be ascertained, the pursuer shall include in his pleadings an averment of that fact and averments setting out what steps have been taken to identify the identity or address, as the case may be, of that person.

(4) An application under section 29(9) of the Act for variation of the date or method of payment of a capital sum shall be made by minute in the process of the action to which the application relates.]

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CHAPTER 34

ACTIONS RELATING TO HERITABLE PROPERTY

PART I

SEQUESTRATION FOR RENT

Actions craving payment [^{F339}of rent]

34.1. (1) In an action for sequestration and sale—

- (a) for non-payment of rent,
- (b) for recovery of rent, or
- (c) in security of rent,

whether brought before or after the term of payment, payment of rent may be craved; and decree for payment of such rent or part of it, when due and payable, may be pronounced and extracted in common form.

(2) There shall be served on the defender in such an action, with the initial writ, warrant and citation, a notice in Form H1.

Textual Amendments

F339 Words in rule 34.1 heading substituted (1.11.1996) by S.I. 1996/2445, para. 3(57)

Warrant to inventory and secure

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

(2) A warrant to sequester, inventory, sell, eject or relet shall include authority to open ^{F340} . . . shut and lockfast places for the purpose of executing such warrant.

Textual Amendments

F340 Rule 34.2(2): comma omitted (1.11.1996) by S.I. 1996/2445, para. 3(58)

Sale of effects

34.3. (1) In an action for sequestration and sale, the sheriff may order the sequestered effects to be sold by a sheriff officer or other named person.

(2) Where a sale follows an order under paragraph (1), the sale shall be reported within 14 days after the date of the sale and the pursuer shall lodge with the sheriff clerk the roup rolls or certified copies of them and a state of debt.

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

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Care of effects

- 34.4. The sheriff may, at any stage of an action for sequestration and sale appoint a fit person to take charge of the sequestrated effects, or may require the tenant to find caution that they shall be made available.

PART II

REMOVING

Actions of removing where fixed term of removal

- 34.5. (1) Subject to section 21 of the Agricultural Holdings (Scotland) Act 1991 ^{M87}(notice to quit and notice of intention to quit)—
- (a) where 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) where 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 shall 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 verbal, 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 shall 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 shall 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.
- (3) In an action for declarator of irritancy and removing by a superior against a vassal, the pursuer shall call as parties the last entered vassal and such heritable creditors and holders of postponed ground burdens as are disclosed by a search for 20 years before the raising of the action, and the expense of the search shall form part of the pursuer's expenses of process.

Marginal Citations

M87 [1991 c.55.](#)

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Form of notice of removal

34.6. (1) A notice under the following sections of [^{F341}the ^{M88}Sheriff Courts (Scotland) Act 1907] shall be in Form H2:—

- (a) section 34 (notice in writing to remove where lands exceeding two acres held on probative lease),
- (b) section 35 (letter of removal where tenant in possession of lands exceeding two acres), and
- (c) section 36 (notice of removal where lands exceeding two acres occupied by tenant without written lease).

(2) A letter of removal shall be in Form H3.

Textual Amendments

F341 Words in rule 34.6(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(59)

Marginal Citations

M88 1907 c. 51

Form of notice under section 37 of [^{F342}the Act of 1907]

34.7. A notice under section 37 of [^{F343}the Sheriff Courts (Scotland) Act 1907] (notice of termination of tenancy) shall be in Form H4.

Textual Amendments

F342 Words in rule 34.7 heading substituted (1.11.1996) by S.I. 1996/2445, para. 3(60)(a)

F343 Words in rule 34.7 substituted (1.11.1996) by S.I. 1996/2445, para. 3(60)(b)

Giving notice of removal

34.8. (1) A notice under section 34, 35, 36, 37 or 38 of [^{F344}the Sheriff Courts (Scotland) Act 1907] (which relate to notices of removal) 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 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 a section of [^{F344}the Sheriff Courts (Scotland) Act 1907] mentioned in paragraph (1) in any manner in which he may serve an initial writ; and, accordingly, rule 5.4 (service within Scotland by sheriff officer) shall, with the necessary modifications, apply to the giving of notice under this paragraph as it applies to service of an initial writ.

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Textual Amendments

F344 Words in [rule 34.8](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(61\)](#)

Evidence of notice to remove

- 34.9. (1) A certificate of the sending of notice under rule 34.8 dated and endorsed on the lease or an extract of it, or on the letter of removal, signed by the sheriff officer or the person sending the notice, his solicitor or factor, or an acknowledgement of the notice endorsed on the lease or an extract of it, or on the letter of removal, by the party in possession or his agent, shall be sufficient evidence that notice has been given.
- (2) Where there is no lease, a certificate of the sending of such notice shall be endorsed on a copy of the notice or letter of removal.

Applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970

- 34.10. (1) An application or counter-application to the sheriff under any of the following provisions of Part II of the ^{M89}Conveyancing and Feudal Reform (Scotland) Act 1970 (which relates to the standard security) shall be made by initial writ where any other remedy is craved:—
- (a) ^{M90}section 18(2) (declarator that obligations under contract performed);
 - (b) section 20(3) (application by creditor for warrant to let security subjects);
 - (c) section 22(1) (objections to notice of default); and
 - (d) section 22(3) (counter-application for remedies under the Act);
 - (e) section 24(1) (application by a creditor for warrant to exercise remedies on default); and
 - (f) section 28(1) (decree of foreclosure).
- (2) An interlocutor of the sheriff disposing of an application or counter-application under paragraph (1) shall be final and not subject to appeal except as to a question of title or any other remedy granted.

Marginal Citations

M89 1970 c.35.

M90 [Section 18\(2\)](#) was amended by the [Redemption of Standard Securities \(Scotland\) Act 1971 \(c.45\)](#), [section 1](#).

Service on unnamed occupiers

- [^{F345}34(1)]. Subject to paragraph (2), this rule applies only to a crave for removing in an action of removing 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.

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- (3) Where this rule applies, the pursuer may apply by motion to shorten or dispense with the period of notice or other period of time in these Rules relating to the conduct of the action or the extracting of any decree.
- (4) Where the name of a person in occupation of the 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”.
- (5) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the initial writ shall be served (whether or not it is also served on a named person), unless the court otherwise directs, by a sheriff officer—
 - (a) affixing a copy of the initial writ and a citation in Form H5 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 initial writ and a citation in Form H5 addressed to “the occupiers”.]

Textual Amendments

F345 Sch. 1 rule 34.11 inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(18)

Applications under the Mortgage Rights (Scotland) Act 2001

[^{F346}34(1). In an action to which rule 3.2(3) applies, an application under either of the following provisions of the Mortgage Rights (Scotland) Act 2001 shall be made by minute in the action:—

- (a) section 1(2)(application to the court for an order under section 2);
 - (b) section 2(5)(application to vary or revoke an order or to further continue proceedings).
- (2) Any such minute may be lodged by a person who is entitled to make an application even although that person has not been called as a defender and such a person may appear or be represented at any hearing to determine the application.]

Textual Amendments

F346 Rule 34.12 inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (2002/7), {para. 2(5)}

CHAPTER 35

ACTIONS OF MULTIPLEPOINDING

Application of this Chapter

35.1. This Chapter applies to an action of multiplepoinding.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

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Application of Chapters 9 and 10

- 35.2. Chapter 10 (additional procedure) and the following rules in Chapter 9 (standard procedure in defended causes) shall not apply to an action of multiplepounding:—
- rule9.1 (notice of intention to defend),
 - rule9.2 (fixing date for Options Hearing),
 - rule9.4 (lodging of pleadings before Options Hearing),
 - rule9.8 (adjustment of pleadings),
 - rule9.9 (effect of sist on adjustment),
 - rule9.10 (open record),
 - rule9.11 (record for Option Hearing),
 - rule9.12 (Option Hearing),
 - rule9.15 (applications for time to pay directions).

Parties

- 35.3. (1) An action of multiplepounding may be brought by any person holding, or having an interest in, or claim on, the fund in medio in his own name.
- (2) The pursuer shall call as defenders to such an action—
- (a) all persons so far as known to him as having an interest in the fund in medio; and
 - (b) where he is not the holder of the fund, the holder of that fund.

Condescence of fund in medio

- 35.4. (1) Where the pursuer is the holder of the fund in medio, he shall include a detailed statement of the fund in the condescence in the initial writ.
- (2) Where the pursuer is not the holder of the fund in medio, the holder shall, before the expiry of the period of notice—
- (a) lodge in process—
 - (i) a condescence of the fund in medio, stating any claim or lien which he may profess to have on that fund;
 - (ii) a list of all persons known to him as having an interest in the fund; and
 - (b) intimate a copy of the condescence and list to any other party.

Warrant of citation in multiplepoundings

- 35.5. The warrant of citation of the initial writ in an action of multiplepounding shall be in Form M1.

Citation

- 35.6. (1) Subject to rule 5.6 (service where address of person is not known), citation of any person in an action of multiplepounding shall be in Form M2 which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of appearance in Form M4.
- (2) The certificate of citation shall be in Form M3 and shall be attached to the initial writ.

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Advertisement

- 35.7. The sheriff may make an order for advertisement of the action in such newspapers as he thinks fit.

Lodging of notice of appearance

- 35.8. Where a party intends to lodge—
- (a) defences to challenge the jurisdiction of the court or the competency of the action,
 - (b) objections to the condescendence of the fund in medio, or
 - (c) a claim on the fund,
- he shall, before the expiry of the period of notice, lodge a notice of appearance in Form M4.

Fixing date of first hearing

- 35.9. Where a notice of appearance, or a condescendence on the fund in medio and a list under rule 35.4(2)(a) has been lodged, the sheriff clerk shall—
- (a) fix a date and time for the first hearing, which date shall be the first suitable court day occurring not sooner than four weeks after the expiry of the period of notice;
 - (b) on fixing the date for the first hearing forthwith intimate that date in Form M5 to each party; and
 - (c) prepare and sign an interlocutor recording the date of the first hearing.

Hearings

- 35.10. (1) The sheriff shall conduct the first, and any subsequent hearing, with a view to securing the expeditious progress of the cause by ascertaining from the parties the matters in dispute.
- (2) The parties shall provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this Chapter.
 - (3) At the first, or any subsequent hearing, the sheriff shall fix a period within which defences, objections or claims shall be lodged, and appoint a date for a second hearing.
 - (4) Where the list lodged under rule 35.4(2)(a) contains any person who is not a party to the action, the sheriff shall order—
 - (a) the initial writ to be amended to add that person as a defender;
 - (b) service of the pleadings so amended to be made on that person, with a citation in Form M6; and
 - (c) intimation to that person of any condescendence of the fund in medio lodged by a holder of the fund who is not the pursuer.
 - (5) Where a person to whom service has been made under paragraph (4) lodges a notice of appearance under rule 35.8, the sheriff clerk shall intimate to him in Form M5 the date of the next hearing fixed in the action.

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Lodging defences, objections and claims

- 35.11. (1) Defences, objections and claims by a party shall be lodged with the sheriff clerk in a single document under separate headings.
- (2) Each claimant shall lodge with his claim any documents founded on in his claim, so far as they are within his custody or power.

Disposal of defences

- 35.12. (1) Where defences have been lodged, the sheriff may order the initial writ and defences to be adjusted and thereafter close the record and regulate further procedure.
- (2) Unless the sheriff otherwise directs, defences shall be disposed of before any further procedure in the action.

Objections to fund in medio

- 35.13. (1) Where objections to the fund in medio have been lodged, the sheriff may, after disposal of any defences, order the condescendence of the fund and objections to be adjusted; and thereafter close the record and regulate further procedure.
- (2) If no objections to the fund in medio have been lodged, or if objections have been lodged and disposed of, the sheriff may, on the motion of the holder of the fund, and without ordering intimation to any party approve the condescendence of the fund and find the holder liable only in one single payment.

Preliminary pleas in multiple findings

- 35.14. (1) A party intending to insist on a preliminary plea shall, not later than 3 days before any hearing to determine further procedure following the lodging of defences, objections or claims, lodge with the sheriff clerk a note of the basis of the plea.
- (2) Where a party fails to comply with the provisions of paragraph (1), he shall be deemed to be no longer insisting on the plea and the plea shall be repelled by the sheriff at the hearing referred to in paragraph (1).
- (3) If satisfied that there is a preliminary matter of law which justifies a debate, the sheriff shall, after having heard parties and considered the note lodged under this rule, appoint the action to debate.

Consignation of the fund and discharge of holder

- 35.15. (1) At any time after the condescendence of the fund in medio has been approved, the sheriff may order the whole or any part of the fund to be sold and the proceeds of the sale consigned into court.
- (2) After such consignation the holder of the fund in medio may apply for his exoneration and discharge.
- (3) The sheriff may allow the holder of the fund in medio, on his exoneration and discharge, his expenses out of the fund as a first charge on the fund.

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Further service or advertisement

- 35.16. The sheriff may at any time, of his own motion or on the motion of any party, order further service on any person or advertisement.

Ranking of claims

- 35.17. (1) After disposal of any defences, and approval of the condescendence of the fund in medio, the sheriff may, where there is no competition on the fund, rank and prefer the claimants and grant decree in terms of that ranking.
- (2) Where there is competition on the fund, the sheriff may order claims to be adjusted and thereafter close the record and regulate further procedure.

Remit to reporter

- 35.18. (1) Where several claims have been lodged, the sheriff may remit to a reporter to prepare a scheme of division and report.
- (2) The expenses of such remit, when approved by the sheriff, shall be made a charge on the fund, to be deducted before division.

CHAPTER 36

ACTIONS OF DAMAGES

PART I

INTIMATION TO CONNECTED PERSONS IN CERTAIN ACTIONS OF DAMAGES

Application and interpretation of this Part

- 36.1. (1) This Part 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 Part—
- “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;
- “relative” has the meaning assigned to it in Schedule 1 to the ^{M91}Damages (Scotland) Act 1976.

Marginal Citations

M91 1976 c.13; Schedule 1 was amended by the Administration of Justice Act 1982 (c.53), section 14(4).

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

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Averments

- 36.2. In an action to which this Part applies, the pursuer shall aver in the condescence, as the case may be—
- (a) that there are no connected persons;
 - (b) that there are connected persons, being the persons specified in the crave for intimation;
 - (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.

Warrants for intimation

- 36.3. (1) Where the pursuer makes averments under rule 36.2(b) (existence of connected persons), he shall include a crave in the initial writ for intimation to any person who is believed to have title to sue the defender in an action in respect of the death of the deceased or the personal injuries from which the deceased died.
- (2) A notice of intimation in Form D1 shall be attached to the copy of the initial writ where intimation is given on a warrant under paragraph (1).

Applications to dispense with intimation

- 36.4. (1) Where the pursuer makes averments under rule 36.2(c) (dispensing with intimation to connected persons), he shall apply by crave in the initial writ for an order to dispense with intimation.
- (2) In determining an application under paragraph (1), 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.
- (3) 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.

Subsequent disclosure of connected persons

- 36.5. Where the name or whereabouts of a person, in respect of whom the sheriff has dispensed with intimation on a ground specified in rule 36.2(c) (dispensing with intimation to connected persons), subsequently becomes known to the pursuer, the pursuer shall apply to the sheriff by motion for a warrant for intimation to such a person; and such intimation shall be made in accordance with rule 36.3(2).

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Connected persons entering process

- 36.6. (1) A connected person may apply by minute craving leave to be sisted as an additional pursuer to the action.
- (2) Such a minute shall also crave leave of the sheriff to adopt the existing grounds of action, and to amend the craves, condescendence and pleas-in-law.
- (3) The period within which answers to a minute under this rule may be lodged shall be 14 days from the date of intimation of the minute.
- (4) [^{F347}Rule 14.13 (procedure following grant of minute)] shall not apply to a minute to which this rule applies.

Textual Amendments

F347 Words in rule 36.6(4) substituted (1.11.1996) by S.I. 1996/2445, para. 3(62)

Failure to enter process

- 36.7. Where a connected person to whom intimation is made in accordance with this Part—
- (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.

PART II

INTERIM PAYMENTS OF DAMAGES

Application and interpretation of this Part

- 36.8. (1) This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.
- (2) In this Part—
- “defender” includes a third party against whom the pursuer has a crave for damages;
- “personal injuries” includes any disease or impairment of a physical or mental condition.

Applications for interim payment of damages

- 36.9. (1) In an action to which this Part applies, a pursuer may, at any time after defences have been lodged, apply by motion for an order for interim payment of damages to him by the defender or, where there are two or more of them, by any one or more of them.
- (2) The pursuer shall intimate a motion under paragraph (1) to every other party on a period of notice of 14 days.

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- (3) On a motion under paragraph (1), the sheriff may, if satisfied that—
- (a) the defender has admitted liability to the pursuer in the action, or
 - (b) if the action proceeded to proof, the pursuer would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part, or on the part of any person in respect of whose injury or death the claim of the pursuer arises, and would obtain decree for damages against any defender,
- ordain that defender to make an interim payment to the pursuer of such amount as the sheriff thinks fit, not exceeding a reasonable proportion of the damages which, in the opinion of the sheriff, are likely to be recovered by the pursuer.
- (4) Any such payment may be ordered to be made in one lump sum or otherwise as the sheriff thinks fit.
- (5) No order shall be made against a defender under this rule unless it appears to the sheriff that the defender is—
- (a) a person who is insured in respect of the claim of the pursuer;
 - (b) a public authority; or
 - (c) a person whose means and resources are such as to enable him to make the interim payment.
- (6) Notwithstanding the grant or refusal of a motion for an interim payment, a subsequent motion may be made where there has been a change of circumstances.
- (7) Subject to Part IV (management of damages payable to persons under legal disability), an interim payment shall be made to the pursuer unless the sheriff otherwise directs.
- (8) This rule shall, with the necessary modifications, apply to a counterclaim for damages for personal injuries made by a defender as it applies to an action in which the pursuer may apply for an order for interim payment of damages.

Adjustment on final decree

- 36.10. Where a defender has made an interim payment under rule 36.9, the sheriff may, when final decree is pronounced, make such order with respect to the interim payment as he thinks fit to give effect to the final liability of that defender to the pursuer; and in particular may order—
- (a) repayment by the pursuer of any sum by which the interim payment exceeds the amount which that defender is liable to pay to the pursuer; or
 - (b) payment by any other defender or a third party, of any part of the interim payment which the defender who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to, or connected with, the claim of the pursuer.

PART III

PROVISIONAL DAMAGES FOR PERSONAL INJURIES

Application and interpretation of this Part

- 36.11. (1) This Part applies to an action of damages for personal injuries.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

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(2) In this Part—

“the Act of 1982” means the ^{M92}Administration of Justice Act 1982;

“further damages” means the damages referred to in section 12(4)(b) of the Act of 1982;

“provisional damages” means the damages referred to in section 12(4)(a) of the Act of 1982.

Marginal Citations

M92 1982 c.53.

Applications for provisional damages

36.12. An application under section 12(2)(a) of the Act of 1982 for provisional damages for personal injuries shall be made by including in the initial writ—

- (a) a crave for provisional damages;
- (b) averments in the condescence supporting the crave, including averments—
 - (i) that there is a risk that, at some definite or indefinite time in the future, the pursuer will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration of his physical or mental condition; and
 - (ii) that the defender was, at the time of the act or omission which gave rise to the cause of action, a public authority, public corporation or insured or otherwise indemnified in respect of the claim; and
- (c) an appropriate plea-in-law.

Applications for further damages

36.13. (1) An application for further damages by a pursuer in respect of whom an order under section 12(2)(b) of the Act of 1982 has been made shall be made by minute in the process of the action to which it relates and shall include—

- (a) a crave for further damages;
- (b) averments in the statement of facts supporting that crave; and
- (c) appropriate pleas-in-law.

(2) On lodging such a minute in process, the pursuer shall apply by motion for warrant to serve the minute on—

- (a) every other party; and
- (b) where such other party is insured or otherwise indemnified, his insurer or indemnifier, if known to the pursuer.

(3) Any such party, insurer or indemnifier may lodge answers to such a minute in process within 28 days after the date of service on him.

(4) Where answers have been lodged under paragraph (3), the sheriff may, on the motion of any party, make such further order as to procedure as he thinks fit.

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PART IV

MANAGEMENT OF DAMAGES PAYABLE TO PERSONS UNDER LEGAL DISABILITY

Orders for payment and management of money

- 36.14. (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 [^{F348}(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) An order under paragraph (1) shall be made on the granting of decree for payment or of absolvitor.

Textual Amendments

F348 Words in rule 36.14(1) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 34

Methods of management

- 36.15. In making an order under rule 36.14(1), the sheriff may—
- (a) appoint a judicial factor to apply, invest or otherwise deal with the money for the benefit of the person under legal disability;
 - (b) 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;
 - (c) 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
 - (d) order the money to be paid directly to the person under legal disability.

Subsequent orders

- 36.16. (1) Where the sheriff has made an order under rule 36.14(1), any person having an interest may apply for an appointment or order under rule 36.15, or any other order for the payment or management of the money, by minute in the process of the cause to which the application relates.
- (2) An application for directions under rule 36.15(b) or (c) may be made by any person having an interest by minute in the process of the cause to which the application relates.

Management of money paid to sheriff clerk

- 36.17. (1) A receipt in Form D2 by the sheriff clerk shall be a sufficient discharge in respect of the amount paid to him under this Part.

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- (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 this Part shall 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 this Part shall be invested in a manner in which trustees are authorised to invest by virtue of the ^{M93}Trustee Investments Act 1961.

Marginal Citations

M93 1961 c.62.

^{F349}PART V

PRODUCTIONS IN CERTAIN ACTIONS OF DAMAGES

Textual Amendments

F349 Sch. 1 Ch. 36 Pt. 4A inserted (2.10.2000) by S.S.I. 2000/239, para. 3(19)

Application of this Part

^{F350}36.17A. This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.

Textual Amendments

F350 Sch. 1 Chapter 36 Pt. IV A (rules 36.17A - 36.17C) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(19)

Averments of medical treatment

^{F351}36.17B. The condescence of the initial writ in an action to which this Part applies shall include averments naming—

(a) every general medical practitioner or general medical practice from whom;
and

(b) 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 the injuries sustained, or disease suffered, by him.

Textual Amendments

F351 Sch. 1 Chapter 36 Pt. IV A (rules 36.17A - 36.17C) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(19)

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Lodging of medical reports

^{F352}36.17C In an action to which this Part applies, the pursuer shall lodge as productions, with the initial writ when it is presented for warranting in accordance with rule 5.1, all medical reports on which he intends, or intends to reserve the right, to rely in the action.

- (2) Where no medical report is lodged as required by paragraph (1), the defender may apply by motion for an order specifying a period within which such a report shall be lodged in process.]

Textual Amendments

F352 Sch. 1 Chapter 36 Pt. IV A (rules 36.17A - 36.17C) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(19)

SEX DISCRIMINATION ACT 1975

Causes under section 66 of the Act of 1975

36.18.(1) In a cause in which a breach of statutory duty under section 66(1) of the ^{M94}Sex Discrimination Act 1975 (proceedings for act of discrimination) is averred, the sheriff may, of his own motion or on the motion of any party, appoint an assessor.

- (2) An assessor appointed under paragraph (1) shall be a person who the sheriff considers has special qualifications to be of assistance in determining [^{F353}a cause] referred to in that paragraph.

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

Textual Amendments

F353 Words in rule 36.18(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(1)(63)

Marginal Citations

M94 1975 c.65.

CHAPTER 37

CAUSES UNDER THE PRESUMPTION OF DEATH (SCOTLAND) ACT 1977

Interpretation of this Chapter

37.1. In this Chapter—

- “the Act of 1977” means the ^{M95}Presumption of Death (Scotland) Act 1977;
“action of declarator” means an action under section 1(1) of the Act of 1977;
“missing person” has the meaning assigned in section 1(1) of the Act of 1977.

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Marginal Citations

M95 1977 c.27.

Parties to, and service and intimation of, actions of declarator

- 37^{F354}(1) In an action of declarator—
- (a) the missing person shall be named as the defender;
 - (b) subject to paragraph (2), service on that person shall be executed by advertisement in such newspaper or other publication as the sheriff thinks fit of such facts relating to the missing person and set out in the initial writ as the sheriff may specify; and
 - (c) the period of notice shall be 21 days from the date of publication of the advertisement unless the sheriff otherwise directs.]
- [^{F355}(2) The advertisement mentioned in paragraph (1) shall be in Form P1.]
- (3) Subject to paragraph (5), in an action of declarator, the pursuer shall include a crave for a warrant for intimation to—
 - (a) the missing person’s—
 - (i) spouse, and
 - (ii) children, or, if he has no children, his nearest relative known to the pursuer,
 - (b) any person, including any insurance company, who so far as known to the pursuer has an interest in the action, and
 - (c) the Lord Advocate,in the following terms:— “For intimation to (name and address) as [husband or wife, child or nearest relative] [a person having an interest in the presumed death] of (name and last known address of the missing person) and to the Lord Advocate.”.
 - (4) A notice of intimation in Form P2 shall be attached to the copy of the [^{F356}initial writ] where intimation is given on a warrant under paragraph (3).
 - (5) The sheriff may, on the motion of the pursuer, dispense with intimation on a person mentioned in paragraph (3)(a) or (b).
 - (6) An application by minute under section 1(5) of the Act of 1977 (person interested in seeking determination or appointment not sought by pursuer) shall contain a crave for the determination or appointment sought, averments in the answers to the condescendence in support of that crave and an appropriate plea-in-law.
 - (7) On lodging a minute under paragraph (6), the minuter shall—
 - (a) send a copy of the minute by registered post or the first class recorded delivery service to each person to whom intimation of the action has been made under paragraph (2); and
 - (b) lodge in process the Post Office receipt or certificate of posting of that minute.

Textual Amendments

F354 Sch. 1 rule 37.2(1) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(20)(a)

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F355 Sch. 1 rule 37.2(2) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(20)(b)

F356 Words in Sch. 1 rule 37.2(4) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(20)(c)

Further advertisement

37.3. Where no minute has been lodged indicating knowledge of the present whereabouts of the missing person, at any time before the determination of the action, the sheriff may, of his own motion or on the motion of a party, make such order for further advertisement as he thinks fit.

Applications for proof

37.4. (1) In an action of declarator where no minute has been lodged, the pursuer shall, after such further advertisement as may be ordered under rule 37.3, apply to the sheriff by motion for an order for proof.

(2) A proof ordered under paragraph (1) shall be by affidavit evidence unless the sheriff otherwise directs.

Applications for variation or recall of decree

37.5. (1) An application under section 4(1) of the Act of 1977 (variation or recall of decree) shall be made by minute in the process of the action to which it relates.

(2) On the lodging of such a minute, the sheriff shall make an order—

- (a) for service on the missing person, where his whereabouts have become known;
- (b) for intimation to those persons mentioned in rule 37.2(3) or to dispense with intimation to a person mentioned in rule 37.2(3)(a) or (b); and
- (c) for any answers to the minute to be lodged in process within such period as the sheriff thinks fit.

(3) An application under section 4(3) of the Act of 1977 (person interested seeking determination or appointment not sought by applicant for variation order) shall be made by lodging answers containing a crave for the determination or appointment sought.

(4) A person lodging answers containing a crave under paragraph (3) shall, as well as sending a copy of the answers to the minuter—

- (a) send a copy of the answers by registered post or the first class recorded delivery service to each person on whom service or intimation of the minute was ordered; and
- (b) lodge in process the Post Office receipt or certificate of posting of those answers.

Appointment of judicial factors

37.6. (1) The Act of Sederunt (Judicial Factors Rules) 1992^{F357} shall apply to an application for the appointment of a judicial factor under section 2(2)(c) or section 4(2) of the Act of 1977 as it applies to a petition for the appointment of a judicial factor.

(2) In the application of rule 37.5 (applications for variation or recall of decree) to an application under section 4(1) of the Act of 1977 in a cause in which variation or

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recall of the appointment of a judicial factor is sought, for references to a minute there shall be substituted references to a note.

Textual Amendments
F357 S.I. 1992/272.

CHAPTER 38

EUROPEAN COURT

Interpretation of this Chapter

38.1. (1) In this Chapter—

“appeal” includes an application for leave to appeal;

“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 [^{F358}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 ^{M96}Civil Jurisdiction and Judgments Act 1982, under Article 3 of Schedule 2 to that Act.

(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 ^{M97}European Communities Act 1972.

Textual Amendments

F358 Word in Sch. 1 rule 38.1(1)(a) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(21)

Marginal Citations

M96 1982 c.27; section 1(1) was amended by section 2 of, and Schedule 2 by section 3 of, and Schedule 2 to, the Civil Jurisdiction and Judgments Act 1991 (c.12).

M97 1972 c.68.

Applications for reference

38.2. (1) A reference may be made by the sheriff of his own motion or on the motion of a party.

^{F359}(2)

Textual Amendments

F359 Sch. 1 rule 38.2(2) omitted (2.10.2000) by virtue of S.S.I. 2000/239, para. 3(1)(22)

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Preparation of case for reference

- 38.3. (1) Where the sheriff decides that a reference shall be made, he shall continue the cause for that purpose and, within 4 weeks after the date of that continuation, draft a reference.
- [^{F360}(1A) Except in so far as the sheriff may otherwise direct, a reference shall be prepared in accordance with Form E1, having regard to the guidance set out in the ^{M98}Notes for Guidance issued by the Court of Justice of the European Communities.]
- (2) On the reference being drafted, the sheriff clerk shall send a copy to each party.
- (3) Within 4 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.
- (4) Within 14 days after the date on which any such note of adjustments may be lodged, the sheriff, after considering any such adjustments, shall make and sign the reference.
- (5) The sheriff clerk shall forthwith intimate the making of the reference to each party.

Textual Amendments

F360 Sch. 1 rule 38.3(1A) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(23)

Marginal Citations

M98 The Notes for Guidance are reproduced in the Parliament House Book.

Sist of cause

- 38.4. (1) Subject to paragraph (2), on a reference being made, the cause shall, unless the sheriff when making such a reference otherwise orders, be sisted until the European Court has given a preliminary ruling on the question 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

- 38.5. (1) Subject to paragraph (2), a copy of the reference, certified by the sheriff clerk, shall be transmitted by the sheriff clerk to the Registrar of the European Court.
- (2) Unless the sheriff otherwise directs, a copy of the reference shall not be sent to the Registrar of the European Court where an appeal against the making of the reference is pending.
- (3) For the purpose of paragraph (2), an appeal shall be treated as pending—
- (a) until the expiry of the time for making that appeal; or
 - (b) where an appeal has been made, until that appeal has been determined.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

[^{F361}CHAPTER 39

PROVISIONS IN RELATION TO CURATORS AD LITEM

Textual Amendments

F361 Sch. 1 Ch. 39 (rule 39.1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(24)

Fees and outlays of curators ad litem in respect of children

^{F362}39.(1) This rule applies to any civil proceedings whether or not the child is a party to the action.

(2) In an action where the sheriff appoints a curator *ad litem* to a child, the pursuer shall in the first instance, unless the court otherwise directs, be responsible for the fees and outlays of the curator *ad litem* incurred during the period from his appointment until the occurrence of any of the following events:—

- (a) he lodges a minute stating that he does not intend to lodge defences or to enter the process;
- (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
- (c) the discharge, before the occurrence of the events mentioned in sub paragraphs (a) and (b), of the curator.]

Textual Amendments

F362 Sch. 1 Ch. 39 (rule 39(1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(24)

[^{F363}CHAPTER 40

COMMERCIAL ACTIONS

Textual Amendments

F363 Ch. 40 (rules 40.1 - 40.17) inserted (1.3.2001) by S.S.I. 2001/8, para. 2(5)

Application and interpretation of this Chapter

40.1. (1) This Chapter applies to a commercial action.

(2) In this Chapter—

- (a) “commercial action” means—an action arising out of, or concerned with, any transaction or dispute of a commercial or business nature including, but not limited to, actions relating to—
 - (i) the construction of a commercial document;
 - (ii) the sale or hire purchase of goods;
 - (iii) the export or import of merchandise;
 - (iv) the carriage of goods by land, air or sea;

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (v) insurance;
- (vi) banking;
- (vii) the provision of services;
- (viii) a building, engineering or construction contract; or
- (ix) a commercial lease; and
- (b) “commercial action” does not include an action in relation to consumer credit transactions.

- (3) A commercial action may be raised only in a sheriff court where the Sheriff Principal for the sheriffdom has directed that the procedure should be available.

Proceedings before a nominated sheriff

- 40.2. All proceedings in a commercial action shall be brought before—
- (a) a sheriff of the sheriffdom nominated by the Sheriff Principal; or
 - (b) where a nominated sheriff is not available, any other sheriff of the sheriffdom.

Procedure in commercial actions

- 40.3. (1) In a commercial action the sheriff may make such order as he thinks fit for the progress of the case in so far as not inconsistent with the provisions in this Chapter.
- (2) Where any hearing is continued, the reason for such continuation shall be recorded in the interlocutor.

Election of procedure for commercial actions

- 40.4. The pursuer may elect to adopt the procedure in this Chapter by bringing an action in Form G1A.

Transfer of action to be a commercial action

- 40.5. (1) In an action within the meaning of rule 40.1(2) in which the pursuer has not made an election under rule 40.4, any party may apply by motion at any time to have the action appointed to be a commercial action.
- (2) An interlocutor granted under paragraph (1) shall include a direction as to further procedure.

Appointment of a commercial action as an ordinary cause

- 40.6. (1) At any time before, or at the Case Management Conference, the sheriff shall appoint a commercial action to proceed as an ordinary cause—
- (a) on the motion of a party where—
 - (i) detailed pleadings are required to enable justice to be done between the parties; or
 - (ii) any other circumstances warrant such an order being made; or
 - (b) on the joint motion of parties.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *Sheriff Courts (Scotland) Act 1907*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (2) If a motion to appoint a commercial action to proceed as an ordinary action is refused, no subsequent motion to appoint the action to proceed as an ordinary cause shall be considered except on a material change of circumstances.
- (3) Where the sheriff orders that a commercial action shall proceed as an ordinary cause the interlocutor granting such shall prescribe—
 - (a) a period of adjustment, if appropriate; and
 - (b) the date, time and place for any options hearing fixed.
- (4) In determining what order to make in deciding that a commercial action proceed as an ordinary cause the sheriff shall have regard to the periods prescribed in rule 9.2.

Special requirements for initial writ in a commercial action

- 40.7. (1) Where the construction of a document is the only matter in dispute no pleadings or pleas-in-law require to be included in the initial writ.
- (2) There shall be appended to an initial writ in Form G1A a list of the documents founded on or adopted as incorporated in the initial writ.

Notice of Intention to Defend

- 40.8. (1) Where the defender intends to—
 - (a) challenge the jurisdiction of the court;
 - (b) state a defence; or
 - (c) make a counterclaim,he shall, before the expiry of the period of notice lodge with the sheriff clerk a notice of intention to defend in Form O7 and shall, at the same time, send a copy to the pursuer.
- (2) The lodging of a notice of intention to defend shall not imply acceptance of the jurisdiction of the court.

Defences

- 40.9. (1) Where a notice of intention to defend has been lodged, the defender shall lodge defences within 7 days after the expiry of the period of notice.
- (2) There shall be appended to the defences a list of the documents founded on or adopted as incorporated in the defences.
- (3) Subject to the requirement that each article of condescendence in the initial writ need not be admitted or denied, defences shall be in the form of answers that allow the extent of the dispute to be identified and shall have appended a note of the pleas in law of the defender.

Fixing date for Case Management Conference

- 40.10. (1) On the lodging of defences, the sheriff clerk shall fix a date and time for a Case Management Conference, which date shall be on the first suitable court day occurring not sooner than 14 days, nor later than 28 days after the date of expiry of the period of notice.

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- (2) On fixing the date for the Case Management Conference, the sheriff clerk shall—
 - (a) forthwith intimate to the parties the date and time of the Case Management Conference; and
 - (b) prepare and sign an interlocutor recording that information.
- (3) The fixing of the date of the Case Management Conference shall not affect the right of a party to make application by motion, to the court.

Applications for summary decree in a commercial action

- 40.11. Where a pursuer, in terms of rule 17.2(1) (applications for summary decree), or a defender in terms of rule 17.3(1) (application of summary decree to counterclaims), applies for summary decree in a commercial action, the period of notice mentioned in rule 17.2(3) shall be 48 hours.

Case Management Conference

- 40.12. (1) At the Case Management Conference in a commercial action the sheriff shall seek to secure the expeditious resolution of the action.
- (2) Parties shall be prepared to provide such information as the sheriff may require to determine—
 - (a) whether, and to what extent, further specification of the claim and defences is required; and
 - (b) the orders to make to ensure the expeditious resolution of the action.
 - (3) The orders the sheriff may make in terms of paragraph 2(b) may include but shall not be limited to—
 - (a) the lodging of written pleadings by any party to the action which may be restricted to particular issues;
 - (b) the lodging of a statement of facts by any party which may be restricted to particular issues;
 - (c) allowing an amendment by a party to his pleadings;
 - (d) disclosure of the identity of witnesses and the existence and nature of documents relating to the action or authority to recover documents either generally or specifically;
 - (e) the lodging of documents constituting, evidencing or relating to the subject matter of the action or any invoices, correspondence or similar documents;
 - (f) the exchanging of lists of witnesses;
 - (g) the lodging of reports of skilled persons or witness statements;
 - (h) the lodging of affidavits concerned with any of the issues in the action;
 - (i) the lodging of notes of arguments setting out the basis of any preliminary plea;
 - (j) fixing a debate or proof, with or without any further preliminary procedure, to determine the action or any particular aspect thereof;
 - (k) the lodging of joint minutes of admission or agreement;
 - (l) recording admissions made on the basis of information produced; or
 - (m) any order which the sheriff thinks will result in the speedy resolution of the action (including the use of alternative dispute resolution), or requiring the attendance of parties in person at any subsequent hearing.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *Sheriff Courts (Scotland) Act 1907*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (4) In making any order in terms of paragraph (3) the sheriff may fix a period within which such order shall be complied with.
- (5) The sheriff may continue the Case Management Conference to a specified date where he considers it necessary to do so—
 - (a) to allow any order made in terms of paragraph (3) to be complied with; or
 - (b) to advance the possibility of resolution of the action.
- (6) Where the sheriff makes an order in terms of paragraph (3) he may ordain the pursuer to—
 - (a) make up a record; and
 - (b) lodge that record in process,within such period as he thinks fit.

Lodging of productions

- 40.13. Prior to any proof or other hearing at which the documents listed in terms of rules 40.7(2) and 40.9(2) are to be referred to parties shall, in addition to lodging the productions in terms of rule 21.1, prepare, for the use of the sheriff, a working bundle in which the documents are arranged chronologically or in another appropriate order.

Hearing for further procedure

- 40.14. At any time before final judgement, the sheriff may—
 - (a) of his own motion or on the motion of any party, fix a hearing for further procedure; and
 - (b) make such other order as he thinks fit.

Failure to comply with rule or order of sheriff

- 40.15. Any failure by a party to comply timeously with a provision in this Chapter or any order made by the sheriff in a commercial action shall entitle the sheriff, of his own motion—
 - (a) to refuse to extend any period for compliance with a provision in these Rules or an order of the court;
 - (b) to dismiss the action or counterclaim, as the case may be, in whole or in part;
 - (c) to grant decree in respect of all or any of the craves of the initial writ or counterclaim, as the case may be; or
 - (d) to make an award of expenses,as he thinks fit.

Determination of action

- 40.16. It shall be open to the sheriff, at the end of any hearing, to restrict any interlocutor to a finding.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

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Parts of Process

- 40.17. All parts of process lodged in a commercial action shall be clearly marked “Commercial Action”.]

[^{F364}CHAPTER 41

PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

Textual Amendments

F364 Sch. 1 Ch. 41 inserted (8.3.2002) by Act of Sederunt (Ordinary Cause Rules) Amendment (Applications under the Protection from Abuse (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(2)}

Interpretation

- 41.1. (1) In this Chapter a section referred to by number means the section so numbered in the Protection from Abuse (Scotland) Act 2001.
- (2) Words and expressions used in this Chapter which are also used in the Protection from Abuse (Scotland) Act 2001 have the same meaning as in that Act.

Attachment of power of arrest to interdict

- 41.2. (1) An application under section 1(1) (application for attachment of power of arrest to interdict)–
- (a) shall be made in the crave in the initial writ, defences or counterclaim in which the interdict to which it relates is applied for, or, if made after the application for interdict, by motion in the process of the action in which the interdict was sought [^{F365}, or by minute, with answers if appropriate, should the sheriff so order]; and
 - (b) shall be intimated to the person against whom the interdict is sought or was obtained.
- (2) Where the sheriff attaches a power of arrest under section 1(2) (order attaching power of arrest) the following documents shall be served along with the power of arrest in accordance with section 2(1) (documents to be served along with power of arrest):–
- (a) a copy of the application for interdict;
 - (b) a copy of the interlocutor granting interdict; and
 - (c) where the application to attach the power of arrest was made after the interdict was granted, a copy of the certificate of service of the interdict.
- (3) After the power of arrest has been served, the following documents shall be delivered by the person who obtained the power to the chief constable in accordance with section 3(1) (notification to police):–
- (a) a copy of the application for interdict;
 - (b) a copy of the interlocutor granting interdict;
 - (c) a copy of the certificate of service of the interdict; and
 - (d) where the application to attach the power of arrest was made after the interdict was granted–

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (i) a copy of the application for the power of arrest;
- (ii) a copy of the interlocutor granting it; and
- (iii) a copy of the certificate of service of the power of arrest and the documents that required to be served along with it in accordance with section 2(1).

Textual Amendments

F365 Words in Sch. 1 rule 41.2(1)(a) inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(13)

Extension or recall of power of arrest

- 41.3. (1) An application under either of the following provisions shall be made by minute in the process of the action in which the power of arrest was attached:—
- (a) section 2(3) (extension of duration of power of arrest);
 - (b) section 2(7) (recall of power of arrest).
- (2) Where the sheriff extends the duration of, or recalls, a power of arrest, the person who obtained the extension or recall must deliver a copy of the interlocutor granting the extension or recall in accordance with section 3(1).

Documents to be delivered to chief constable in relation to recall or variation of interdict

- 41.4. Where an interdict to which a power of arrest has been attached under section 1(2) is varied or recalled, the person who obtained the variation or recall must deliver a copy of the interlocutor varying or recalling the interdict in accordance with section 3(1).

Certificate of delivery of documents to chief constable

- 41.5.— Where a person is in any circumstances required to comply with section 3(1) he shall, after such compliance, lodge in process a certificate of delivery in Form PA1.]

VALID FROM 20/08/2004

[^{F366}CHAPTER 42

Textual Amendments

F366 Sch. 1 Ch. 42 inserted (20.8.2004) by Act of Sederunt (Ordinary Cause Rules) Amendment (Competition Appeal Tribunal) 2004 (S.S.I. 2004/350), art. 2

COMPETITION APPEAL TRIBUNAL

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Interpretation

42.1. In this Chapter–

“the 1998 Act” means the Competition Act 1998 ^{F367}; and
 “the Tribunal” means the Competition Appeal Tribunal established by section 12 of the Enterprise Act 2002.

Textual Amendments

F367 1998 c. 41.

Transfer of proceedings to the Tribunal

- 42.2. (1) A party in proceedings for a monetary claim to which section 47A of the 1998 Act ^{F368} applies may apply by motion to the sheriff for an order transferring the proceedings, or any part of them, to the Tribunal.
- (2) Where the sheriff orders that such proceedings (or any part of them) are transferred to the Tribunal, the sheriff clerk shall, within 7 days from the date of such order–
- (a) transmit the process (or the appropriate part) to the clerk of the Tribunal;
 - (b) notify each party to the proceedings in writing of the transmission under sub paragraph (a); and
 - (c) certify, by making an appropriate entry on the interlocutor sheet, that he has made all notifications required under sub paragraph (b).
- (3) Transmission of the process under paragraph (2)(a) shall be valid notwithstanding any failure by the sheriff clerk to comply with paragraph (2)(b) and (c).]

Textual Amendments

F368 Section 47A was inserted by the Enterprise Act 2002, section 18.

VALID FROM 16/06/2006

[^{F369}CHAPTER 43

CAUSES RELATING TO ARTICLES 81 AND 82 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

Textual Amendments

F369 Sch. 1 Ch. 43 inserted (16.6.2006) by Act of Sederunt (Ordinary Cause Rules) Amendment (Causes Relating to Articles 81 and 82 of the Treaty Establishing the European Community) 2006 (S.S.I. 2006/293), art. 2

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Intimation of actions to the Office of Fair Trading

43.1 (1) In this rule–

“the Treaty” means the Treaty establishing the European Community;
and

“the OFT” means the Office of Fair Trading.

(2) In an action where an issue under Article 81 or 82 of the Treaty is raised–

- (a) by the pursuer in the initial writ;
- (b) by the defender in the defences;
- (c) by any party in the pleadings;

intimation of the action shall be given to the OFT by the party raising the issue by a notice of intimation in Form OFT1.

(3) The initial writ, defences or pleadings in which the issue under Article 81 or 82 of the Treaty is raised shall include a crave for warrant for intimation to the OFT.

(4) A certified copy of an interlocutor granting a warrant under paragraph (3) shall be sufficient authority for the party to intimate by notice in Form OFT1.

(5) A notice of intimation under paragraph (2) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.

(6) There shall be attached to the notice of intimation–

- (a) a copy of the initial writ, defences or pleadings (including any adjustments and amendments), as the case may be;
- (b) a copy of the interlocutor allowing intimation of the notice; and
- (c) where the pleadings have not been amended in accordance with any minute of amendment, a copy of that minute.]

VALID FROM 03/11/2006

^{F370}CHAPTER 44

EQUALITY ENACTMENTS

Textual Amendments

F370 Sch. 1 Ch. 44 inserted (3.11.2006) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Equality Act 2006 etc.) 2006 (S.S.I. 2006/509), **art. 2(3)**

Application and interpretation

44.1. (1) This Chapter applies to claims under the equality enactments.

(2) In this Chapter, “claims under the equality enactments” means proceedings in reparation for breach of statutory duty under any of the following enactments:–

- (a) Sex Discrimination Act 1975;

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- (b) Race Relations Act 1976;
- (c) Disability Discrimination Act 1995;
- (d) Equality Act 2006.

Relevant Commission

- 44.2. (1) The pursuer shall send a copy of the initial writ to the relevant Commission by registered or recorded delivery post.
- (2) The relevant Commission is—
- (a) for proceedings under the Sex Discrimination Act 1975, the Equal Opportunities Commission;
 - (b) for proceedings under the Race Relations Act 1976, the Commission for Racial Equality;
 - (c) for proceedings under the Disability Discrimination Act 1995, the Disability Rights Commission;
 - (d) for proceedings under the Equality Act 2006, the Commission for Equality and Human Rights.

Assessor

- 44.3. (1) The sheriff may, of his own motion or on the motion of any party, appoint an assessor.
- (2) The assessor shall be a person who the sheriff considers has special qualifications to be of assistance in determining the cause.

National security

- 44.5. (1) Where, on a motion under paragraph (3) or of his own motion, the sheriff considers it expedient in the interests of national security, he may—
- (a) exclude from all or part of the proceedings—
 - (i) the pursuer;
 - (ii) the pursuer's representatives;
 - (iii) any assessors;
 - (b) permit a pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings or the part of the proceedings, from which he is excluded;
 - (c) take steps to keep secret all or part of the reasons for his decision in the proceedings.
- (2) The sheriff clerk shall, on the making of an order under paragraph (1) excluding the pursuer or his representatives, notify the Advocate General for Scotland of that order.
- (3) A party may apply by motion for an order under paragraph (1).
- (4) The steps referred to in paragraph (1)(c) may include the following:—
- (a) directions to the sheriff clerk; and
 - (b) orders requiring any person appointed to represent the interests of the pursuer in proceedings from which the pursuer or his representatives are

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excluded not to communicate (directly or indirectly) with any persons (including the excluded pursuer)–

- (i) on any matter discussed or referred to;
- (ii) with regard to any material disclosed,

during or with reference to any part of the proceedings from which the pursuer or his representatives are excluded.

- (5) Where the sheriff has made an order under paragraph (4)(b), the person appointed to represent the interests of the pursuer may apply by motion for authority to seek instructions from or otherwise communicate with an excluded person.]

VALID FROM 01/11/2007

[^{F371}CHAPTER 45

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

Textual Amendments

F371 Sch. 1 Ch. 45 inserted (1.11.2007) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Vulnerable Witnesses (Scotland) Act 2004) 2007 (S.S.I. 2007/463), {art. 2(13)}

Interpretation

45.1. In this Chapter–

“child witness notice” has the meaning given in section 12(2) of the Act of 2004;

“review application” means an application for review of arrangements for vulnerable witnesses pursuant to section 13 of the Act of 2004;

“vulnerable witness application” has the meaning given in section 12(6) of the Act of 2004.

Child Witness Notice

45.2. A child witness notice lodged in accordance with section 12(2) of the Act of 2004 shall be in Form G19.

Vulnerable Witness Application

45.3. A vulnerable witness application lodged in accordance with section 12(6) of the Act of 2004 shall be in Form G20.

Intimation

45.4. (1) The party lodging a child witness notice or vulnerable witness application shall intimate a copy of the child witness notice or vulnerable witness application to all the other parties to the proceedings and complete a certificate of intimation.

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- (2) A certificate of intimation referred to in paragraph (1) shall be in Form G21 and shall be lodged with the child witness notice or vulnerable witness application.

Procedure on lodging child witness notice or vulnerable witness application

45.5. (1) On receipt of a child witness notice or vulnerable witness application, the sheriff may—

- (a) make an order under section 12(1) or (6) of the Act of 2004 without holding a hearing;
- (b) require further information from any of the parties before making any further order;
- (c) fix a date for a hearing of the child witness notice or vulnerable witness application.

- (2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child or vulnerable witness is to give evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.

- (3) An order fixing a hearing for a child witness notice or vulnerable witness application shall be intimated by the sheriff clerk—

- (a) on the day the order is made; and
- (b) in such manner as may be prescribed by the sheriff,

to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

Review of arrangements for vulnerable witnesses

45.6. (1) A review application shall be in Form G22.

- (2) Where the review application is made orally, the sheriff may dispense with the requirements of paragraph (1).

Intimation of review application

45.7. (1) Where a review application is lodged, the applicant shall intimate a copy of the review application to all other parties to the proceedings and complete a certificate of intimation.

- (2) A certificate of intimation referred to in paragraph (1) shall be in Form G23 and shall be lodged together with the review application.

Procedure on lodging a review application

45.8. (1) On receipt of a review application, the sheriff may—

- (a) if he is satisfied that he may properly do so, make an order under section 13(2) of the Act of 2004 without holding a hearing or, if he is not so satisfied, make such an order after giving the parties an opportunity to be heard;
- (b) require of any of the parties further information before making any further order;
- (c) fix a date for a hearing of the review application.

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- (2) The sheriff may, subject to any statutory time limits, make an order altering the date of the proof or other hearing at which the child or vulnerable witness is to give evidence and make such provision for intimation of such alteration to all parties concerned as he deems appropriate.
- (3) An order fixing a hearing for a review application shall be intimated by the sheriff clerk—
 - (a) on the day the order is made; and
 - (b) in such manner as may be prescribed by the sheriff,to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

Determination of special measures

- 45.9. When making an order under section 12(1) or (6) or 13(2) of the Act of 2004 the sheriff may, in light thereof, make such further orders as he deems appropriate in all the circumstances.

Intimation of an order under section 12(1) or (6) or 13(2)

- 45.10. An order under section 12(1) or (6) or 13(2) of the Act of 2004 shall be intimated by the sheriff clerk—
 - (a) on the day the order is made; and
 - (b) in such manner as may be prescribed by the sheriff,to all parties to the proceedings and such other persons as are named in the order where such parties or persons are not present at the time the order is made.

Taking of evidence by commissioner

- 45.11. (1) An interlocutor authorising the special measure of taking evidence by a commissioner shall be sufficient authority for the citing the witness to appear before the commissioner.
- (2) At the commission the commissioner shall—
 - (a) administer the oath de fidei administratione to any clerk appointed for the commission; and
 - (b) administer to the witness the oath in Form G14, or where the witness elects to affirm, the affirmation in Form G15.
 - (3) The commission shall proceed without interrogatories unless, on cause shown, the sheriff otherwise directs.

Commission on interrogatories

- 45.12. (1) Where interrogatories have not been dispensed with, the party citing or intending to cite the vulnerable witness shall lodge draft interrogatories in process.
- (2) Any other party may lodge cross-interrogatories.
 - (3) The interrogatories and cross-interrogatories, when adjusted, shall be extended and returned to the sheriff clerk for approval and the settlement of any dispute as to their contents by the sheriff.

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- (4) The party who cited the vulnerable witness shall—
- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments), the approved interrogatories and any cross-interrogatories and a certified copy of the interlocutor of his appointment;
 - (b) instruct the clerk; and
 - (c) be responsible in the first instance for the fee of the commissioner and his clerk.
- (5) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission to examine the witness.

Commission without interrogatories

- 45.13. Where interrogatories have been dispensed with, the party citing or intending to cite the vulnerable witness shall—
- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
 - (b) fix a diet for the execution of the commission in consultation with the commissioner and every other party;
 - (c) instruct the clerk; and
 - (d) be responsible in the first instance for the fees of the commissioner and his clerk.

Lodging of video record and documents

- 45.14. (1) Where evidence is taken on commission pursuant to an order made under section 12(1) or (6) or 13(2) of the Act of 2004 the commissioner shall lodge the video record of the commission and relevant documents with the sheriff clerk.
- (2) On the video record and any documents being lodged the sheriff clerk shall—
- (a) note—
 - (i) the documents lodged;
 - (ii) by whom they were lodged; and
 - (iii) the date on which they were lodged, and
 - (b) intimate what he has noted to all parties concerned.

Custody of video record and documents

- 45.15. (1) The video record and documents referred to in rule 45.14 shall, subject to paragraph (2), be kept in the custody of the sheriff clerk.
- (2) Where the video record of the evidence of a witness is in the custody of the sheriff clerk under this rule and where intimation has been given to that effect under rule 45.14(2), the name and address of that witness and the record of his evidence shall be treated as being in the knowledge of the parties; and no party shall be required, notwithstanding any enactment to the contrary—
- (a) to include the name of that witness in any list of witnesses; or
 - (b) to include the record of his evidence in any list of productions.

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Application for leave for party to be present at the commission

45.16. An application for leave for a party to be present in the room where the commission proceedings are taking place shall be by motion.]

Rule 1.4]

F372F373F374F375F376F377F378F379F380F381F381F381F381F382F383F384F385F386F372F387F388 **APPENDIX 1**

FORMS

Textual Amendments

- F372** Sch. 1 (with Appendices 1, 2) substituted (1.1.1994) for Sch. 1 (with Appendix) by Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993 (S.I. 1993/1956), para. 2, **Sch. 1**
- F373** Sch. 1 Appendix 1: forms F5, F6, F7, F8, F9, F19, F21, F23, F24 and F26 substituted (1.11.1996) by Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 (S.I. 1996/2167), para. 2, **Sch.** {para. 35(a)}
- F374** Sch. 1 Appendix 1: forms F25 omitted (1.11.1996) by virtue of Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 (S.I. 1996/2167), para. 2, **Sch.** {para. 35(b)}
- F375** Sch. 1 Appendix 1: forms F41 inserted (1.11.1996) by Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 (S.I. 1996/2167), para. 2, **Sch.** {para. 35(c)}
- F376** Sch. 1 Appendix 1: forms G7, G8, G9 substituted (1.11.1996) by Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 1996 (S.I. 1996/2445), **para. 3(65)(b)**
- F377** Sch. 1 Appendix 1: forms G7A, G7B, G7C inserted (1.11.1996) by Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 1996 (S.I. 1996/2445), **para. 3(65)(c)**, Sch.
- F378** Sch. 1 Appendix 1: form A1 inserted (1.11.1996) by Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 1996 (S.I. 1996/2445), **para. 3(65)(i)**, Sch.
- F379** Sch. 1 Appendix 1: form F12A inserted (1.11.1996) by Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 1996 (S.I. 1996/2445), **para. 3(65)(k)**, Sch.
- F380** Sch. 1 Appendix 1: forms G5, G10, G11, G12, O4, O10, F12, F17, F31 amended (1.11.1996) by Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 1996 (S.I. 1996/2445), **para. 3(65)(a)(d)(e)(f)(g)(h)(j)(l)(m)**
- F381** Sch. 1 Appendix 1: forms E1, F26, F41, G13, O4, O5, O7 substituted, form H5 inserted, form P1 amended (2.10.2000) by Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 2000 (S.S.I. 2000/239), para. 3(25)(a)-(e), **Sch. 1**
- F382** Sch. 1 Appendix 1 Form G1A inserted (1.3.2001) by Act of Sederunt (Ordinary Cause Rules Amendment (Commercial Actions) 2001 (S.S.I. 2001/8), para. 2(6), **Sch.**
- F383** Sch. 1 Appendix 1; forms F42, F43 inserted (2.4.2001) by Act of Sederunt (Ordinary Cause Rules Amendment (European Matrimonial and Parental Responsibility Jurisdiction and Judgments) 2001 (S.S.I. 2001/144), para. 2(4), **Sch.**
- F384** Sch. 1 Appendix 1: Form O5A inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), para. 2(6)(b), {Sch. 1}
- F385** Sch. 1 Appendix 1 Form O2A inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), para. 2(6)(a), Sch. 1
- F386** Sch. 1 Appendix 1: Form O6 substituted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (S.S.I. 2002/7), para. 2(6)(c), {Sch. 1}
- F387** Sch. 1 Appendix 1: Form PA1 inserted (8.3.2002) by Act of Sederunt (Ordinary Cause Rules Amendment (Applications under the Protection from Abuse (Scotland) Act 2001) 2002 (S.S.I. 2002/128), para. 2(3), {Sch.}

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F388 Sch. 1 Appendix 1 Form G16 substituted (1.1.2004) by The Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), rule 4(4), {Sch.}

Form G1

Rule 3.1(1)

Form of initial writ

INITIAL WRIT

SHERIFFDOM OF (insert name of sheriffdom)
 AT (insert place of sheriff court)

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

Against

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

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

CONDESCENDENCE

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

PLEAS-IN-LAW

(State in numbered sentences)

Signed

[A.B.], Pursuer;
 or [X.Y.], Solicitor for the pursuer (state
 designation and business address)

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Rule 3.1(1)(b) and 40.4

FORM G1A

Form of initial writ in a commercial action

SHERIFFDOM OF *(insert name of sheriffdom)*
AT *(insert place of sheriff court)*

COMMERCIAL ACTION

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

Against

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

[A.B.] for the Pursuer craves the Court *(specify the orders sought)*

CONDESCENDENCE

(provide the following, in numbered paragraphs–

- *information sufficient to identify the transaction or dispute from which the action arises;*
- *a summary of the circumstances which have resulted in the action being raised; and*
- *details setting out the grounds on which the action proceeds.)*

Note: *Where damages are sought, the claim may be summarised in the pleadings–*

- *in the form of a statement of damages; or*
- *by lodging with the initial writ a schedule detailing the claim.*

PLEAS-IN-LAW

(state in numbered sentences)

Signed
[A.B.], Pursuer
or [X.Y.], Solicitor for the
Pursuer *(state designation
and business address)*

Form G2 Rule 4.2(1)

Form of caveat

SHERIFFDOM OF *(insert name of sheriffdom)*
AT *(insert place of sheriff court)*

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

Should any application be made for *(here specify the nature of the application(s) to which this caveat is to apply)* before the lodging of a notice of intention to defend, it is requested that intimation be made to the caveator before any order is pronounced.

Date *(insert date)*

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

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

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

Out of hours contacts:

1. *(insert name and telephone number)*
2. *(insert name and telephone number)*

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

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Form G3 Rule 5.6(1)(a)

Form of advertisement

NOTICE TO [C.D.] Court ref. no.
 An action has been raised in Sheriff Court by [A.B.], Pursuer, calling as a Defender [C.D.] whose last known address was (insert last known address of defender). If [C.D.] wishes to defend the action [where notice is given in a family action add: or make any claim or seek any order] he [or she] should immediately contact the sheriff clerk at (insert address) from whom the service copy initial writ may be obtained. If he [or she] fails to do so decree may be granted against him [or her].

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

Form G4 Rules 5.6(1)(b) and 33.16(3)(b)

Form of notice for walls of court

NOTICE TO [C.D.] Court ref. no.
 An action has been raised in Sheriff Court by [A.B.], Pursuer, calling as a Defender [C.D.] whose last known address was (insert last known address of defender). If [C.D.] wishes to defend the action (where notice is to be given in a family action add: or make any claim or seek any order) he [or she] should immediately contact the sheriff clerk at (insert address) from whom the service copy initial writ may be obtained. If he [or she] fails to do so decree may be granted against him [or her].

Date (insert date) Signed
 Sheriff clerk (depute)
 Telephone no. (insert telephone number of sheriff clerk's office)

FORM G5 Rules 9.2(2)(a) and 33.16(3)(b)

Form of intimation of Options Hearing

Sheriff Court (insert address and telephone number) Court ref. no.

[A.B.] (design) Pursuer against [C.D.] (design) Defender

You are given notice that in this action :-

(insert date) is the last day for lodging defences;

(insert date) is the last day for making adjustments to the writ or defences;

(insert date, time and place) is the date, time and place for the Options Hearing.

Date (insert date) Signed
 Sheriff clerk (depute)

NOTE:
 If you fail to comply with the terms of this notice or with any of the rules 9.3, 9.4, 9.6, 9.10, and 9.11 of the Standard Procedure of the Ordinary Cause Rules of the Sheriff Court, decree by default may be granted in terms of rule 16.2 (2) of those Rules.

NOTE TO BE ADDED WHERE PARTY UNREPRESENTED

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

Form G6 Rule 15.1(1)(b)

Form of motion

SHERIFFDOM OF (insert name of sheriffdom) Court ref. no.
 AT (insert place of sheriff court)

MOTION FOR THE PURSUER (or DEFENDER)

in the cause
 [A.B.] (insert designation and address) Pursuer
 against
 [C.D.] (insert designation and address) Defender

The (insert description of party) moves the court to (insert details of motion and, where appropriate, the reasons) for seeking the order.

List the documents or parts of process lodged with the motion :-
 (insert description of document or name part of process)

Date (insert date) Signed
 Party (insert name and description of party)
 or Solicitor for party
 (insert designation and business address)

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FORM G7

Rule 15.2(1)

Form of intimation of motion

SHERIFFDOM OF *(insert name of sheriffdom)*

Court Ref. no.

AT *(insert place of sheriff court)*

in the cause

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

Pursuer

against

[C.D.] *(insert name and address)*

Defender

LAST DATE FOR LODGING NOTICE OF OPPOSITION:

APPLICATION IS MADE BY MOTION FOR THE ORDER(S) SOUGHT IN THE ATTACHED FORM *(attach a copy of the motion in Form G6)*

* A copy of the document(s) or part(s) of process referred to in Form G6 is/are attached.

OPPOSITION TO THE MOTION MAY BE MADE by completing Form G9 (notice of opposition to motion) and lodging it with the sheriff clerk at *(insert address)* on or before the last date for lodging notice of opposition. A copy of the notice of opposition must be sent immediately to any other party in the action.

IN THE EVENT OF A NOTICE OF OPPOSITION BEING LODGED the sheriff clerk will assign a date, time and place for hearing parties on the motion. Intimation of this hearing will be sent to parties by the sheriff clerk.

IF NO NOTICE OF OPPOSITION IS LODGED, the motion may be considered by the sheriff without the attendance of parties.

Date *(insert date)*

(Signed)

Pursuer *(or as the case may be)*

*[or Solicitor for pursuer [or as the case may be]
(insert name and business address)]*

EXPLANATORY NOTE TO BE ADDED WHERE PARTY TO WHOM INTIMATION IS MADE IS NOT LEGALLY REPRESENTED

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.

NOTE: If you intend to oppose the motion you must appear or be represented on the date of the hearing. If you return Form G9 (notice of opposition to motion) and then fail to attend or be represented at the court hearing, the court may consider the motion in your absence and may grant the order(s) sought.

* Delete if not applicable

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FORM G7A

Rule 14.4(1)(a)

Form of intimation of minute (answers lodged)

SHERIFFDOM OF *(insert name of sheriffdom)*

Court Ref. no.

AT *(insert place of sheriff court)*

in the cause

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

Pursuer

against

[C.D.] *(insert name and address)*

Defender

LAST DATE FOR LODGING ANSWERS:

APPLICATION IS MADE FOR THE ORDER(S) SOUGHT IN THE MINUTE ATTACHED

(attach a copy of minute and interlocutor)

* A copy of the document(s) or part(s) of process referred to in the minute is/are attached.

IN THE EVENT OF ANSWERS BEING LODGED the sheriff clerk will assign a date, time and place for hearing parties on the minute and answers. Intimation of this hearing will be sent to parties by the sheriff clerk.

IF NO ANSWERS ARE LODGED, the minute may be considered by the sheriff without the attendance of parties.

Date *(insert date)*

(Signed)

Pursuer *[or as the case may be]*

[or Solicitor for pursuer [or as the case may be]

(Add name and business address)]

EXPLANATORY NOTE TO BE ADDED WHERE PARTY TO WHOM INTIMATION IS MADE IS NOT LEGALLY REPRESENTED

<p>IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.</p>

<p>NOTE: If you intend to oppose the minute you must appear or be represented on the date of the hearing. If you return Form G9 (notice of opposition to minute) and then fail to attend or be represented at the court hearing, the court may consider the minute in your absence and may grant the order(s) sought.</p>
--

*Delete if not applicable

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FORM G7B

Rule 14.4(1)(a)

Form of intimation of minute (no order for answers or no hearing fixed)

SHERIFFDOM OF *(insert name of sheriffdom)*

Court Ref. no.

AT *(insert place of sheriff court)*

in the cause

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

Pursuer

against

[C.D.] *(insert name and address)*

Defender

LAST DATE FOR LODGING NOTICE OF OPPOSITION:

APPLICATION IS MADE BY MINUTE FOR THE ORDER(S) SOUGHT IN THE MINUTE ATTACHED *(attach a copy of minute and interlocutor)*

*A copy of the document(s) or part(s) of process referred to in the minute is/are attached.

OPPOSITION TO THE MINUTE MAY BE MADE by completing Form G9 (notice of opposition to minute) and lodging it with the sheriff clerk at *(insert address)* on or before the last date for lodging notice of opposition. A copy of the notice of opposition must be sent immediately to any other party in the action.

IN THE EVENT OF A NOTICE OF OPPOSITION BEING LODGED the sheriff clerk will assign a date, time and place for hearing parties on the minute. Intimation of this hearing will be sent to parties by the sheriff clerk.

IF NO NOTICE OF OPPOSITION IS LODGED, the minute may be considered by the sheriff without the attendance of parties.

Date *(insert date)*

(Signed)

Pursuer *[or as the case may be]*

[or Solicitor for pursuer [or as the case may be]

(Add name and business address)]

EXPLANATORY NOTE TO BE ADDED WHERE PARTY TO WHOM INTIMATION IS MADE IS NOT LEGALLY REPRESENTED

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.

NOTE: If you intend to oppose the minute you must appear or be represented on the date of the hearing. If you return Form G9 (notice of opposition to minute) and then fail to attend or be represented at the court hearing, the court may consider the minute in your absence and may grant the order(s) sought.

* Delete if not applicable

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FORM G7C

Rule 14.4(1)(a)

Form of intimation of minute (hearing fixed)

SHERIFFDOM OF *(insert name of sheriffdom)*

Court Ref. no.

AT *(insert place of sheriff court)*

in the cause

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

Pursuer

against

[C.D.] *(insert name and address)*

Defender

DATE AND TIME FOR HEARING MINUTE:

***DATE FOR LODGING ANSWERS OR AFFIDAVIT EVIDENCE:**

APPLICATION IS MADE FOR THE ORDER(S) SOUGHT IN THE MINUTE ATTACHED
(attach a copy of minute and interlocutor)

*A copy of the document(s) or part(s) of process referred to in the minute is/are attached.

IF YOU WISH TO OPPOSE THE MINUTE OR MAKE ANY REPRESENTATIONS you must attend or be represented at *(insert name and address of court)* on the date and time referred to above.

*If an order has been made for you to lodge answers or affidavit evidence these must be lodged with the sheriff clerk *(insert address)* on or before the above date.

IF YOU FAIL TO ATTEND OR BE REPRESENTED the minute may be determined in your absence.

Date *(insert date)*

(Signed)

Pursuer *[or as the case may be]*

[or Solicitor for pursuer [or as the case may be]

(Add name and business address)]

EXPLANATORY NOTE TO BE ADDED WHERE PARTY TO WHOM INTIMATION IS MADE IS NOT LEGALLY REPRESENTED

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.

NOTE: If you intend to oppose the minute you must appear or be represented on the date of the hearing. If you return Form G9 (notice of opposition to minute) and then fail to attend or be represented at the court hearing, the court may consider the minute in your absence and may grant the order(s) sought.

* Delete if not applicable

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FORM G8

Rules 14.6 and 15.1(2)

Form of certificate of intimation of motion or minute

CERTIFICATE OF INTIMATION OF MOTION [or MINUTE]

I certify that intimation of the motion [or minute] was made to *(insert names of parties or solicitors for the parties, as appropriate)* by *(insert method of intimation; where intimation is by facsimile transmission, insert fax number to which intimation sent)* on *(insert date of intimation)*.

(Signed)
Solicitor [or Sheriff Officer]
(Add name and business address)

Date *(insert date)*

FORM G9

Rules 14.7(1)(a) and 15.3(1)(a)

Form of notice of opposition to motion or minute

NOTICE OF OPPOSITION TO MOTION [or MINUTE]

SHERIFFDOM OF *(insert name of sheriffdom)*

Court Ref. no:

AT *(insert place of sheriff court)*

in the cause

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

Pursuer

against

[C.D.] *(insert name and address)*

Defender

Notice of opposition to motion [or minute] given by *(insert name of party opposing motion)* to *(insert names of all other parties, or solicitors for the parties, to the action)* by *(insert method of intimation; where intimation is made by facsimile transmission, insert fax number to which notice of opposition sent)* on *(insert date of intimation)*.

Date *(insert date)*

(Signed)
Pursuer [or as the case may be]
(insert name and address of party)
[or Solicitor for Pursuer [or as the case may be]
(Add name and business address)]

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Form G10 Rule 24.2(3)

Form of intimation to a party whose solicitor has withdrawn

SHERIFFDOM OF (insert name of sheriffdom)
 AT (insert place of sheriff court)

in the case
 [A.B.], (insert designation),
 Pursuer
 against
 [C.D.], (insert designation)
 Defender

Court ref. no.

The court has been informed that your solicitors have ceased to act for you.

As a result the sheriff has ordered that you appear or be represented on (insert date and time) within the Sheriff Court at the above address. A copy of the order is attached.

When you appear you will be asked by the sheriff to state whether you intend to proceed with your action [or defences or answers].

Date (insert date) Signed
 Solicitor (add designation and business address)

* Delete as appropriate

NOTE:
 IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

FORM G11 Rule 28.3(1)

Form of notice in optional procedure for commission and diligence

Order by the Sheriff Court at (insert address) Court ref. no.

in the case
 [A.B.], (insert designation) Pursuer
 against
 [C.D.], (insert designation) Defender

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

You are given notice that you are required to produce to the sheriff clerk at the above address within seven days of (insert date on which service was effected, *D.R. Rule 3.1(2) relative to postal service or intimation*):

- (1) this order, which must be produced intact;
- (2) a certificate signed and completed in terms of the form appended to this notice; and
- (3) all documents in your possession falling within the enclosed specification, with an inventory of such documents signed by you relating to this order and your certificate.

Production may be made by lodging the documents with the sheriff clerk at the above address, by posting them by registered post or the first class recorded delivery service addressed to the sheriff clerk at the above address.

Date (insert date) Signed
 Solicitor for party (add designation and business address of the solicitor for the party in whose favour commission and diligence granted)

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

 CERTIFICATE

I hereby certify with reference to the order of the Sheriff Court at (insert place of sheriff court) in the cause (insert court ref. no.) and the relative specification of documents, served upon me and marked respectively X and Y:

(1) that the documents which are produced and which are numbered in the inventory signed by me and marked X, are the whole documents in my possession falling under the specification (or that I have no documents in my possession falling within the specification).

(2) that, to the best of my knowledge and belief, there are in existence other documents falling within the specification, but not in my possession, namely (describe them by reference to one or more of the descriptions of documents in the specification), which were last seen by me on or about (insert date), at (insert place), in the hands of (insert name and address of the person) (or that I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification).

Signed

FORM G12

Rules 28.3(3) and 29.7(4)

Form of certificate of citation of witness or haver

I certify that on (insert date of citation) I duly cited [K.L.], (design) to attend at (insert name of sheriff court) Sheriff Court on (insert date) at (insert time) as a witness for the pursuer [or defender] in the action at the instance of [A.B.] (design), Pursuer, against [C.D.] (design), Defender, [and I required him [or her] to bring with him [or her] (specify documents)]. This I did by (state mode of citation).

Date (insert date)

Signed

[P.Q.], Sheriff officer;
 or [X.Y.], (add designation and business address)
 Solicitor for the pursuer [or defender]

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Rules 28.4(4) and 29.7(4)

FORM G13

Form of citation of witness or haver

CITATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

To [K.L.] *(design)*

You are required to attend the above sheriff court on *(insert date)* at *(insert time)* as a witness for the pursuer [*or* defender] in the action by [A.B.] *(design)*, Pursuer, against [C.D.] *(design)*, Defender, [*and to bring with you (specify documents)*].

If you fail to attend, warrant may be granted for your arrest.

Date *(insert date)*

Signed

[P.Q.], Sheriff Officer,

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

Solicitor for the pursuer [*or* defender]

NOTE

Claims for necessary outlays and loss of earnings within certain specified limits will be paid. Claims should be made to the person who has cited you to attend court. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid prior to your attendance you should apply 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.

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Form G14 Rules 28.4(6)(b), 28.10(4)(b) and 29.16

Form of oath for witness

The witness to raise his right hand and repeat after the sheriff (or commissioner): "I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth".

Form G15 Rules 28.4(6)(b), 28.10(4)(b) and 29.16

Form of affirmation for witness

The witness to repeat after the sheriff (or commissioner): "I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth".

SCHEDULE 1

Rule 4(4)

FORM G16

Rules 28.14(3) and 28.14A(2)

Form of minute for [letter of request] [taking of evidence in the European Community]*

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

MINUTE FOR PURSUER [DEFENDER]*

in the cause

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

Pursuer

against

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

Defender

Court ref. no.

The Minuter states that the evidence specified in the attached [letter of request] [Form A] [Form I]* is required for the purpose of these proceedings and craves the court to issue [a letter of request] [that Form]* to *(specify in the case of a letter of request the central or other appropriate authority of the country or territory in which the evidence is to be obtained, and in the case of Form A or I the applicable court, tribunal, central body or competent authority)* to obtain the evidence specified.

Date *(insert date)*

Signed *(insert designation and address)*

* *delete as applicable*

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FORM G17 Rule 28.14(3)

Form of letter of request

LETTER OF REQUEST

1. Sender *(insert name and address)*
 2. Central authority of the requested state *(insert name and address)*
 3. Person to whom the executed request is to be returned *(insert name and address)*
 4. The undersigned applicant has the honour to submit the following request:
 5. a. Requesting judicial authority *(insert name and address)*
b. To the competent authority *(insert name of requested state)*
 6. Names and addresses of the parties and their representatives
 - a. Plaintiff
 - b. Defender
 - c. Other parties
 7. Nature and purpose of the proceedings and summary of facts
 8. Evidence to be obtained or other judicial act to be performed
(Items to be completed where applicable)
 9. Identity and address of any person to be examined
 10. Questions to be put to the persons 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 it is to be produced, copied, viewed, 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 (costs) incurred will be borne by *(insert name and address)*
- (Items to be included in all letters of request)*
18. Date of request
19. Signature and seal of the requesting authority

FORM G18 Rule 30.3(2)

Form of certificate of rate of exchange

CERTIFICATE OF RATE OF EXCHANGE

I *(insert designation and address)* certify that the rates current in London for the purchase of (state the unit of currency in which the decree is expressed) on *(insert date)* was (state rate of exchange) to the £ sterling and at this rate the sum of (state the amount of the sum in the decree) amounts to (insert sterling equivalent).

Date *(insert date)*

Signed
For and on behalf of the bank manager or other official

Form O1 Rule 3.3(1)

Form of warrant of citation

(Insert place and date) Grants warrant to cite the defender *(insert name and address)* by serving upon him *(or her)* a copy of the writ and warrant on a period of notice of *(insert period of notice)* days, and orders him *(or her)*, if he *(or she)* intends to defend the action or make any claim, to lodge a notice of intention to defend with the sheriff clerk at *(insert place of sheriff court)* within the said period of notice after such service *(and grants warrant to arrest on the dependence)*.

[Meantime grants interim interdict, or grants warrant to arrest to found jurisdiction, or sequestrates and grants warrant to inventory, or otherwise, as the case may be.]

Signed
Sheriff *(or sheriff clerk)*

Form O2 Rule 3.3(2)

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

(Insert place and date) Grants warrant to cite the defender *(insert name and address)* by serving a copy of the writ and warrant, with Form O3, on a period of notice of *(insert period of notice)* days and orders him *(or her)* if he *(or she)*:

- (a) intends to defend the action or make any claim, to lodge a notice of intention to defend, or
- (b) admits the claim and intends to apply for a time to pay direction *(and apply for recall or restriction of an arrestment)* to lodge the appropriate part of Form O3 duly completed;

with the sheriff clerk at *(insert place of sheriff court)* within the said period of notice after such service *(and grants warrant to arrest on the dependence)*.

[Meantime grants interim interdict, or grants warrant to arrest to found jurisdiction, or sequestrates and grants warrant to inventory, or otherwise, as the case may be.]

Signed
Sheriff *(or sheriff clerk)*

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Rule 3.3(4)

FORM O2A

Form of warrant in an action to which rule 3.2(3) applies

(Insert place and date) Grants warrant to cite the defender (insert name and address) by serving a copy of the writ and warrant and Form O7 on a period of notice of (insert period of notice) days and ordains him [or her] if he [or she]–

- (a) intends to defend the action or make any claim, to lodge a notice of intention to defend with the sheriff clerk at (insert place of sheriff court) within the said period of notice after such service [and grants warrant to arrest on the dependence]; or
- (b) intends to apply for an order under section 2 of the Mortgage Rights (Scotland) Act 2001, to lodge a minute applying for an order under that section before the conclusion of the proceedings.

[Meantime grants interim interdict or otherwise as the case may be.]

Form O2 Rules 3.3(3), 7.3(2) and 18.51(x)(x)

Form of notice to be served on defender in ordinary action where time to pay direction may be applied for

ACTION RAISED BY

PURSUER	DEFENDER

AT (Including address) SHERIFF COURT

COURT REF. NO. DATE OF EXPIRY OF PERIOD OF NOTICE

/ /

THIS SECTION MUST BE COMPLETED BY THE PURSUER BEFORE SERVICE

The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a 'time to pay direction' which is an order permitting you to pay any sum of money you are ordered to pay to the pursuer (which may include interest and court expenses) either by way of instalments or deferred lump sum. A deferred lump sum means that you must pay all the amount at one time within a period specified by the court. When making a time to pay direction the court may recall or restrict an arrestment made on your property by the pursuer in connection with the action or debt (for example your bank account may have been frozen).

HOW TO APPLY FOR A TIME TO PAY DIRECTION WHERE YOU ADMIT THE CLAIM AND YOU DO NOT WANT TO OBTAIN AN ARRESTMENT

- 1 Attached to this notice at pages 3 and 4 is an application for a time to pay direction, and for recall or restriction of an arrestment, if appropriate. If you want to make an application you should lodge the completed application with the sheriff clerk at the above address before the expiry of the period of notice, the date of which is given above. No court fee is payable when lodging the application.
- 2 Before completing the application please read carefully the notes overlaid on page 2. In the event of difficulty you may contact the court's civil department at the address above or any sheriff clerk's office, solicitor, Citizens Advice Bureau or other advice agency.

NOTE
Where this form is being served on a defender along with Form O9 (notice to additional or substitute defender) the reference to "date of expiry of period of notice" should be amended to "date for lodging of defences or an application for a time to pay direction" and the reference to "before the expiry of the period of notice" should be amended to "on or before the date for lodging of defences or an application for a time to pay direction".

HOW TO COMPLETE THE APPLICATION
PLEASE WRITE IN INK USING BLOCK CAPITALS

PART A of the application will have been completed in advance by the pursuer and gives details of the pursuer and you as the defender.

PART B - If you wish to apply to pay by instalments enter the amount and tick the appropriate box at B3(1). If you wish to apply to pay the full sum due in one deferred payment enter the period of deferment you propose at B3(2).

PART C - Give full details of your financial position in the space provided.

PART D - If you wish the court, when making the time to pay direction to recall or restrict an arrestment made in connection with the action, enter the appropriate details about what has been arrested and the place and date of the arrestment at D5, and attach the schedule of arrestment or copy.

Sign the application where indicated and detach pages 3 and 4. Retain the copy initial writ and pages 1 and 2 of this form as you may need them at a later stage. You should ensure that your application arrives at the court before the expiry of the period of notice.

WHAT WILL HAPPEN NEXT

If the pursuer objects to your application, a hearing will be fixed and the court will advise you in writing of the date and time.

If the pursuer does not object to your application, a copy of the court order for payment (called an extract decree) will be served on you by the pursuer's solicitor advising when instalment payments should commence or deferred payment be made.

Court ref. no.

APPLICATION FOR A TIME TO PAY DIRECTION
UNDER THE DEBTORS (SCOTLAND) ACT 1987

***PART A** By _____

DEFENDER

***(This section must be completed by pursuer before service)** In an action raised by _____

PURSUER

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PART B

- 1 The applicant is a defender in the action brought by the above named pursuer.
- 2 The defender admits the claim and applies to the court for a time to pay direction.
- 3 The defender applies (1) To pay by instalments of £

(Tick one box only) EACH WEEK FORTNIGHT MONTH

OR

(2) To pay the sum ordered in one payment within WEEKS/MONTHS

PART C

4 Defender's financial position
My weekly fortnightly monthly My weekly fortnightly monthly

Outgoings are: income is:

Rent / mortgage	£			Wages / pensions	£		
Heating	£			Social security	£		
Food	£			Other	£		
HP	£						
Other	£						
Total	£			Total	£		

Dependants: Children - how many Dependant relatives - how many

Here list all capital (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:

Here list any outstanding debts:

PART D

5 The defender seeks to recall or restrict an arrestment of which the details are as follows (please state, and attach the schedule of arrestment or copy):

6 This application is made under sections 1(1) and 2(3) of the Debtors (Scotland) Act 1987.

Therefore the defender asks the court

- ^a to make a time to pay direction.
- ^b to recall the above arrestment.
- ^c to restrict the above arrestment (in which case state restriction wanted):

* Delete what does not apply

Date (insert date)

Signed

Defender

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Rule 5.2(1)

FORM 04

Form of Citation

CITATION

SHERIFFDOM OF *(insert name of Sheriffdom)*

AT *(insert place of sheriff court)*

[A.B.], *(insert designation and address)* Pursuer, against [C.D.], *(insert designation and address)*,
 Defender

Court Ref No:

(Insert place and date). You [C.D.], are hereby served with this copy writ and warrant, with Form 07 (notice of intention to defend).

Form 07 is served on you for use should you wish to intimate an intention to defend this action.

IF YOU WISH TO DEFEND THIS ACTION you should consult a solicitor with a view to lodging a notice of intention to defend (Form 07). The notice of intention to defend, together with the court fee of £*(insert amount)* must be lodged with the Sheriff Clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed. NB Rule 5.3(2) relating to postal service).*

A copy of any notice of intention to defend should be sent to the Solicitor for the pursuer at the same time as your notice of intention to defend is lodged with the Sheriff Clerk.

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

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

Signed

[P.Q.], Sheriff Officer

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

Solicitor for the Pursuer

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FORM 05

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

CITATION

SHERIFFDOM OF *(insert name of Sheriffdom)*

AT *(insert place of Sheriff Court)*

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

Defender

Court Ref No:

(insert place and date). You [C.D.], are hereby served with this copy writ and warrant, together with the following forms–

Form 03 (application for time to pay direction); and

Form 07 (notice of intention to defend).

Form 03 is served on you because it is considered that you may be entitled to apply for a time to pay direction [and for the recall or restriction of an arrestment used on the dependence of the action or in security of the debt referred to in the copy writ]. See Form 03 for further details.

IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION, you must complete Form 03 and return it to the Sheriff Clerk at *(insert address)* within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed)*. NB Rule 5.3(2) relating to postal service).

IF YOU ADMIT THE CLAIM AND WISH TO AVOID A COURT ORDER BEING MADE AGAINST YOU, the whole sum claimed including interest and any expense due should be paid to the pursuer or his solicitor in good time before the expiry of the period of notice.

Form 07 is served on you for use should you wish to intimate an intention to defend the action.

IF YOU WISH TO DEFEND THIS ACTION you should consult a solicitor with a view to lodging a notice of intention to defend (Form 07). The notice of intention to defend, together with the court fee of £*(insert amount)* must be lodged with the Sheriff Clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed)*. NB Rule 5.3(2) relating to postal service).

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A copy of any notice of intention to defend should be sent to the Solicitor for the pursuer at the same time as your notice of intention to defend is lodged with the Sheriff Clerk.

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

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

Signed

[P.Q.], Sheriff Officer

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

Solicitor for the Pursuer

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Rule 5.2(2A)

FORM O5A

Form of citation in an action to which rule 3.2(3) applies

CITATION

SHERIFFDOM OF *(insert name of Sheriffdom)*

AT *(insert place of Sheriff Court)*

[A.B.], *(insert designation and address)* Pursuer against [C.D.], *(insert designation and address)*,
Defender

Court Ref No:

(Insert place and date). You [C.D.], are hereby served with this copy writ and warrant, with Form O7 (notice of intention to defend).

Form O7 is served on you for your use should you wish to intimate an intention to defend this action.

IF YOU WISH TO DEFEND THIS ACTION you should consult a solicitor with a view to lodging a notice of intention to defend (Form O7). The notice of intention to defend, together with the court fee of £ *(insert amount)*, must be lodged with the Sheriff Clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed NB Rule 5.3(2) relating to postal service)*.

A copy of any notice of intention to defend should be sent to the Solicitor for the pursuer at the same time as your notice of intention to defend is lodged with the Sheriff Clerk.

IF YOU WISH TO MAKE AN APPLICATION FOR AN ORDER UNDER SECTION 2 OF THE MORTGAGE RIGHTS (SCOTLAND) ACT 2001 you should consult a solicitor with a view to lodging a minute applying for an order under that section. The minute, together with the court fee of £ *(insert amount)*, must be lodged with the Sheriff Clerk at the above address before the conclusion of the proceedings.

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

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

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

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FORM O6
Form of certificate of citation

CERTIFICATE OF CITATION

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

(In actions in which a time to pay direction may be applied for, state whether Form O2 and Form O3 were sent in accordance with rule 3.3).

(In actions to which rule 3.2(3) applies, state whether Form O2A was sent in accordance with rule 3.3).

Signed
[P.Q.], Sheriff officer
[L.M.], witness
or [X.Y.], (add designation and
business address)
Solicitor for the pursuer

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Rules 5.2(1) and 9.1(1)

FORM 07

Form of notice of intention to defend

NOTICE OF INTENTION TO DEFEND

in an action raised at Sheriff Court

***PART A**

Court Ref No

(Insert name and business address of
solicitor for the Pursuer)

Pursuer

Defender

Solicitor for the Pursuer

*(This section to be completed by the
Pursuer before service)

Date of service:

Date of expiry of period of notice:

PART B

(This section to be completed by the defender or defender's solicitors, and both parts of this form to be returned to the Sheriff Clerk (insert address of Sheriff Clerk) on or before the date of expiry of the period of notice referred to in PART A above. At the same time a copy of the form should be sent to the Solicitor for the Pursuer).

(Insert place and date)

[C.D.], (insert designation and address), Defender, intends to defend the action raised by [A.B.], (insert designation and address), Pursuer, against him (and others).

Signed
[C.D.], Defender
or [X.Y.], (add designation and business
address)
Solicitor for the defender

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FORM 08 Rule 18.5(1)(a)(i)

Form of notice to additional or substitute defender where time to pay direction may be applied for

SHERIFFDOM OF *(insert name of sheriffdom)*
 AT *(insert place of sheriff court)*

To [E.F.] *(insert designation and address of additional [or substitute] defender)* Court ref. no.

You [E.F.] are given notice that in this action in which [A.B.] is the pursuer and [C.D.] is the defender, your name has, by order of the court dated *(insert date of court order)* been added *[or substituted]* as a defender to the said action; and the action, originally against [C.D.] is now *[or also]* directed against you.

Enclosed with this notice are the following documents -
 Copies of the *[insert as appropriate, the pleadings as adjusted or closed record];*
 Form O3 (application for a time to pay direction); and
 Form O7 (notice of intention to defend).

Form O3 is served on you because it is considered that you may be entitled to apply for a time to pay direction (and for the recall or restriction of an arrestment used on the dependence of the action or in security of the debt referred to in the copy writ). See Form O3 for further details.

IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION, you must complete Form O3 and return it to the sheriff clerk at *(insert address)* within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal citation)*.

IF YOU ADMIT THE CLAIM AND WISH TO AVOID A COURT ORDER BEING MADE AGAINST YOU, the whole sum claimed including interest and any expenses due should be paid to the pursuer or his solicitor in good time before the expiry of the period of notice.

Form O7 is served on you for use should you wish to intimate an intention to defend the action.

IF YOU WISH TO DEFEND THIS ACTION you should consult a solicitor with a view to lodging a notice of intention to defend (Form O7). The notice of intention to defend, together with the court fee of £ *(insert amount)* must be lodged with the sheriff clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed. N.B. See Rule 5.3(2) relating to postal service)*.

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

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

Signed
 [P.Q.] Sheriff officer,
 or [X.Y.] *(add designation and business address)*
 Solicitor for the pursuer *[or defender]*

FORM 09 Rule 18.5(1)(a)(ii)

Form of notice to additional or substitute defender

SHERIFFDOM OF *(insert name of sheriffdom)*
 AT *(insert place of sheriff court)*

To [E.F.] *(insert designation and address of additional [or substitute] defender)* Court ref. no.

You [E.F.] are given notice that in this action in which [A.B.] is the pursuer and [C.D.] is the defender, your name has, by order of the court dated *(insert date of court order)* been added *[or substituted]* as a defender to the said action; and the action, originally against the said [C.D.] is now *[or also]* directed against you.

Enclosed with this notice are the following documents -
 Copies of the *[insert as appropriate pleadings as adjusted or closed record];* and
 Form O7 (notice of intention to defend).

Form O7 is served on you for use should you wish to intimate an intention to defend the action.

IF YOU WISH TO DEFEND THIS ACTION you should consult a solicitor with a view to lodging a notice of intention to defend (Form O7). The notice of intention to defend, together with the court fee of £ *(insert amount)* must be lodged with the sheriff clerk at the above address within 28 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal service)*.

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

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

Signed
 [P.Q.] Sheriff officer,
 or [X.Y.] *(add designation and business address)*
 Solicitor for the pursuer *[or defender]*

Form O10 Rule 20.1

Form of third party notice

SHERIFFDOM OF *(insert name of sheriffdom)* Court ref. no.

AT *(insert place of sheriff court)*

THIRD PARTY NOTICE

in the cause
 [A.B.], *(insert designation and address)*, Pursuer
 against
 [C.D.], *(insert designation and address)*, Defender

To [E.F.]
 You are given notice by [C.D.] of an order granted by Sheriff *(insert name of sheriff)* in this action in which [A.B.] is the pursuer and [C.D.] the defender. In the action the pursuer claims against the defender the sum of £ *(insert amount)* as damages in respect of *(insert brief cause of the circumstances of the claim as more fully appears in the [insert as appropriate, pleadings as adjusted or amended or closed record] enclosed)*.

*The defender admits *[or denies]* liability to the pursuer but claims that, if he is liable to the pursuer, you are liable to relieve him *[or her]* wholly *[or partially]* of his *[or her]* liability because *(set forth contract or other right of contribution, relief, or indemnity)* as more fully appears from the defences lodged by him *[or her]* in the action.
 or
 *The defender denies liability for the injury claimed to have been suffered by the pursuer and maintains that liability, if any, to the pursuer rests solely on you *[along with (insert names of any other person whom defender maintains is liable to him [or her] by way of contribution, relief or indemnity)]* as more fully appears from the defences lodged by him *[or her]* in the action.
 or
 *The defender denies liability for the injury said to have been suffered by the pursuer but maintains that if there is any liability he shares that with you as more fully appears from the defences lodged by him *[or her]* in the action.
 or
 *The defender admits liability in part for the injury suffered by the pursuer but disputes the amount of damages and maintains that liability falls to be shared by you, as more fully appears from the defences lodged by him *[or her]* in the action.
 or
 *The defender admits liability in part for the injury suffered by the pursuer and for the damages claimed but maintains that liability falls to be shared by you, as more fully appears from the defences lodged by him *[or her]* in the action.
 or
 **(Otherwise as the case may be)*

IF YOU WISH TO resist either the claim of the pursuer against the defender, or the claim of the defender against you, you must lodge answers with the sheriff clerk at the above address within 28 days of *(insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal service)*. You must also pay the court fee of £ *(insert amount)*.

Date *(insert date)* Signed
 Solicitor for the defender.

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Form A1

Rule 31.4(1)

Form of note of appeal to the sheriff principal

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert name of sheriff court)*

Court Ref. no.

in the cause

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

Pursuer *[or as the case may be]*

against

[C.D.] *(insert name and address)*

Defender *[or as the case may be]*

The pursuer *(or defender or as the case may be)* appeals to the sheriff principal on the following grounds:–

(state grounds on which appeal is to proceed)

[and requests the sheriff to write a note].

Date *(insert date)*

(Signed)
*[or Solicitor for pursuer *[or**
as the case may be]
(Add name and business
address)]

FORM F1 Rule 33.7(1)(a)

Form of intimation to children and next-of-kin in an action of divorce or separation where the defender's address is not known Court ref. no.

To *(insert name and address as in warrant)*

You are given NOTICE that an action of divorce (or separation) has been raised against *(insert name)* your *(insert relationship, e.g. father, mother, brother or other relative on the case may be)*. If you know of his (or her) present address, you are requested to inform the sheriff clerk *(insert address of sheriff clerk)* in writing immediately. If you wish to appear as a party you must lodge a minute with the sheriff clerk for leave to do so. Your minute must be lodged within 21 days of *(insert date on which intimation was given, N.B. Rule 5.3 (2) relating to postal service or intimation)*.

Date *(insert date)* Signed Solicitor for the pursuer *(add designation and business address)*

NOTE
If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk, with the appropriate fee of *(insert amount)* and a copy of this intimation.

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

FORM F2 Rule 33.7(1)(b)

Form of intimation to alleged adulterer in action of divorce or separation Court ref. no.

To *(insert name and address as in warrant)*

You are given NOTICE that in this action, you are alleged to have committed adultery. A copy of the initial writ is attached. If you wish to dispute the truth of the allegation made against you, you must lodge a minute with the sheriff clerk *(insert address of sheriff clerk)* for leave to appear as a party. Your minute must be lodged within 21 days of *(insert date on which intimation given, N.B. Rule 5.3(2) relating to postal service or intimation)*.

Date *(insert date)* Signed Solicitor for the pursuer

NOTE
If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk together with the appropriate fee of *(insert amount)* and a copy of this intimation.

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

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FORM F3 Rule 33.7(1)(c)

Form of intimation to children, next of kin and curator bonis in an action of divorce or separation where the defender suffers from a mental disorder
 Court ref. no.

To (insert name and address as in warrant)

You are given NOTICE that an action of divorce (or separation) has been raised against (insert name, and designation) your (insert relationship, e.g. father, mother, brother or other relative, or ward, as the case may be). A copy of the initial writ is enclosed. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk), for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation).
 Date (insert date) Signed
 Solicitor for the pursuer (insert designation and business address)

NOTE:
 If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk together with the appropriate fee of (insert amount) and a copy of this intimation.

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

FORM F4 Rule 33.7(1)(d)

Form of intimation to additional spouse of either party in proceedings relating to a polygamous marriage
 To (name and address as in warrant) Court ref.no.

You are given NOTICE that this action for divorce (or separation), involves (insert name and designation) your spouse. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date) Signed
 Solicitor for the pursuer

NOTE:
 If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

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

FORM F5

Rule 33.7(1)(e)(i) and (ii)

Form of intimation to a local authority or third party who may be liable to maintain a child

To (insert name and address as in warrant)

Court ref. no.

YOU ARE GIVEN NOTICE that in this action, the court may make an order under section 11 of the Children (Scotland) Act 1995 in respect of (insert name and address), a child in your care [or liable to be maintained by you]. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date)

Signed
 Solicitor for the pursuer

NOTE: If you decide to lodge a minute it may be in your best interests to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

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

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FORM F6

Rule 33.7(1)(e)(iii)

Form of intimation to person who in fact exercises care or control of a child

To *(insert name and address as in warrant)*

Court ref. no.

YOU ARE GIVEN NOTICE that in this action, the court may make an order under section 11 of the Children (Scotland) Act 1995 in respect of *(insert name and address)* a child at present in your care or control. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk *(insert address of sheriff clerk)* for leave to do so. Your minute must be lodged within 21 days of *(insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation)*.

Date *(insert date)*

Signed
Solicitor for the pursuer

NOTE: If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of *(insert amount)* and a copy of this intimation.

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

FORM F7

Rule 33.7(1)(f)

Form of notice to parent or guardian in action for a section 11 order in respect of a child

1. YOU ARE GIVEN NOTICE that in this action, the pursuer is applying for an order under section 11 of the Children (Scotland) Act 1995 in respect of the child *(insert name of child)*. A copy of the initial writ is served on you and is attached to this notice.

2. If you wish to oppose this action, or oppose the granting of any order applied for by the pursuer in respect of the child, you must lodge a notice of intention to defend (Form F26). See Form F26 attached for further details.

Date *(insert date)*

Signed
Pursuer
or Solicitor for the pursuer *(add designation and business address)*

NOTE: IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

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FORM F8 Rules 33.7(1)(g), 33.7(4) and 33.12(2) and (3)

Form of notice to local authority requesting a report in respect of a child

To *(insert name and address)*

Court ref. no.

1. **YOU ARE GIVEN NOTICE** that in an action in the Sheriff Court at *(insert address)* the pursuer has applied for a residence order in respect of the child *(insert name of child)*. A copy of the initial writ is enclosed.
2. You are required to submit to the court a report on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.

Date *(insert date)*

Signed
Solicitor for the pursuer *(add designation and business address)*

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FORM F9

Rules 33.7(1)(h)

Form of intimation in an action which includes a crave for a section 11 order

PART A

Court Ref. No.

This part must be completed by the Pursuer's solicitor in language a child is capable of understanding.

To (1)

The Sheriff (the person who has to decide about your future) has been asked by (2) to decide:-

- (a) (3) and (4)
- (b) (5)
- (c) (6)

If you want to tell the Sheriff what you think about the things your (2) has asked the Sheriff to decide about your future you should complete Part B of this form and send it to the Sheriff Clerk at (7) by (8). An envelope which does not need a postage stamp is enclosed for you to use to return the form.

IF YOU DO NOT UNDERSTAND THIS FORM OR IF YOU WANT HELP TO COMPLETE IT you may get help from a SOLICITOR or contact the SCOTTISH CHILD LAW CENTRE ON the FREE ADVICE TELEPHONE LINE ON 0800 317 500.

If you return the form it will be given to the Sheriff. The Sheriff may wish to speak with you and may ask you to come and see him or her.

NOTES FOR COMPLETION

(1) Insert name and address of child.	(2) Insert relationship to the child of party making the application to court.
(3) Insert appropriate wording for residence order sought.	(4) Insert address.
(5) Insert appropriate wording for contact order sought.	(6) Insert appropriate wording for any other order sought.
(7) Insert address of sheriff clerk.	(8) Insert the date occurring 21 days after the date on which intimation is given. N.B. Rule 5.3(2) relating to intimation and service.
(9) Insert court reference number.	(10) Insert name and address of parties to the action.

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PART B

IF YOU WISH THE SHERIFF TO KNOW YOUR VIEWS ABOUT YOUR FUTURE YOU SHOULD COMPLETE THIS PART OF THE FORM

To the Sheriff Clerk, (7)

Court Ref. No. (9)

(10)

QUESTION (1): DO YOU WISH THE SHERIFF TO KNOW WHAT YOUR VIEWS ARE ABOUT YOUR FUTURE?

(PLEASE TICK BOX)

Yes	
No	

If you have ticked YES please also answer Question (2) or (3)

QUESTION (2): WOULD YOU LIKE A FRIEND, RELATIVE OR OTHER PERSON TO TELL THE SHERIFF YOUR VIEWS ABOUT YOUR FUTURE?

(PLEASE TICK BOX)

Yes	
No	

If you have ticked YES please write the name and address of the person you wish to tell the Sheriff your views in Box (A) below. You should also tell that person what your views are about your future.

BOX A:	(NAME)
	(ADDRESS)

Is this person:-	A friend? <input type="checkbox"/>
	A relative? <input type="checkbox"/>
	A teacher? <input type="checkbox"/>
	Other? <input type="checkbox"/>

OR

QUESTION (3): WOULD YOU LIKE TO WRITE TO THE SHERIFF AND TELL HIM WHAT YOUR VIEWS ARE ABOUT YOUR FUTURE?

(PLEASE TICK BOX)

Yes	
No	

If you decide that you wish to write to the Sheriff you can write what your views are about your future in Box (B) below or on a separate piece of paper. If you decide to write your views on a separate piece of paper you should send it along with this form to the Sheriff Clerk in the envelope provided.

BOX B:	<u>WHAT I HAVE TO SAY ABOUT MY FUTURE:-</u>
--------	--

NAME:

ADDRESS:

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FORM F10 Rule 33.7(1)(f)

Form of intimation to creditor in application for order for the transfer of property under section 8 of the Family Law (Scotland) Act 1985

To (insert name and address as in warrant) Court ref. no.

You are given NOTICE that in this action an order is sought for the transfer of property (specify the order), over which you hold a security. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk), for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date) Signed Solicitor for the pursuer

NOTE
If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

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

FORM F11 Rule 33.7(1)(g)

Form of intimation in an action where the pursuer makes an application for an order under section 18 of the Family Law (Scotland) Act 1985

To (insert name and address as in warrant) Court ref. no.

You are given NOTICE that in this action, the pursuer craves the court to make an order under section 18 of the Family Law (Scotland) Act 1985. A copy of the initial writ is attached. If you wish to apply to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date) Signed Solicitor for the pursuer

NOTE
If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

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

FORM F12 Rule 33.7(1)(k)

Form of intimation in an action where a non-entitled pursuer makes an application for an order under the Matrimonial Homes (Family Protection) (Scotland) Act 1981

To (insert name and address as in warrant) Court ref. no.

You are given NOTICE that in this action, the pursuer craves the court to make an order under section (insert the section under which the order is sought) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981. A copy of the initial writ is attached. If you wish to apply to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date) Signed Solicitor for the pursuer

NOTE
If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

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

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FORM F12A

Rule 33.7(1)(I)

Form of intimation to trustees or managers of pension scheme in relation to order for payment in respect of pension lump sum under section 12A of the Family Law (Scotland) Act 1985

To *(insert name and address as in warrant)*

Court ref no:

You are given NOTICE that in this action the pursuer has applied for an order under section 8 of the Family Law (Scotland) Act 1985 for a capital sum in circumstances where the matrimonial property includes rights in a pension scheme under which a lump sum is payable. The relevant pension scheme is *(give brief details, including number, if known)*. If you wish to apply to appear as a party, you must lodge a minute with the sheriff clerk *(insert address of sheriff clerk)* for leave to do so. Your minute must be lodged within 21 days of *(insert date on which intimation was given. NB: rule 5.3(2) relating to postal service or intimation.)*

Date *(insert date)*

Signed
 Solicitor for the pursuer
(Add designation and business address)

NOTE: If you decide to lodge a minute it may be in your best interests to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of *(insert amount)* and a copy of this intimation.

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

FORM F13

Rule 33.8(3)

Form of intimation to person with whom an improper association is alleged to have occurred

To *(insert name and address as in warrant)*

Court ref. no.

You are given NOTICE that in this action, the defender is alleged to have had an improper association with you. A copy of the initial writ is attached. If you wish to dispute the truth of the allegation made against you, you must lodge a minute with the sheriff clerk *(insert address of sheriff clerk)* for leave to appear as a party. Your minute must be lodged within 21 days of *(insert date on which intimation was given. NB: Rule 5.3(2) relating to postal service or intimation.)*

Date *(insert date)*

Signed

Solicitor for the pursuer

NOTE

If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of *(insert amount)* and a copy of this intimation.

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

FORM F14

Rule 33.10

Form of warrant of citation in family action

(Insert place and date)

Grants warrant to cite the defender *(insert name and address of defender)* by serving upon him *(or her)* a copy of the writ and warrant upon a period of notice of *(insert period of notice)* days, and orders the defender to lodge a notice of intention to defend with the sheriff clerk at *(insert address of sheriff clerk)* if he *(or she)* wishes to:

- (a) challenge the jurisdiction of the court;
- (b) oppose any claim made or order sought;
- (c) make any claim or seek any order.

[Meantime grants interim interdict, or warrant to arrest on the dependence].

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FORM F15 Rules 33.11(1) and 33.13(1)(a)

Form of citation in family action

CITATION

SHERIFFDOM OF (insert name of sheriffdom)
AT (insert place of sheriff court)

[A.B.] (insert designation and address) Pursuer, against [C.D.] (insert designation and address), Defender.
Court ref. no.

(Insert place and date) You [C.D.] are hereby served with this copy writ and warrant, with Form F26 (notice of intimation to defend) and (insert details of any other form of notice served, e.g. any of the forms served in accordance with rule 33.14).

Form F26 is served on you for use should you wish to intimate an intention to defend the action.

IF YOU WISH TO -

- (a) challenge the jurisdiction of the court;
- (b) oppose any claim made or order sought;
- (c) make any claim or seek any order; or
- (d) seek any order;

you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26). The notice of intention to defend, together with the court fee of £ (insert amount) must be lodged with the sheriff clerk at the above address within 21 days (or insert appropriate period of notice) of (insert the date on which service was executed). *N.B. Rule 5.3(2) relating to postal service or intimation.*

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

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

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

FORM F16 Rule 33.11(2)

Form of certificate of citation in family action

CERTIFICATE OF CITATION

(Insert place and date) I, hereby certify that upon the day of 1 day cited [C.D.] Defender, to answer to the foregoing writ. This I did by (state method of service: if by officer and not by post, add in presence of [L.M.] (insert designation), witness hereto with me subscribing, and (insert details of any forms of intimation or notice sent including details of the person to whom intimation sent and the method of service).

Signed
[P.Q.] Sheriff officer
[L.M.] witness
or
[X.Y.] (add designation and business address)
Solicitor for the pursuer

FORM F17 Rule 33.13(1)(c)

Form of request to medical officer of hospital or similar institution

To (insert name and address of medical officer)

In terms of rule 33.13(1)(c) of the Ordinary Cause Rules of the Sheriff Court a copy of the initial writ at the instance of (insert name and address of pursuer), Pursuer, against (insert name and address of defender), Defender, is enclosed and you are requested to
(a) deliver it personally to the (insert name of defender), and
(b) explain the contents to him or her, unless you are satisfied that such delivery or explanation would be dangerous to his or her health or mental condition. You are further requested to complete and return to me in the enclosed stamped addressed envelope the certificate appended hereto, making necessary deletions.

Date (insert date) Signed
Solicitor for the pursuer (add designation and business address)

FORM F18 Rules 33.13(1)(d) and 33.13(2)

Form of certificate by medical officer of hospital or similar institution

Court ref. no.

I (insert name and designation) certify that I have received a copy initial writ in an action of (type of family action to be inserted by the party requesting service) at the instance of (insert name and designation), Pursuer, against (insert name and designation), Defender, and that

* I have on the day of personally delivered a copy thereof to the said defender who is under my care at (insert address) and I have explained the contents or purport thereof to him or her, or

* I have not delivered a copy thereof to the said defender who is under my care at (insert address) and I have not explained the contents or purport thereof to him or her because (state reasons).

Date (insert date) Signed
Medical officer (add designation and address)

* Delete as appropriate.

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FORM F19

Rule 33.14(1)(a)(i)

Form of notice to defender where it is stated that defender consents to the granting of decree of divorce

YOU ARE GIVEN NOTICE that the copy initial writ served on you with this notice states that you consent to the grant of decree of divorce.

1. If you do so consent the consequences for you are that:–

- (a) provided the pursuer establishes the fact that he [or she] has not cohabited with you at any time during a continuous period of two years after the date of your marriage and immediately preceding the bringing of this action and that you consent, a decree of divorce will be granted;
- (b) on the grant of a decree of divorce you may lose your rights of succession to the pursuer's estate; and
- (c) decree of divorce will end the marriage thereby affecting any right to such pension as may depend on the marriage continuing, or, on your being left a widow the state widow's pension will not be payable to you when the pursuer dies.

Apart from these, there may be other consequences for you depending upon your particular circumstances.

2. You are entitled, whether or not you consent to the grant of decree of divorce in this action, to apply to the sheriff in this action–

- (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
- (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

3. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

4. If, after consideration, you wish to consent to the grant of decree of divorce in this action, you should complete and sign the attached notice of consent (Form F20) and send it to the sheriff clerk at the sheriff court referred to in the initial writ within 21 days of (*insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal service*).

5. If, at a later stage, you wish to withdraw your consent to decree being granted against you in this action, you must inform the sheriff clerk immediately in writing.

Date (*insert date*)

Signed
 Solicitor for the pursuer (*add designation and business address*)

FORM F 20 Rule 33.14(1)(a)(i) and 33.18(1)
 Court ref. no.

Form of notice of consent in actions of divorce under section 1(2)(d) of the Divorce (Scotland) Act 1976
 I(A.B.), (*insert designation and address*), Pursuer, against C(D.), (*insert designation and address*), Defender
 I (*full name and address of the defender to be inserted by pursuer or pursuer's solicitor before sending notice*) have received a copy of the initial writ in the action against me at the instance of (*full name and address of pursuer to be inserted by pursuer or pursuer's solicitor before sending notice*). I understand that it states that I consent to the grant of decree of divorce in this action. I have considered the consequences for me mentioned in the notice (Form F19) sent to me with this notice. I consent to the grant of decree of divorce in this action.

Date (*insert date*) Signed
 Defender

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FORM F21

Rule 33.14(1)(a)(ii)

Form of notice to defender where it is stated that defender consents to the granting of decree of separation

YOU ARE GIVEN NOTICE that the copy initial writ served on you with this notice states that you consent to the grant of decree of separation.

1. If you do so consent the consequences for you are that—
 - (a) provided the pursuer establishes the fact that he [or she] has not cohabited with you at any time during a continuous period of two years after the date of your marriage and immediately preceding the bringing of this action and that you consent, a decree of separation will be granted;
 - (b) on the grant of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist; you will continue to have a legal obligation to support your wife [or husband] and children;

Apart from these, there may be other consequences for you depending upon your particular circumstances.

2. You are entitled, whether or not you consent to the grant of decree of separation in this action, to apply to the sheriff in this action—

- (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
- (b) for an order under Section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

3. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

4. If, after consideration, you wish to consent to the grant of decree of separation in this action, you should complete and sign the attached notice of consent (Form F22) and send it to the sheriff clerk at the sheriff court referred to in the initial writ and other papers within 21 days of (*insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal service or intimation*).

5. If, at a later stage, you wish to withdraw your consent to decree being granted against you in this action, you must inform the sheriff clerk immediately in writing.

Date (*insert date*)

Signed
Solicitor for the pursuer (*add designation and business address*)

FORM F22 Rules 33.14(1)(a)(ii) and 33.18(1)

Court ref. no.

Form of notice of consent in actions of separation under section 1(2)(d) of the Divorce (Scotland) Act 1976

[A.B.], (*insert designation and address*), Pursuer against [C.D.], (*insert designation and address*), Defender

I (*full name and address of the defender to be inserted by pursuer or pursuer's solicitor before sending notice*) confirm that I have received a copy of the initial writ in the action against me at the instance of (*full name and address of pursuer to be inserted by pursuer or pursuer's solicitor before sending notice*). I understand that it states that I consent to the grant of decree of separation in this action. I have considered the consequences for me mentioned in the notice (Form F21) sent together with this notice. I consent to the grant of decree of separation in this action.

Date (*insert date*)

Signed
Defender

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FORM F23

Rule 33.14(1)(b)(i)

Form of notice to defender in an action of divorce where it is stated that there has been five years' non-cohabitation**YOU ARE GIVEN NOTICE that–**

1. The copy initial writ served on you with this notice states that there has been no cohabitation between you and the pursuer at any time during a continuous period of five years after the date of the marriage and immediately preceding the commencement of this action. If the pursuer establishes this as a fact and the Sheriff is satisfied that the marriage has broken down irretrievably, a decree will be granted, unless the sheriff is of the opinion that to grant decree would result in grave financial hardship to you.

2. Decree of divorce will end the marriage thereby affecting any right to such pension as may depend the marriage continuing, or, on your being left a widow the state widow's pension will not be payable to you when the pursuer dies. You may also lose your rights of succession to the pursuer's estate.

3. You are entitled, whether or not you dispute that there has been no such cohabitation during that five year period, to apply to the sheriff in this action–

- (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
- (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

4. IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

Date (*insert date*)

Signed
Solicitor for the pursuer (*add designation and business address*)

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FORM F24

Rule 33.14(1)(b)(ii)

Form of notice to defender in an action of separation where it is stated that there has been five years' non-cohabitation

YOU ARE GIVEN NOTICE that–

1. The copy initial writ served on you together with this notice states that there has been no cohabitation between you and the pursuer at any time during a continuous period of five years after the date of the marriage and immediately preceding the commencement of this action and that if the pursuer establishes this as a fact, and the sheriff is satisfied that there are grounds justifying decree of separation, a decree will be granted, unless the sheriff is of the opinion that to grant decree would result in grave financial hardship to you.

2. On the granting of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist. You will continue to have a legal obligation to support your wife [or husband] and children.

3. You are entitled, whether or not you dispute that there has been no such cohabitation during that five year period, to apply to the sheriff in this action–

- (a) to make provision under the Family Law (Scotland) Act 1985;
- (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

4. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

Date (*insert date*)

Signed
Solicitor for the pursuer (*add designation and business address*)

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Rules 33.11(1) and 33.34(2)(a)

FORM F26

Form of notice of intention to defend in family action

NOTICE OF INTENTION TO DEFEND

PART A

PART A

(This section to be completed by the pursuer's solicitor before service.)

[Insert name and business address of solicitor for the pursuer]

Court ref. No.

In an action brought in Sheriff Court

.....
.....
.....

Pursuer

.....
.....

Defender

Date of service:

Date of expiry of period of notice

PART B

(This section to be completed by the defender or defender's solicitor, and both parts of the form to be returned to the Sheriff Clerk at the above Sheriff Court on or before the date of expiry of the period of notice referred to in Part A above.)

(Insert place and date)

[C.D.] (Insert designation and address), Defender, intends to

- (a) challenge the jurisdiction of the court;
- (b) oppose a crave in the initial writ;
- (c) make a claim;
- (d) seek an order;

in the action against him [or her] raised by [A.B.], (insert designation and address), Pursuer.

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PART C

(This section to be completed by the defender or the defender's solicitor where an order under section 11 of the Children (Scotland) Act 1995 in respect of a child is sought by the pursuer or is to be sought by the defender).

DO YOU WISH TO OPPOSE THE MAKING OF ANY ORDER CRAVED BY THE PURSUER IN RESPECT OF A CHILD?

YES/NO*

*delete as appropriate

If you answered YES to the above question, please state here the order(s) which you wish to oppose and the reasons why the court should not make such order(s).

DO YOU WISH THE COURT TO MAKE ANY ORDER UNDER SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995 IN RESPECT OF A CHILD?

YES/NO*

*delete as appropriate

If you answered YES to the above question, please state here the order(s) which you wish the court to make and the reasons why the court should make such order(s).

PART D

IF YOU HAVE COMPLETED PART C OF THIS FORM YOU MUST INCLUDE EITHER CRAVE (1) OR (2) BELOW (*delete as appropriate)

(1)*Warrant for intimation of notice in terms of Form F9 on the child(ren) (*insert full name(s) and date(s) of birth*) is sought.

(2)*I seek to dispense with intimation on the child(ren) (*insert full name(s) and date(s) of birth*) for the following reasons:–

Signed

[C.D.] Defender

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

Solicitor for Defender

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FORM F27 Rule 33.29(1)(b)

Form of minute for decree in family action to which rule 33.28 applies

(Insert name of solicitor for the pursuer) having considered the evidence contained in the affidavits and the other documents all as specified in the schedule hereto, and being satisfied that upon the evidence a motion for decree (in terms of the crave of the initial writ) [or in such restricted terms as may be appropriate] may properly be made, moves the court accordingly.

In respect whereof
 Signed
 Solicitor for the pursuer (add designation and business address)

SCHEDULE
(Number and specify documents considered)

FORM F28 Rules 33.40(c) and 33.64(1)(c)

Form of notice of intimation to local authority or third party to whom care of a child is to be given

To (name and address as in warrant) Court ref. no.

You are given NOTICE that in this action, the sheriff proposes to commit to your care the child (insert name and address). A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date) Signed
 Solicitor for the pursuer

NOTE
 If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

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

FORM F29 Rules 33.41 and 33.64(2)

Form of notice of intimation to local authority of supervision order

[A.B.], (insert designation and address), Pursuer, against [C.D.], (insert designation and address), Defender

To (insert name and address of local authority) Court ref. no.

You are given NOTICE that on (insert date) in the Sheriff Court at (insert place) the sheriff made a supervision order under section 12 of the Matrimonial Proceedings (Children) Act 1988 [or section 1(1)(b) of the Guardianship Act 1973] placing the child (insert name and address of child) under your supervision. A certified copy of the sheriff's interlocutor is attached.

Date (insert date) Signed
 Sheriff clerk (depute)

FORM F30 Rules 33.72(1) and 33.72(2)

Form of certificate of delivery of documents to chief constable

(Insert place and date), hereby certify that upon the day of 1 daily delivered (insert name and address) chief constable of (insert name of constabulary) (insert details of the documents delivered). This I did by (state method of service).

Signed
 Solicitor for the pursuer (add designation and business address)

FORM F31 Rule 33.74 (1)

Form of simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976

Sheriff Clerk
 Sheriff Court House

APPLICATION FOR DIVORCE WITH CONSENT OF OTHER PARTY TO THE MARRIAGE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST TWO YEARS)

Before completing this form, you should have read the leaflet entitled "Do it Yourself Divorce", which explains the circumstances in which a divorce may be sought by this method. If simplified procedure applies to your circumstances, you may use this form to apply for divorce. Below you will find directions designed to assist you with your application. Please follow them carefully. In the event of difficulty, you may contact any sheriff clerk's office or Citizens Advice Bureau.

Directions for making application

WRITE IN INK, USING BLOCK CAPITALS

- Application (Part 1) 1. Complete and sign Part 1 of the form (pages 3-7), paying particular attention to the notes opposite each section.
- Consent of husband/wife (Part 2) 2. When you have completed Part 1 of the form, attach the (blue) instruction sheet SP3 to it and send both documents to your spouse for completion of the consent at Part 2 (page 9)
 NOTE: If your spouse does NOT complete and sign the form of consent, your application cannot proceed further under the simplified procedure. In that event, if you still wish to obtain a divorce, you should consult a solicitor.
- Affidavit (Part 3) 3. When the application has been returned to you with the consent (Part 2) duly completed and signed, you should take the form to a Justice of the Peace, Notary Public, Commissioner for Oaths or other duly authorised person so that your affidavit at Part 3 (page 10) may be completed and sworn.
- Returning completed application form to court 4. When directions 1-3 above have been complied with, your application is now ready to be sent to the sheriff clerk at the above address. With it you must enclose:
 (i) your marriage certificate (the document headed "Extract of an entry in a Register of Marriages", which will be returned to you in due course), and
 (ii) either a cheque or postal order in respect of the court fee, crossed and made payable to "the Sheriff Clerk", or a certified form SP15, claiming exemption from the court fee.
 5. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the sheriff clerk immediately.

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PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname
Other name(s) in full
.....
Present address
.....
Daytime telephone number (if any)

2. NAME AND ADDRESS OF SPOUSE

Surname
Other name(s) in full
.....
Present address
.....
Daytime telephone number (if any)

3. JURISDICTION

Please indicate with a tick () in the appropriate box or boxes which of the following apply:

PART A

- (i) I consider myself to be domiciled in Scotland
- (ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application
- (iii) My spouse considers himself or herself to be domiciled in Scotland
- (iv) My spouse has lived in Scotland for a period of at least 12 months immediately before the date of signing this application

PART B

- (v) I have lived at the address shown in paragraph 1 above for at least 40 days immediately before the date I signed this application
- (vi) My spouse has lived at the address shown in paragraph 2 above for at least 40 days immediately before the date I signed this application

4. DETAILS OF PRESENT MARRIAGE

Place of Marriage (Registration District)
Date of Marriage: Day month year

5. PERIOD OF SEPARATION

- (i) Please state the date on which you ceased to live with your spouse. (If more than 2 years, just give the month and year) Day, Month, Year
- (ii) Have you lived with your spouse since that date? * [YES /NO]
- (iii) If yes, for how long in total did you live together before finally separating again? months

6. RECONCILIATION

Is there any reasonable prospect of reconciliation with your spouse? * [YES /NO]
Do you consider that the marriage has broken down irretrievably? * [YES/ NO]

7. CONSENT

Does your spouse consent to a divorce being granted? * [YES /NO]

8. MENTAL DISORDER

Is your spouse suffering from any mental disorder (whether illness or handicap)? * [YES /NO]

9. CHILDREN

Are there any children of the marriage under the age of 16? * [YES/NO]

10. OTHER COURT ACTIONS

Are you aware of any court actions currently proceeding in any country (including Scotland) which may affect your marriage? (If yes, give details) * [YES /NO]
*Delete as appropriate

11. REQUEST FOR DIVORCE AND DISCLAIMER OF FINANCIAL PROVISION

I confirm that the facts stated in paragraphs 1-10 above apply to my marriage.

I do NOT ask the sheriff to make any financial provision in connection with this application.

I request the sheriff to grant decree of divorce from my spouse.

Date Signature of applicant

IMPORTANT

Part 1 MUST be completed, signed and dated before sending the application form to your spouse.

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CONSENT BY APPLICANT'S SPOUSE TO DIVORCE

NOTE: Before completing this part of the form,
 please read the notes opposite (page 8)

I,,
 (insert full name, in BLOCK letters, of Applicant's spouse)

residing at

(insert address, also in BLOCK letters)

HEREBY STATE THAT

- (a) I have read Part 1 of this application;
 (b) the Applicant has lived apart from me for a continuous period of two years immediately preceding the date of the application (paragraph 11 of Part 1);
 (c) I do not ask the sheriff to make any financial provision for me including:
 (i) the payment by the Applicant of a periodical allowance (i.e. a regular payment of money weekly or monthly, etc. for maintenance);
 (ii) the payment by the Applicant of a capital sum (i.e. a lump sum payment);
 (d) I understand that divorce may result in the loss to me of property rights; and
 (e) I CONSENT TO DECREE OF DIVORCE BEING GRANTED IN RESPECT OF THIS APPLICATION.

Date Signature of applicant.....

NOTE: You may withdraw your consent, even after giving it, at any time before divorce is granted by the sheriff. Should you wish to do so, please contact the sheriff clerk immediately.

PART 3

APPLICANT'S AFFIDAVIT

To be completed by the Applicant only after Parts 1 and 2 have been signed and dated.

I, (insert Applicant's full name),
 residing at (insert Applicant's present home address)

SWEAR that to the best of my knowledge and belief:

- (1) the facts stated in Part 1 of this Application are true; and
 (2) the signature in Part 2 of this Application is that of my *husband/wife.

Signature of Applicant

SWORN at (insert place)

To be completed
 by Justice of the
 Peace, Notary Public
 or Commissioner
 for Oaths

this day of 19

before me (insert full name)

insert full address)

Signature

*Justice of the Peace / Notary Public / Commissioner for Oaths

*Delete as appropriate

FORM F33

Rule 33.74(2)

Form of simplified divorce application under section 1 (2) (a) of the Divorce (Scotland) Act 1976

Sheriff Clerk
 Sheriff Court House

(Telephone)

APPLICATION FOR DIVORCE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST FIVE YEARS)

Before completing this form, you should have read the leaflet entitled "Do it yourself Divorce", which explains the circumstances in which a divorce may be sought by this method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for divorce. Below you will find directions designed to assist you with your application. Please follow them carefully. In the event of difficulty, you may contact any sheriff clerk's office or Citizens Advice Bureau.

Directions for making application

WRITE IN INK, USING BLOCK CAPITALS

Application (Part 1) 1. Complete and sign Part 1 of the form (pages 3-7), paying particular attention to the notes opposite each section.

Affidavits (Part 2) 2. When you have completed Part 1, you should take the form to a Justice of the Peace, Notary Public, Commissioner for Oaths or other duly authorised person in order that your affidavit in Part 2 (page 8) may be completed and sworn.

Returning completed application form to court 3. When directions 1 and 2 above have been complied with, your application is now ready to be sent to the sheriff clerk at the above address. With it you must enclose:
 (i) your marriage certificate (the document headed "Extract of an entry in a Register of Marriages", which will be returned to you in due course). Check the notes on page 2 to see if you need to obtain a letter from the General Register Office stating that there is no record of your spouse having divorced you, and
 (ii) either a cheque or postal order in respect of the court fee, crossed and made out to the "Sheriff Clerk".

4. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the sheriff clerk immediately.

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PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname

Other name(s) in full

Present address

Daytime telephone number (if any).....

2. NAME OF SPOUSE

Surname

Other name(s) in full

3. ADDRESS OF SPOUSE (if the address of your spouse is not known, please enter "not known" in this paragraph and proceed to paragraph 4)

Present address

Daytime telephone number (if any).....

4. Only complete this paragraph if you do not know the present address of your spouse

NEXT-OF-KIN

Name

Address

Relationship to your spouse

5. CHILDREN OF THE MARRIAGE

Names and dates of birth Addresses

.....

.....

.....

.....

If insufficient space is available to list all the children of the marriage, please continue on a separate sheet and attach to this form.

6. JURISDICTION Please indicate with a tick () in the appropriate box or boxes which of the following apply:

PART A

(i) I consider myself to be domiciled in Scotland

(ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application

(iii) My spouse considers himself or herself to be domiciled in Scotland

(iv) My spouse has lived in Scotland for a period of at least 12 months immediately before the date of signing this application

PART B

(v) I have lived at the address shown in paragraph 1 above for at least 40 days immediately before the date I signed this application

(vi) My spouse has lived at the address shown in paragraph 2 above for at least 40 days immediately before I signed this application

7. DETAILS OF PRESENT MARRIAGE

Place of Marriage (Registration District)

Date of Marriage:(Day).....(month).....(year).....

8. PERIOD OF SEPARATION

(i) Please state the date on which you ceased to live with your spouse. (If more than 5 years, just give the month and year) Day..... Month Year

(ii) Have you lived with your spouse since that date? *YES/ NO

(iii) If yes, for how long in total did you live together before finally separating again? months

9. RECONCILIATION

Is there any reasonable prospect of reconciliation with your spouse? *YES/ NO

Do you consider that the marriage has broken down irretrievably? *YES/ NO

10. MENTAL DISORDER

Is your spouse suffering from any mental disorder (whether illness or handicap)? *YES / NO (If yes, give details)

11. CHILDREN

Are there any children of the marriage under the age of 16? *YES/ NO

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12. OTHER COURT ACTIONS

Are you aware of any court actions currently proceeding in any country (including Scotland) which may affect your marriage?
 (If yes, give details)

*[YES/ NO]

* Delete as appropriate

13. DECLARATION AND REQUEST FOR DIVORCE

I confirm that the facts stated in paragraphs 1-11 above apply to my marriage.

I do NOT ask the sheriff to make any financial provision in connection with this application.

I believe that no grave financial hardship will be caused to my spouse as a result of the granting of this application.

I request the sheriff to grant decree of divorce from my husband or wife.

Date.....

Signature of Applicant

PART 2

APPLICANT'S AFFIDAVIT

(To be completed by the Applicant only after Part 1 has been signed and dated.)

I, (insert full name)

residing at (insert present home address).....

.....

SWEAR that to the best of my knowledge and belief that the facts stated in Part 1 of this Application are true.

Signature of Applicant

SWORN at (insert place)

To be completed this day of 19

by Justice of the Peace, Notary Public or Commissioner before me (insert full name)

For Oaths of (insert full address)

.....

Signature

*Justice of the Peace / Notary Public / Commissioner for Oaths

*Delete as appropriate

FORM F34 Rule 33.76(3)(a)

Form of citation in application relying on the facts in section 1 (2)(d) of the Divorce (Scotland) Act 1976

(Insert name and address of non-applicant spouse)

APPLICATION FOR DIVORCE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST TWO YEARS WITH CONSENT OF OTHER PARTY)

Your spouse has applied to the sheriff for divorce on the ground that the marriage has broken down irretrievably because you and he or she have lived apart for a period of at least two years and you consent to divorce being granted.

A copy of the application is hereby served upon you.

1. Please note:
- (a) that the sheriff may not make financial provision under this procedure and that your spouse is making no claim for -
 - (i) the payment by you of a periodical allowance (i.e. a regular payment of money weekly or monthly, etc. for maintenance);
 - (ii) the payment by you of a capital sum (i.e. a lump sum payment);
 - (b) that your spouse states that you will not suffer grave financial hardship in the event of decree of divorce being granted.
2. Divorce may result in the loss to you of property rights (e.g. the right to succeed to the Applicant's estate on his or her death) or the right, where appropriate, to a widow's pension.
3. If you wish to oppose the granting of a divorce, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the sheriff clerk before (insert date).
4. In the event of the divorce being granted, you will be sent a copy of the extract decree. Should you change your address before receiving the copy extract decree, please notify the sheriff clerk immediately.

Signed
 Sheriff clerk (depute)
 (insert address and telephone number of the sheriff clerk)
 or Sheriff Officer

NOTE: If you wish to exercise your right to make a claim for financial provision you should immediately advise the sheriff clerk that you oppose the application for that reason, and thereafter consult a solicitor.

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

FORM F35 Rule 33.76(3)(b)

Form of citation in application relying on the facts in section 1(2)(c) of the Divorce (Scotland) Act 1976

(Insert name and address of non-applicant spouse)

APPLICATION FOR DIVORCE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST FIVE YEARS)

Your spouse has applied to the sheriff for divorce on the ground that the marriage has broken down irretrievably because you and he or she have lived apart for a period of at least five years.

A copy of the application is hereby served upon you.

1. Please note:

(a) that the sheriff may not make financial provision under this procedure and that your spouse is making no claim for—

(i) the payment by you of a periodical allowance (i.e. a regular payment of money weekly or monthly, etc. for maintenance);

(ii) the payment by you of a capital sum (i.e. a lump sum payment);

(b) that your spouse states that you will not suffer grave financial hardship in the event of decree of divorce being granted.

2. Divorce may result in the loss to you of property rights (e.g. the right to succeed to the Applicant's estate on his or her death) or the right, where appropriate, to a widow's pension.

3. If you wish to oppose the granting of a divorce, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the sheriff clerk before (insert date).

4. In the event of the divorce being granted, you will be sent a copy of the extract decree. Should you change your address before receiving the copy extract decree, please notify the sheriff clerk immediately.

Signed

Sheriff clerk (depute) (insert the address and telephone number of the sheriff court) or Sheriff officer

NOTE: If you wish to exercise your right to make a claim for financial provision you should immediately advise the sheriff clerk that you oppose the application for that reason, and thereafter consult a solicitor.

FORM F36 Rule 33.77(1)(a)

Form of intimation of simplified divorce application for display on the walls of court

Court ref. no.

An application for divorce has been made in this sheriff court by [A.B.] (insert designation and address), Applicant, naming [C.D.], (insert designation and address) as Respondent.

If [C.D.], wishes to oppose the granting of decree of divorce he [or she] should immediately contact the sheriff clerk from whom he [or she] may obtain a copy of the application.

Date (insert date)

Signed

Sheriff clerk (depute)

FORM F37 Rule 33.77(2)

Form of intimation to children and next-of-kin in simplified divorce application

To (insert name and address)

Court ref.no.

You are hereby given NOTICE that an application for divorce has been made against (insert name of respondent) your (insert relationship e.g. father, mother, brother or other relative as the case may be). A copy of this application is attached.

If you know of his or her present address, you are requested to inform the sheriff clerk (insert address of sheriff clerk) in writing immediately. You may also, if you wish, oppose the granting of decree of divorce by sending a letter to the court giving your reasons for your opposition to the application. Your letter must be sent to the sheriff clerk within 21 days of (insert date on which intimation was given. N.B. Rule 5.5(2) relating to postal service or intimation).

Date (insert date)

Signed

Sheriff clerk (depute)

NOTE
IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

FORM F38 Rule 33.80(2)

Form of extract decree of divorce in simplified divorce application

At (insert place and date)

in an action in the Sheriff Court of the Sheriffdom of (insert name of sheriffdom) at (insert place of sheriff court)

at the instance of [A.B.], (insert full name of applicant), Applicant,

against (insert full name of respondent), Respondent,

who were married at (insert place) on (insert date),

the sheriff pronounced decree divorcing the Respondent from the Applicant.

Extracted at (insert place and date)

by me, sheriff clerk of the Sheriffdom of (insert name of sheriffdom).

Signed

Sheriff clerk (depute)

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FORM F39 Rule 33.90
Form of certificate relating to the making of a maintenance assessment under the Child Support Act 1991
Sheriff Court (insert address)
Date (insert date)
I certify that notification has been received from the Secretary of State under section 10 of the Child Support Act 1991 of the making of a maintenance assessment under that Act which supersedes the decree or order granted on (insert date) in relation to aliment for (insert the name(s) of child(ren)) with effect from (insert date).
Signed
Sheriff clerk (depute)

FORM F40 Rule 33.90
Form of certificate relating to the cancellation or ceasing to have effect of a maintenance assessment under the Child Support Act 1991
Sheriff Court (insert address)
Date (insert date)
I certify that notification has been received from the Secretary of State under section 10 of the Child Support Act 1991 that the maintenance assessment made on (insert date) has been cancelled (or ceased to have effect) on (insert date).
Signed
Sheriff clerk (depute)

Rule 33.22A(2)

FORM F41

Form of intimation to parties of a Child Welfare Hearing

Sheriff Court (insert address and telephone number)

Court Ref No:

In the action [A.B.], (design), Pursuer against [C.D.], (design), Defender

YOU ARE GIVEN NOTICE that a Child Welfare Hearing has been fixed for (insert time) on (insert date) at (insert place).

Date (insert date) Signed

Sheriff Clerk (Depute)

NOTE

Please note that in terms of Rule 33.22A(5) parties to the action must attend personally

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

***This section to be deleted where service is to be made on a solicitor.**

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FORM F42

Rule 33.27A(1)

Form of Certificate under Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses

Matrimonial matters

Sheriffdom of *(insert name of sheriffdom)*

at *(insert place of Sheriff Court)*

I hereby certify, pursuant to Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, concerning judgments in matrimonial matters, the following:

1. Member State of origin: *(insert country)*
2. Court or authority issuing the certificate:
 - 2.1 Name: Sheriff Court of *(insert name)*
 - 2.2 Address: *(insert address of sheriff court)*
 - 2.3 Tel/Fax/E-mail: *(insert Tel/Fax/E-mail)*
3. Marriage:
 - 3.1 Wife:
 - 3.1.1 Full Name: *(insert name)*
 - 3.1.2 Country and place of birth: *(insert country and place)*
 - 3.1.3 Date of birth: *(insert date)*
 - 3.2 Husband:
 - 3.2.1 Full Name: *(insert name)*
 - 3.2.2 Country and place of birth: *(insert country and place)*
 - 3.2.3 Date of birth: *(insert date)*
 - 3.3 Country, place (where available) and date of marriage
 - 3.3.1 Country of marriage : *(insert country)*
 - 3.3.2 Place of marriage (where available): *(insert place)*
 - 3.3.3 Date of marriage: *(insert date)*

Status: Point in time view as at 01/01/2004. This version of this Act contains provisions that are not valid for this point in time.

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4. Court which delivered the judgment:

4.1 Name of Court: *(insert name)*

4.2 Place of Court: *(insert place)*

5. Judgment:

5.1 Date: *(insert date)*

5.2 Case reference number: *(insert reference number)*

5.3 Type of judgment:

5.3.1 Divorce

5.3.3 Legal separation

5.4 Was the Judgment given in default of appearance ?

5.4.1 No

5.4.2 Yes

6. Name of parties to whom legal aid has been granted: *(insert names)*

7. Is the judgment subject to further appeal under the law of the Member State of origin ?

7.1 No

7.2 Yes

8. Date of legal effect in the Member State where the judgment was given:

8.1 of divorce: *(insert date)*

8.2 of separation: *(insert date)*

(Signed)

Sheriff Clerk

(Place and date)

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FORM F43

Rule 33.27A(1)

Form of Certificate under Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses

Parental Responsibility

Sheriffdom of *(insert name of sheriffdom)*

at *(insert place of Sheriff Court)*

I hereby certify, pursuant to Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in Matrimonial matters and in matters of parental responsibility for children of both spouses, concerning judgments in matters of parental responsibility, the following:

1. Member State of origin: *(insert country)*
2. Court or authority issuing the certificate:
 - 2.1 Name: Sheriff Court of *(insert name)*
 - 2.2 Address: *(insert address of sheriff court)*
 - 2.3 Tel/Fax/E-mail: *(insert tel/fax/e-mail)*
3. Parents:
 - 3.1 Mother:
 - 3.1.1 Full Name: *(insert name)*
 - 3.1.2 Date and place of birth: *(insert date and place)*
 - 3.2 Father:
 - 3.2.1 Full Name: *(insert name)*
 - 3.2.2 Date and place of birth: *(insert date and place)*
4. Court which delivered Judgment:
 - 4.1 Name of Court: *(insert name)*
 - 4.2 Place of Court; *(insert place)*
5. Judgment:
 - 5.1 Date: *(insert date)*
 - 5.2 Case Reference number: *(insert reference number)*
 - 5.3 Was the Judgment given in default of appearance?
 - 5.3.1 No
 - 5.3.2 Yes

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6. Children who are covered by the judgment:

6.1 Full Name and date of birth: *(insert name and date of birth)*

6.2 Full Name and date of birth: *(insert name and date of birth)*

6.3 Full Name and date of birth: *(insert name and date of birth)*

6.4 Full Name and date of birth: *(insert name and date of birth)*

7. Names of parties to whom legal aid has been granted: *(insert names)*

8. Attestation of enforceability and service

8.1 Is the judgment enforceable according to the law of the Member State of origin?

8.1.1 Yes

8.1.2 No

8.2 Has the judgment been served on the party against whom enforcement is sought?

8.2.1 Yes

8.2.1.1 Full name of party: *(insert name)*

8.2.1.2 Date of service: *(insert date)*

8.2.2 No

(Signed)

Sheriff Clerk

(Place and date)

FORM III Rule 34.1(2)

Form of notice informing defender of right to apply for certain orders under the Debtors (Scotland) Act 1987 on sequestration for rent

Sheriff Court *(insert address)* Court ref. no.

You are given NOTICE that, where articles are sequestered for rent you have the right to apply to the sheriff for certain orders under the Debtors (Scotland) Act 1987.

1. You may apply to the sheriff within fourteen days after the date the articles are sequestered for an order releasing any article on the ground that:

- (a) it is exempt from sequestration for rent (articles which are exempt are listed in section 16 of the Debtors (Scotland) Act 1987); or
- (b) its inclusion in the 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 sequestered 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 advice centre or to the sheriff clerk at the above address.

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FORM H2 Rule 34.6(1)
Form of notice of removal
To (insert name, designation, and address of party in possession). You are required to remove from (describe subjects) at the term of (or if different terms, state them and the subjects to which they apply), in terms of lease (describe it) [or in terms of your letter of removal dated (insert date)] [or otherwise as the case may be].
Date (insert date) Signed (add designation and address)

FORM H3 Rule 34.6(2)
Form of letter of removal
To (insert name and designation of addressee) (insert place and date) I am to remove from (state subjects by usual name or short description sufficient for identification) at the term of (insert term and date).
[K.L.] (add designation and address).
(If not holograph, to be attested thus: [M.N.] (add designation and address), witness).

FORM H4 Rule 34.7
Form of notice of removal under section 37 of the 1907 Act
NOTICE OF REMOVAL UNDER SECTION 37 OF THE SHERIFF COURTS (SCOTLAND) ACT 1907
To (insert designation and address).
You are required to remove from (insert description of heritable subjects, land, ground etc.) at the term of (Whitsunday or Martinmas), (insert date).
Date (insert date) Signed (add designation and address)

Rule 34.11(4)

FORM H5

Form of citation of unnamed occupiers

CITATION

SHERIFFDOM OF (insert name of sheriffdom)

AT (insert place of sheriff court)

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

Pursuer

against

The Occupier[s] of (address)

Defender

An action has been brought in the above Sheriff Court by [A.B.]. [A.B.] calls as a defender the occupier[s] of the property at (insert address). If the occupier[s] [or any of them] wish[es] to challenge the jurisdiction of the court or to defend the action, he [or she [or it] [or they]] should contact the sheriff clerk at (insert address of sheriff court) immediately and in any event by (date on which period of notice expires).

Signed

Sheriff [or Sheriff Clerk]

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FORM M1 Rule 35.5
Form of warrant of citation in an action of multiplepoinding

(Insert place and date) Grants warrant to cite the defender (insert name and address) by serving a copy of the writ and warrant upon a period of notice of (insert period of notice days, and retains him [or her], if he [or she] intends to lodge;
(a) defences challenging the jurisdiction of the court or the competence of the action; or
(b) objections to the condescendence on the fund in medio; or
(c) a claim on the fund;
to lodge a notice of appearance with the sheriff clerk at (insert name and address of sheriff court) within the said period of notice after such service [and grants warrant to arrest on the dependence].
[Where the holder of the fund in medio is a defender, insert: Appoints the holder of the fund in medio to
(a) lodge with the sheriff clerk at (insert place of sheriff court) within the said period of notice after such service
(i) a detailed condescendence on the fund in medio; and
(ii) a list of parties having an interest in the fund; and
(b) intimate to all parties to the action a copy of the condescendence and list.]

FORM M2 Rule 35.6(1)
Form of citation in an action of multiplepoinding

CITATION
SHERIFFDOM OF (insert name of sheriffdom) Court ref. no.
AT (insert place of sheriff court)
[A.B.] (insert designation and address), Pursuer against [C.D.] (insert designation and address) Defender
(Insert place and date) You [C.D.] are hereby served with this copy writ and warrant, together with Form M4 (notice of appearance).
[Where the defender is the holder of the fund in medio, insert the following paragraph:-
As holder of the fund in medio you must lodge with the sheriff clerk at the above address within (insert period of notice) days of (insert date on which service was executed N.B. Rule 5.3(2) relating to postal service)-
(a) a detailed condescendence on the fund in medio; and
(b) a list of parties having an interest in the fund.
You must at the same time intimate to all other parties to the action a copy of
(a) the detailed condescendence on the fund; and
(b) the list of parties having an interest in the fund.]

Form M4 is served on you for use should you wish to intimate that you intend to lodge:-
(a) defences challenging the jurisdiction of the court or the competence of the action; or
(b) objections to the condescendence on the fund in medio; or
(c) a claim on the fund.
IF YOU WISH TO APPEAR IN THIS ACTION you should consult a solicitor with a view to lodging a notice of appearance (Form M4). The notice of appearance, together with the court fee of £(insert amount) must be lodged with the sheriff clerk at the above address within (insert the appropriate period of notice) days of (insert the date on which service was executed N.B. Rule 5.3(2) relating to postal service).
IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income. You can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.
PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as having no interest in the fund in medio and will proceed accordingly.

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

Form M3 Rule 35.6(2)
Form of certificate of citation in an action of multiplepoinding

CERTIFICATE OF CITATION
(Insert place and date), hereby certify that upon the day of
I duly cited [C.D.] Defender, to answer to the foregoing writ. This I did by (state method of service, if by officer and not by post, add: in presence of [L.M.] (insert designation), witness hereto with me subscribing, and where service is executed by post state whether made by registered post or the first class recorded delivery service).
Signed
[P.Q.] Sheriff officer
[L.M.] witness
or [X.Y.] (add designation and business address)
Solicitor for the pursuer

FORM M4 Rule 35.6(1) and 35.8
Form of notice of appearance in an action of multiplepoinding

*Part A NOTICE OF APPEARANCE (MULTIPLEPOINDING)
Court ref. no.
(Insert name and business address of solicitor for the pursuer)
is an action raised at Sheriff Court
Pursuer
Defender
Solicitor for the pursuer

*[This part to be completed by the pursuer before service]
DATE OF SERVICE: DATE OF EXPIRY OF PERIOD OF NOTICE:

*PART B
*This section to be completed by the defender or the defender's solicitor and both parts of this form returned to the sheriff clerk at (insert address of sheriff clerk) on or before the expiry of the period of notice referred to in PART A above

(Insert place and date)
[C.D.] (design), Defender, intends to lodge :
Tick the appropriate box(es)
[] defences challenging the jurisdiction of the court or the competence of the action.
[] objections to the condescendence on the fund in medio
[] a claim on the fund in medio.
Signed
[C.D.] Defender,
or [X.Y.] (add designation and business address)
Solicitor for the defender

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Form M5 Rules 35.9(b) and 35.10(5)

Form of intimation of first hearing in an action of multipoleinding

SHERIFFDOM OF (insert name of sheriffdom) Court ref.no.
AT (insert place of sheriff court)
[A, B.] (insert designation and address), Pursuer, against, [C, D.] (insert designation and address), Defender
You are given notice that in this action of multipoleinding
(insert date, time and place) is the date, time and place for the first hearing.

Date (insert date) Signed Sheriff clerk (depute)

NOTE
If the pursuer fails to return the writ in terms of rule 9.3 of the Ordinary Cause Rules of the Sheriff Court or any party fails to comply with the terms of this notice or to provide the sheriff at the hearing with sufficient information to enable it to be conducted in terms of rule 35.10 of these Rules, the sheriff may make such order or finding against that party so failing as he thinks fit.

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

Form M6 Rule 35.10(4)(b)

Form of citation of person having an interest in the fund in an action of multipoleinding

CITATION
SHERIFFDOM OF (insert name of sheriffdom) Court ref.no.
AT (insert place of sheriff court)
[A.B.], (insert designation and address), Pursuer, against [C.D.], (insert designation and address), Defender
(insert place and date) In the above action the court has been advised that you (insert name and address) have an interest in (insert details of the fund in medio). You are hereby served with a copy of the pleadings in this action, together with Form M4 (notice of appearance).

Form M4 is served on you for use should you wish to intimate that you intend to lodge:
(a) defences challenging the jurisdiction of the court or the competence of the action; or
(b) objections to the condensation on the fund in medio; or
(c) a claim on the fund.

IF YOU WISH TO APPEAR IN THIS ACTION you should consult a solicitor with a view to lodging a notice of appearance (Form M4). The notice of appearance, together with the court fee of £ (insert amount) must be lodged with the sheriff clerk at the above address within days of (insert date on which service was executed N.B. Rule 5.3(2) relating to postal service).

NOTE
IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income. You can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.
PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as having no interest in the fund in medio and will proceed accordingly.

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

Form D1 Rule 36.3(2)

Form of intimation to connected person in damages action

SHERIFFDOM OF (insert name of sheriffdom) Court ref.no.
AT (insert place of sheriff court)
You are given NOTICE that an action has been raised in the above sheriff court by (insert name and designation of pursuer) against (insert name and designation of defender).
A copy of the initial writ is attached.

It is believed that you may have a title or interest to sue the said (insert name of defender) in an action based upon (the injuries from which the late (insert name and designation) died) (or the death of the late (insert name and designation)). You may therefore be entitled to enter this action as an additional pursuer. If you wish to do so, you may apply by lodging a minute with the sheriff clerk at the above address to be cited as an additional pursuer within (insert the appropriate period of notice) days of (insert the date on which service was executed N.B. Rule 5.3(2) relating to postal service).

Signed
Solicitor for the pursuer

NOTE
The minute must be lodged with the sheriff clerk with the court fee of (insert amount) and a motion seeking leave for the minute to be received and for answers to be lodged. When lodging the minute you must present to the sheriff clerk a copy of the initial writ and this intimation.

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

FORM D2 Rule 36.17(1)

Form of receipt for payment into court

RECEIPT
In the Sheriff Court of (insert name of sheriffdom) at (insert place of sheriff court) in the cause, (state names of parties or other appropriate description) [A.B.] (insert designation) has this day paid into court the sum of (insert sum concerned) being a payment into court in terms of rule 36.14 of the Ordinary Cause Rules of the Sheriff Court of money which in an action of damages, has become payable to a person under legal disability.

(If the payment is made under rule 36.15(c) add: [the custody of which money has been accepted at the request of (insert name of court making request).])

Date (insert date) Signed Sheriff clerk (depute)

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FORM P1 Rule 37.2(2)

**Form of advertisement in an action of declarator under section 1(1)
 of the Presumption of Death (Scotland) Act 1977**

Sheriff Court *(insert address)* Court ref.no.

An action has been raised in *(insert name of sheriff court)* by [A.B.], Pursuer, to declare that [C.D.], Defender, whose last known address was *(insert last known address of [C.D.] is dead)*.
 Any person wishing to defend the action must apply to do so by *(insert date, being 121 days after the date of the advertisement)* by lodging a minute seeking to be added as a party to the action with the sheriff clerk at the above address.

A copy of the initial writ may be obtained from the sheriff clerk at the above address.

Date *(insert date)* Signed
[X.Y.] *(add designation and business address)* Solicitor for the pursuer
 or [P.Q.] Sheriff Officer

Form P2 Rule 37.2(4)

Form of intimation to missing person's spouse and children or nearest known relative

To *(insert name and address as in warrant)* Court ref. no.

You are given notice that in this action the pursuer craves the court to declare that *(insert the name and last known address of missing person)* is dead. A copy of the initial writ is enclosed.

If you wish to appear as a party, and make an application under section 1(5) of the Presumption of Death (Scotland) Act 1977 craving the court to make any determination or appointment not sought by the pursuer, you must lodge a minute with the sheriff clerk at *(insert address of sheriff clerk)*.
 Your minute must be lodged within *(insert number)* days of *(insert the date on which intimation was given N.B. Rule 5.3(2) relating to postal service or intimation)*.

Date *(insert date)* Signed
Solicitor for the pursuer
(add designation and business address)

NOTE
 If you decide to lodge a minute it may be in your best interests to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of £ *(insert amount)* and a copy of this intimation.

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances. You can get information about legal aid from a solicitor. You may also obtain advice from any Citizen's Advice Bureau or other advice agency.

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Rule 38.3(1A)

“FORM E1

Form of reference to the European Court

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

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

Pursuer

against

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

Defender

[Here set out a clear and succinct statement of the case giving rise to the request for the 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; and*
- (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 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 .”.

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Paragraph 2(3)

SCHEDULE

FORM PA1

Rule 41.5

Form of certificate of delivery of documents to chief constable

(Insert place and date) I, _____ hereby certify that upon the _____ day of _____ I duly delivered to *(insert name and address)* chief constable of *(insert name of constabulary)* *(insert details of the documents delivered)*. This I did by *(state method of delivery)*.

Signed

Solicitor/sheriff officer
*(add designation and
 business address)*

Rule 30.6(1)

^{F389} APPENDIX 2

FORMS FOR EXTRACT DECREES

Textual Amendments

F389 Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by S.I. 1993/1956, para. 2, Sch. 1

Modifications etc. (not altering text)

C23 Sch. 1 Appendix 2: form 8 omitted (1.1.1996) by virtue of S.I. 1996/2445, para. 3(66)
 Sch. 1 Appendix 2: forms 10, 11, 12 substituted, form 13 omitted (2.10.2000) by S.S.I. 2000/239, para. 3(26)(a)(b), Sch. 2

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APPENDIX 2 Rule 30A (1)
FORMS FOR EXTRACT DECREES
FORM 1
Form of extract decree for payment
EXTRACT DECREE FOR PAYMENT
Sheriff Court Court ref. no.
Date of decree * In absence
Pursuer(s) Defender(s)

The sheriff granted decree against the of the undersigned sum, for payment to the of the undersigned sum.
Sum decreed for £ with interest at per cent a year from until payment
and expenses against the of £ .
* A time to pay direction was made under section 1(1) of the Debtors (Scotland) Act 1987.
* The amount is payable by instalments of £ per of instalment of this extract decree.
* The amount is payable by lump sum within of instalment of this extract decree.

This extract is warrant for all lawful execution hereto.

Date * Delete as appropriate. Sheriff clerk (depute)

FORM 2
Form of extract decree ad factum praestandum
EXTRACT DECREE AD FACTUM PRAESTANDUM
Sheriff Court Court ref. no.
Date of decree * In absence
Pursuer(s) Defender(s)

The sheriff ordained the defender(s)

and granted decree against the for payment of expenses of £ .
This extract is warrant for all lawful execution hereto.

Date * Delete as appropriate. Sheriff clerk (depute)

FORM 3
Form of extract decree of removing
EXTRACT DECREE OF REMOVING
Sheriff Court Court ref. no.
Date of decree * In absence
Pursuer(s) Defender(s)

The sheriff ordained the defender(s) to remove * In case the defender(s) themselves and his/her/their sub-tenants, dependents and others, and all effects, from the premises at the undersigned address and to leave those premises vacant ** Just that after a charge of days.

In the event that the defender(s) fails to remove the sheriff granted warrant to sheriff officers to eject the defender(s), sub-tenants, dependents and others, with all effects, from those premises so as to leave them vacant.

The sheriff granted decree against the for payment of expenses of £ .
Full address of premises: This extract is warrant for all lawful execution hereto.

Date Sheriff clerk (depute)

* Delete as appropriate.
** Delete if period of charge is not specified in the decree.

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FORM 4

Form of extract decree of declarator
 EXTRACT DECREE OF DECLARATOR

Sheriff Court	Court ref. no.
Date of decree	* In absence
Pursuer(s)	Defender(s)

The sheriff found and declared that

and granted decree against the _____ for payment of expenses of £ _____
 This extract is warrant for all lawful execution hereon.

Date	Sheriff clerk (depute)
* Delete as appropriate.	

FORM 5

Form of extract decree of furthcoming
 EXTRACT DECREE OF FURTHCOMING

Sheriff Court	Court ref. no.
Date of decree	* In absence
Date of original decree	
Pursuer(s)	De/Defender(s)/Arrester(s)

Common Debtor(s)

The sheriff granted decree against the arrester(s) for payment of the undecreed sum.

Sum decreed for £ _____ or such other sum(s) as may be owing by the arrester(s) to the common debtor(s) by virtue of the original decree dated above in favour of the pursuer(s) against the common debtor(s).

Expenses of £ _____ * payable out of the arrested fund / payable by the common debtor(s).

This extract is warrant for all lawful execution hereon.

Date	Sheriff clerk (depute)
* Delete as appropriate.	

FORM 6

Form of extract decree of absolvitor
 EXTRACT DECREE OF ABSOLVITOR

Sheriff Court	Court ref. no.
Date of first warrant	Date of decree
Pursuer(s)	Defender(s)

(Insert the nature of cause(s) in the above action)

The sheriff absolved the _____ de/defender(s)
 and granted decree against the _____ for payment of expenses of £ _____
 This extract is warrant for all lawful execution hereon.

Date	Sheriff clerk (depute)
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FORM 7
Form of extract decree of dismissal
EXTRACT DECREE OF DISMISSAL

Sheriff Court	Court ref. no.
Date of first warrant	Date of decree
Pursuer(s)	Defender(s)

The sheriff dismissed the action against the _____ defender(s)
and granted decree against the _____ for payment of expenses of £ _____
* This extract is warrant for all lawful execution hereon.

Date _____ Sheriff clerk (depute)

* Delete as appropriate.

FORM 8
Form of extract decree under the Conveyancing and Feudal Reform (Scotland) Act 1970
EXTRACT DECREE UNDER THE CONVEYANCING AND FEUDAL REFORM (SCOTLAND) ACT 1970

Sheriff Court	Court ref. no.
Date of decree	* In absence
Pursuer(s)	Defender(s)

The sheriff granted warrant to the pursuer(s) to enter into possession of the subjects situated at the undermentioned address and to exercise in relation to those subjects all of the remedies competent to a creditor in lawful possession of the subjects, by virtue of the Conveyancing and Feudal Reform (Scotland) Act 1970, and in particular granted warrant to the pursuer(s) to sell those subjects.

The sheriff ordered the defender(s) to remove * himself/herself/themselves and his/her/their sub-tenants, dependents and others and all effects from the subjects and to leave them vacant.

In the event that the defender(s) fails to remove the sheriff granted warrant to sheriff officers to eject the defender(s), sub-tenants, dependents and others, with all effects, from the subjects so as to leave them vacant.

The sheriff granted decree against the _____ for payment of expenses of £ _____

Full address of subjects: _____

This extract is warrant for all lawful execution hereon.

Date _____ Sheriff clerk (depute)

* Delete as appropriate.

FORM 9
Form of general extract decree
EXTRACT DECREE

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 £ _____

This extract is warrant for all lawful execution hereon.

Date _____ Sheriff clerk (depute)

* Delete as appropriate.

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FORM 10
 Form of extract decree of divorce
 EXTRACT DECREE OF DIVORCE

Sheriff Court _____ Court ref. no. _____
 Date of decree _____ * In absence _____
 Pursuer _____ Defender _____

Date of parties marriage _____ Place of parties marriage _____

The sheriff granted decree

(1) divorcing the defender from the pursuer;
 *(2) awarding custody to the * pursuer / defender of the following child(ren):

Full name(s)	Date(s) of birth
--------------	------------------

and finding the * pursuer / defender entitled to access to the following child(ren):

as follows:

*(3) ordering payment

*(a) by the _____ to the _____ of a periodical allowance of £ _____ per _____;
 *(b) by the _____ to the _____ of a capital sum of £ _____;
 *(c) by the _____ to the _____ of £ _____ per _____ as aliment for each child until that child attains _____ years of age, and said sum payable in advance and beginning at the date of this decree with interest thereon at the rate of _____ per cent a year until payment;
 *(d) by the _____ to the _____ of £ _____ of expenses;

*(4) finding the _____ liable to the _____ in expenses as the same may be subsequently incurred.

This extract is warrant for all lawful execution hereon.

Date _____ Sheriff clerk (signature) _____
 * Delete as appropriate.

FORM 11
 Form of extract decree of separation and aliment
 EXTRACT DECREE OF SEPARATION AND ALIMMENT

Sheriff Court _____ Court ref. no. _____
 Date of decree _____ * In absence _____
 Pursuer _____ Defender _____

The sheriff found and declared that the pursuer is entitled to live separately from the defender from the date of decree and for all time thereafter.

The sheriff awarded custody to the * pursuer / defender of the following child(ren):

Full name(s)	Date(s) of birth
--------------	------------------

and found the * pursuer / defender entitled to access to the following child(ren):

as follows:

*The sheriff ordered payment by the _____ to the _____ of £ _____ per _____ as aliment for the _____ said sum payable in advance and beginning at the date of this decree with interest thereon at _____ per cent a year until payment.

*The sheriff ordered payment by the _____ to the _____ of £ _____ per _____ as aliment for each child until that child attains _____ years of age, and said sum payable in advance and beginning at the date of this decree with interest thereon at _____ per cent a year until payment.

and granted decree against the _____ for payment of expenses of £ _____.

This extract is warrant for all lawful execution hereon.

Date _____ Sheriff clerk (signature) _____
 * Delete as appropriate.

FORM 12
 Form of extract decree of custody and aliment
 EXTRACT DECREE OF CUSTODY AND ALIMMENT

Sheriff Court _____ Court ref. no. _____
 Date of decree _____ * In absence _____
 Pursuer _____ Defender _____

The sheriff granted decree against the * pursuer / defender.

The sheriff awarded custody to the * pursuer / defender of the following child(ren):

Full name(s)	Date(s) of birth
--------------	------------------

and found the * pursuer / defender entitled to access to the following child(ren):

as follows:

The sheriff ordered payment by the _____ to the _____ of £ _____ per _____ as aliment for each child until that child attains _____ years of age, said sum payable in advance and beginning at the date of this decree with interest thereon at _____ per cent a year until payment.

and granted decree against the _____ for payment of expenses of £ _____.

This extract is warrant for all lawful execution hereon.

Date _____ Sheriff clerk (signature) _____
 * Delete as appropriate.

SECOND SCHEDULE

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FORM 13
Form of extract decree of affiliation and aliment
EXTRACT DECREE OF AFFILIATION AND ALIMENTS

Sheriff Court _____ Court ref. no. _____
Date of Decree _____ * In absence _____
Pursuer _____ Defender _____

The sheriff, in respect that the defender is the father of the child named below, granted decree against the defender for the sums) undermentioned.

Full name of child _____ Place of birth _____
Date of birth _____ Birth entry no. _____
Registration district _____
Aliment of £ _____ per _____ commencing on _____
Incurring expenses of £ _____ Interest at _____ per cent a year from _____
until payment and expenses, against the _____ of £ _____
This extract is warrant for all lawful execution hereon.

Date _____ Sheriff clerk (deput) _____
* Delete as appropriate.

F390F390 SECOND SCHEDULE

Textual Amendments

F390 Sch. 2 repealed by Statute Law Revision Act 1927 (c. 42), Sch. Pt. I

F390

Status:

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