

SCHEDULE 1

SMALL CLAIM RULES 2002

CHAPTER 6

Service and return of the summons

Persons carrying on business under trading or descriptive name

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

(2) An extract of a decree pronounced in a claim against such person under such trading or descriptive name shall be a valid warrant for diligence against that person.

(3) A summons, decree, charge or other document following upon such summons or decree in a claim in which a person carrying on business under a trading or descriptive name sues or is sued in that name may be served—

- (a) at any place of business or office at which such business is carried on within the sheriffdom of the sheriff court in which the claim is brought; or
- (b) if there is no place of business within that sheriffdom, at any place where such business is carried on (including the place of business or office of the clerk or secretary of any company, corporation or association or firm).

Form of service

6.2.—(1) Subject to rule 6.6 (service where address of defender is unknown), a form of service in Form 5 must be enclosed with the defender's copy summons.

(2) After service has been effected a certificate of execution of service in Form 6 must be prepared and signed by the person effecting service.

(3) When service is effected by a sheriff officer the certificate of execution of service must specify whether the service was personal or, if otherwise, the mode of service and the name of any person to whom the defender's copy summons was delivered.

(4) If service is effected in accordance with rule 6.4(2) (service within Scotland by sheriff officer where personal service etc. unsuccessful) the certificate must also contain a statement of—

- (a) the mode of service previously attempted; and
- (b) the circumstances which prevented the service from being effected.

Service of the summons

6.3.—(1) Subject to rule 6.5 (service on persons outwith Scotland), a copy summons may be served on the defender—

- (a) by the pursuer's solicitor, a sheriff officer or the sheriff clerk sending it by first class recorded delivery post; or
- (b) in accordance with rule 6.4 (service within Scotland by sheriff officer).

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

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

(4) If the pursuer requires the sheriff clerk to effect service on his behalf by virtue of section 36A of the 1971 Act (pursuer not being a partnership, body corporate or acting in a representative

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

capacity)(1) under paragraph (1), he may require the sheriff clerk to supply him with a copy of the summons.

Service within Scotland by sheriff officer

6.4.—(1) A sheriff officer may validly serve any summons, decree, charge or other document following upon such summons or decree issued in a claim by—

- (a) personal service; or
- (b) leaving it in the hands of—
 - (i) an inmate at the person’s dwelling place; or
 - (ii) an employee at the person’s place of business.

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

- (a) by depositing it in the person’s dwelling place or place of business by means of a letter box or by other lawful means; or
- (b) by affixing it to the door of the person’s dwelling place or place of business.

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

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

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

- (a) the document or a copy of it certified as correct by the pursuer’s solicitor or the sheriff clerk, 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).

(6) If the pursuer requires the sheriff clerk to effect service of the summons on his behalf by virtue of section 36A of the 1971 Act, the sheriff clerk may instruct a sheriff officer to effect service in accordance with this rule on payment to the sheriff clerk by the pursuer of the fee prescribed by order of the Scottish Ministers.

Service on persons outwith Scotland

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

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

- (a) England and Wales, Northern Ireland, the Isle of Man or the Channel Islands; or
- (b) any country with which the United Kingdom does not have a convention providing for service of writs in that country,

the document must be served either—

(1) Section 36A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18.

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

- (i) by posting in Scotland a copy of the document in question in a registered letter addressed to the person at his residence or place of business; or
- (ii) in accordance with the rules for personal service under the domestic law of the place in which the document is to be served.

(3) Subject to paragraph (4), if the document requires to be served in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965⁽²⁾ or the European Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters as set out in Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982⁽³⁾, it must be served—

- (a) by a method prescribed by the internal law of the country where service is to be effected for the service of documents in domestic actions upon persons who are within its territory;
- (b) by or through a British consular authority at the request of the Secretary of State for Foreign and Commonwealth Affairs;
- (c) by or through a central authority in the country where service is to be effected at the request of the Secretary of State for Foreign and Commonwealth Affairs;
- (d) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered letter addressed to the person at his residence; or
- (e) where the law of the country in which service is to be effected permits, service by an huissier, other judicial officer or competent official of the country where service is to be made.

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

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

(6) Subject to paragraph (9), a document which requires to be posted in Scotland for the purposes of this rule must be posted by a solicitor, the sheriff clerk or a sheriff officer, and the form for service and the certificate of execution of service must be in Forms 5 and 6 respectively.

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

- (8) Where service is effected by a method specified in paragraph (3)(b) or (c), the pursuer must—
 - (a) send a copy of the summons and warrant for service with form of service attached, or other document, with a request for service to be effected by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and
 - (b) lodge in process a certificate of execution of service signed by the authority which has effected service.

- (9) If service is effected by the method specified in paragraph (3)(e), the pursuer must—
 - (a) send to the official in the country in which service is to be effected a copy of the summons and warrant for service, with citation attached, or other document, with a request for service to be effected by delivery to the defender or his residence; and

(2) Cmnd. 3986 (1969).

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

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

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

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

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

- (a) the United Kingdom;
- (b) the Isle of Man; or
- (c) the Channel Islands,

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

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

- (a) practises or has practised law in that country; or
- (b) is a duly accredited representative of the government of that country.

(12) Every summons or document and every citation and notice on the face of the envelope referred to in paragraph (7) must be accompanied by a translation in an official language of the country in which service is to be executed, unless English is an official language of that country.

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

(14) If the pursuer requires the sheriff clerk to effect service on his behalf under this rule by virtue of section 36A of the 1971 Act (pursuer not a partnership, body corporate or acting in a representative capacity)—

- (a) the cost must be borne by the pursuer;
- (b) no service shall be instructed by the sheriff clerk until such cost has been paid to him by the pursuer; and
- (c) the pursuer may require the sheriff clerk to supply him with a copy of the summons.

Service where address of defender is unknown

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

- (a) by the publication of an advertisement in Form 8 in a newspaper circulating in the area of the defender's last known address; or
- (b) by displaying on the walls of court a copy of a notice in Form 9.

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

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

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

(5) If the pursuer requires the sheriff clerk to effect service on his behalf under paragraph (1) by virtue of section 36A of the 1971 Act (pursuer not a partnership, body corporate or acting in a representative capacity)—

- (a) the cost of any advertisement required under sub-paragraph (a) of that paragraph must be borne by the pursuer;

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

(b) no advertisement required under sub-paragraph (a) of that paragraph shall be instructed by the sheriff clerk until such cost has been paid to him by the pursuer; and

(c) the pursuer may require the sheriff clerk to supply him with a copy of the summons.

(6) A copy of the newspaper containing the advertisement referred to in paragraph (1)(a) must be lodged with the sheriff clerk unless the sheriff clerk instructed such advertisement.

(7) If display on the walls of court is required under paragraph (1)(b), the pursuer must supply to the sheriff clerk for that purpose a completed copy of Form 9.

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

Endorsation by sheriff clerk of defender's residence not necessary

6.7. Any summons, decree, charge or other document following upon a summons or decree may be served, enforced or otherwise lawfully executed in Scotland without endorsation by a sheriff clerk and, if executed by a sheriff officer, may be so executed by a sheriff officer of the court which granted the summons, or by a sheriff officer of the sheriff court district in which it is to be executed.

Contents of envelope containing defender's copy summons

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

(a) the copy summons;

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

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

Re-service

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

(2) If re-service has been ordered in accordance with paragraph (1) or rule 6.6(8), the claim shall proceed thereafter as if it were a new claim.

Defender appearing barred from objecting to service

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

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

Return of summons and execution

6.11.—(1) If—

(a) someone other than the sheriff clerk has served the summons; and

(b) the case requires to call in court for any reason on the hearing date,

the pursuer must return the summons and the certificate of execution of service to the sheriff clerk at least two days before the hearing date.

(2) If the case does not require to call in court on the hearing date, the pursuer must return the certificate of execution of service to the sheriff clerk by the date mentioned in paragraph (1) above.

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

(3) If the pursuer fails to return the summons or certificate of execution of service in accordance with paragraph (1) or (2) as appropriate, the sheriff may dismiss the claim.