



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- F1 [S. 2](#) repealed by [Statute Law Revision Act 1927 \(c. 42\), Sch.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 [^{F8}sheriffs principal], provided the defender shall upon any legal ground of jurisdiction be amenable to the jurisdiction of the [^{F8}sheriff principal] before whom such cause or proceeding may be raised, and provided also that it shall not be competent to the [^{F8}sheriffs 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 [^{F8}sheriffs 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 [^{F9}sheriffs 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 aliment 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) Applications for orders relating to parental rights under section 3 of the Law Reform (Parent and Child) (Scotland) Act 1986.]

(3) Actions of division of commony and of division or division and sale of common property, in which cases the ^{M2}Division of Commonities Act 1695 concerning the division of commonities shall be read and construed as if it conferred jurisdiction upon 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 [^{F9}sheriff 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}.

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Textual Amendments

- F9** Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4
- 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) inserted (S.) by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(1), **Sch. 1 para. 3**
- 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—
 - (a) an action relating to heritable property is before the sheriff; or
 - (b) 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—
 - (a) where subsection (1)(a) above applies, on application;
 - (b) 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.]

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Textual Amendments

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

[^{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 multiplepoining 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)

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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.

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

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 ejectment 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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Modifications etc. (not altering text)

- 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, either holograph or attested by one witness, 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 grantor 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.

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 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 [^{F57}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

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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

F57 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)

VALID FROM 27/11/2003

[^{F58}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

F58 [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 [^{F59}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.

[^{F60}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

F59 Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\), s. 4](#)

F60 [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)

[^{F61}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

- F61** 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)

[^{F62}CONSISTORIAL CAUSES]

Textual Amendments

- F62** 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.

[^{F63}38C Orders with respect to children.

- (1) In any action for divorce or separation, the sheriff may make, with respect to any child of the marriage to which the action relates, such order (including an interim order) as he thinks fit relating to parental rights, and may vary or recall such order.
- (2) In this section—
 - (a) “child” and “parental rights” have the same meaning as in section 8 of the ^{M7}Law Reform (Parent and Child)(Scotland) Act 1986;
 - (b) “child of the marriage” includes any child who—
 - (i) is the child of both parties to the marriage, or

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- (ii) is the child of one party to the marriage and has been accepted as a child of the family by the other party.]

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**

Marginal Citations

M7 1986 c.9(49:8).

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, . . . ^{F64} for regulating the fees of agents [^{F65}(other than such of the fees of agents as the Secretary of State may regulate under or by virtue of section 14A of the ^{M8}Legal Aid (Scotland) Act 1967)] , officers, shorthand writers, and others, . . . ^{F66}, . . . ^{F67} Provided . . . ^{F68} 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 [^{F69}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

F64 Words repealed by Administration of Justice (Scotland) Act 1933 (c. 41), **Sch.**

F65 Words inserted by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 47), s. 6(1), **Sch. 1 para. 7**

F66 Words repealed by Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12, SIF 47), s. 6(2), **Sch. 2**

F67 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.**

F68 Words repealed by Sheriff Courts (Scotland) Act 1913 (2 & 3 Geo. 5 c. 28), **Sch. 1**

F69 Words substituted by virtue of Secretaries of State Act 1926 (c. 18), **s. 1(3)**

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Marginal Citations

M8 1967 c.43 (77:2).

41 **F70**

Textual Amendments

F70 S. 41 repealed by Administration of Justice (Scotland) Act 1933 (c. 41), **Sch.**

42— **F71**
48.

Textual Amendments

F71 Ss. 42–48 repealed by Sheriff Courts (Scotland) Act 1971 (c. 58), **Sch. 2 Pt. II**

49 **F72**

Textual Amendments

F72 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 [^{F73}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 [^{F73}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 ^{M9}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

F73 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)

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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	
M9	1876 c. 70.

51

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F74

Textual Amendments	
F74	S. 51 repealed by Statute Law (Repeals) Act 1973 (c. 39) , Sch. 1 Pt. XII

52

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F75

Textual Amendments	
F75	S. 52 repealed by Statute Law Revision Act 1927 (c. 42) , Sch. Pt. I

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SCHEDULES

[^{F76}FIRST SCHEDULE]

RULES FOR REGULATING THE PROCEDURE OF THE ORDINARY CAUSE

Textual Amendments

F76 Sch. 1 (with appendix) substituted by S.I. 1983/747, art. 3

Modifications etc. (not altering text)

C17 Sch. 1: certain rules and forms applied by S.I. 1976/476, para. 3, S.I. 1988/1976, para. 2(1), Sch. rule 2, Appendix 2 and S.I. 1990/661, para. 3

C18 Sch. 1 applied by Bankruptcy Act 1985 (c. 66, SIF 66), s. 47(4) (as amended by S.I. 1986/517, para. 5)

VALID FROM 01/01/1994

[^{F77}INITIATION AND PROGRESS OF CAUSES

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)

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 ^{M10}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—

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- (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 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

M10 1988 c.32.

Representation

- 1.3. (1) Subject to paragraph (2), a party to any proceedings arising solely under the provisions of the ^{M11}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

M11 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.

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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.

CHAPTER 3

COMMENCEMENT OF CAUSES

Form of initial writ

- 3.1. (1) An ordinary cause shall be commenced by initial writ in Form G1.
- (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 argreement exists prorogating jurisdiction over the subject-matter of the cause to another court, the intitial 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 intial writ shall contain details of those proceedings.
- (5) An article of condescendence shall be included in the intitial 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 condescendence what steps have been taken to ascertain his present whereabouts.
- (7) The initial writ shall be signed by the pursuer or his solicitor (if any) and the name and address of that solicitor shall be stated on the back of every service copy of that writ.

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),

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- (b) an action of multiplepoinding,
 - (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender,
- shall be in Form 01.

- (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 Form 02.
- (3) In a cause in which a warrant of citation in accordance with Form 02 is appropriate, there shall be served on the defender (with the initial writ and warrant) a notice in Form 03.

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

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.

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

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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

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 multiplepoinding, or
 - (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender,
- citation by any person shall be in Form O4 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.
- (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.
- (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 multiplepoinding 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

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- (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.

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 ^{M13}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

M13 1882 c.77.

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 Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965 ^{F78} or the Convention in Schedule 1 of 3C to the Civil Jurisdiction and Judgments Act 1982 ^{F79}—

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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 Foreign Office;
 - (iii) by or through a British Consular Office in the country where service is to be executed at the request of the Foreign Office;
 - (iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered letter addressed to the person at his residence; or
 - (v) where the law of the country in which service is to be executed permits, service by an huissier, other judicial officer or competent official of the country where service is to be executed; or
 - (c) in a country with which the United Kingdom has a convention on the service of writs in that country other than the conventions mentioned in subparagraph (b), by one of the methods approved in the relevant convention.
- (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, 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.

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(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

F78 Cmnd. 3986 (1969).

F79 1982 c.27; [Schedule 3C](#) was inserted by the [Civil Jurisdiction and Judgments Act 1991 \(c.12\)](#), [section 1\(3\)](#).

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 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).

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.

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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.

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.

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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—
- does not lodge a notice of intention to defend,
 - does not lodge an application for a time to pay direction under the Debtors (Scotland) Act 1987 ^{F80},
 - 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)—
- unless it appears ex facie of the initial writ that a ground of jurisdiction exists under the Civil Jurisdiction and Judgments Act 1982 ^{F81} where that Act applies; and
 - the cause is not a cause—
 - in which decree may not be granted without evidence;
 - to which paragraph (4) applies; or
 - to which rule 33.31 (procedure in undefended family action for parental rights) 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—
- 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;
 - the question whether a person is domiciled in another Contracting State shall be determined in accordance with Article 52 of Schedule 1 or 3C to that Act; and
 - 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 Hague Convention on the Service Abroad of Judicial and Exta-Judicial Documents in Civil and Commercial Matters dated 15th November 1965 ^{F82} applies, decree shall not be

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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

- F80** 1987 c.18.
F81 1982 c.27.
F82 Cmnd. 3986 (1969).

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 Land Tenure Reform (Scotland) Act 1974 ^{F83} (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, 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

- F83** 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
 - (b) order the amended 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 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.

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

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

Fixing date for Options Hearing

- 9.2. (1) 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.

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- (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 parties to make any incidental application to the court.

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 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.

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

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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.

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VALID FROM 21/05/2004

[^{F84}CHAPTER 9A

DOCUMENTS AND WITNESSES

Textual Amendments

F84 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 ^{F85}.

Textual Amendments

F85 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 ^{F86}, or for the recall or restriction of an arrestment under

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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

F86 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—
- lodges a motion seeking such an order; and
 - 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—
- the reasons for seeking an extension of the period for adjustment; and
 - 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

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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.

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.

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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 clerk, may on cause shown, authorise the initial writ to be borrowed by the pursuer, his solicitor or the solicitor's authorised clerk.

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.

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 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.

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- (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 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.

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—
 - (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—

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- (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.
- (2) At any time before extract, the sheriff may correct any clerical or incidental error in an interlocutor or note attached to it.
 - (3) In any cause other than a family action within the meaning of rule 33.1(1) which has proceeded as undefended, the sheriff shall—
 - (a) in the final interlocutor on the merits, include findings in fact and law; and
 - (b) append to that interlocutor a note setting out the reasons for his decision.
 - (4) In any interlocutor other than an interlocutor disposing of the merits, 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

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- (ii) forthwith send a copy of the interlocutor and any note attached to it free of charge to each party.

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.

Procedure following leave to enter process

- 13.2. (1) Where a party minuter lodges answers, 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.

VALID FROM 01/07/2008

[^{F87} CHAPTER 13A

INTERVENTIONS BY THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

Textual Amendments

F87 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)

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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 ^{F88} 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.

Textual Amendments

F88 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—
- send a copy of it to all the parties; and
 - lodge it in process, certifying that subparagraph (a) has been complied with.
- (2) A minute of intervention shall set out briefly—
- the CEHR's reasons for believing that the proceedings are relevant to a matter in connection with which the CEHR has a function;
 - the issue in the proceedings which the CEHR wishes to address; and
 - 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—
- refuse leave without a hearing;
 - grant leave without a hearing unless a hearing is requested under paragraph (4);
 - 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.

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- (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.
- (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.

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- (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.
- (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—

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- (a) a minute of amendment; or
- (b) a minute of abandonment.

Form of minute

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

Procedure in minutes

- [14.3. (1) Where the minute includes a crave seeking leave—
- (a) for a person—
 - (i) to be sisted as a party to the action,
 - (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 minuter may also seek leave for a date for a hearing under rule 9.12 (Options Hearing) to be fixed.
- (2) Where leave is granted under paragraph (1), the sheriff clerk shall fix a date and time for a hearing under rule 9.12.
- (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.
- (4) Where the minute includes a crave for any order including the variation or recall of an existing order or makes any application by minute, as provided in these Rules, the minuter may also seek leave for the lodging of answers within a period specified in the minute.
- (5) Rules 15.2 (intimation of motions), 15.3 (opposition to motions) and 15.4 (hearing of motions) shall, with the necessary modifications, apply to the intimation of, opposition to, or hearing of, a minute as they apply to a motion.]

CHAPTER 15

MOTIONS

^{F89} *Opposition to motions*

- 15.3. (1) Where a party seeks to oppose a motion lodged under rule 15.1(1)(b), he shall—
- (a) complete a notice of opposition in Form G9;
 - (b) forthwith intimate a copy of that notice to every other party; and
 - (c) lodge the notice with the sheriff clerk not later than 2 days before the date fixed for the hearing of the motion.

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- (2) Paragraphs (3), (4) and (5) 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.
- (3) The sheriff may, on cause shown, dispense with or reduce the period for lodging the notice mentioned in paragraph (1)(c).

Textual Amendments

F89 Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

^{F90} Hearing of motions

- 15.4. (1) Subject to paragraph (2), where no notice of opposition is lodged, the motion shall be determined by the sheriff in chambers without the attendance 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, the sheriff clerk shall inform that party that the motion will be heard on the date fixed under rule 15.1(3).
- (5) Where a notice of opposition is intimated and lodged, the motion shall be heard by the sheriff on the date fixed under rule 15.1(3).

Textual Amendments

F90 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 rule 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; or
 - (c) a cause under the Presumption of Death (Scotland) Act 1977 ^{F91}.

Textual Amendments

F91 1977 c.27.

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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

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.
- (3) The pursuer shall intimate a motion under paragraph (1) by registered post or the first class recorded delivery service to every other party not less than 14 days before the date fixed for the hearing of the motion
- (4) On a motion under paragraph (1), the sheriff may—
- (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.

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—

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- (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, the certified copy of the initial writ and any record.
- (2) The pursuer shall forthwith intimate any such amendment in writing to every other party.

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);

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- (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 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 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 Debtors (Scotland) Act 1987 ^{F92} 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.
- (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

F92 1987 c.18.

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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 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.

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

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 before 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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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—
- (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 20.7 shall, with the necessary modifications, apply to such a claim as they apply in relation to such a claim by a defender.

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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.

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
 - (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.

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.

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- (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.

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.

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- (2) If a party fails to comply with paragraph (1), 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.
- (3) At any proof before answer or debate, parties may raise matters in addition to those set out in the note mentioned in paragraph (1).

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 he 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.

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) 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 lodge such letter in process.

Intimation to party whose solicitor has withdrawn

- 24.2. (1) 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.

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- (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.

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. (1) 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.
- (2) The party intimating a minute of transference on a person referred to in paragraph (1) of this rule in accordance with rule 15.2 by virtue of rule 14.3 (5) (intimation of minutes) shall at the same time intimate a copy of the pleadings (including any adjustments and amendments) to that person.

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.

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- (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.
- (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 ^{M14}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

M14 1985 c.73.

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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 ^{M15}Representation of the People Act 1983 in an election petition.

Marginal Citations

M15 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 ^{M16}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.

Marginal Citations

M16 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 ^{M17}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.

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(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)

C19 Rule 27.4 applied (with modifications) (1.1.1994) by S.I. 1993/3128, para. 3(2).

Marginal Citations

M17 1893 c.44.

Cautioners and 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 Insurance Companies Act 1982 ^{F93} to carry on insurance business of class 15(b) in Schedule 2 to that Act.

Textual Amendments

F93 1982 c.50.

Modifications etc. (not altering text)

C20 Rule 27.5 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).

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.

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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 ^{M18} Administration of Justice (Scotland) Act 1972.

Marginal Citations

M18 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 section 1 of the Act of 1972 ^{F94},
- 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.
- (3) A copy of the specification lodged under paragraph (2) and intimation of the motion made under paragraph (1) shall be sent by the applicant to every other party, any third party haver and, 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

F94 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.

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

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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 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, a certificate in Form G12 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.
- (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.

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

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- (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).
- (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—
 - (a) administer the oath de fideli administratione to 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.

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

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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 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, other than in the hands of a haver, 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.

Confidentiality

- 28.8. (1) Where confidentiality is claimed for any evidence sought to be recovered under any of the following rules, such evidence shall 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).

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- (2) A motion to have such a sealed packet opened up 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).
- (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).

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; or
 - (b) in respect of the evidence of a witness which is in danger of being lost, to take the evidence to lie in retentis.

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- (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 fidei administratione to 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.

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.
- (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.

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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.

Letters of request

- 28.14. (1) This rule applies to an application for a letter of request to a court or tribunal outside Scotland to obtain evidence of the kind specified in paragraph (2), being evidence obtainable within the jurisdiction of that court or tribunal, for the 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;
 - (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.
- (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 shall become personally liable 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.

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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

[^{F95} CHAPTER 28A

PRE-PROOF HEARING

Textual Amendments

F95 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)

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.]

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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
 - (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.

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) In action with pecuniary conclusions, 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).

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;

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- (iii) by depositing it in that person's dwelling place or place of business;
 - (iv) by affixing it to the door of that person's dwelling place or place of business; or
 - (v) by registered post or the first class recorded delivery service.
- (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.

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

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.

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.

Recording of evidence

- 29.18. Evidence in a cause shall be recorded by—
- (a) a shorthand writer, to whom the oath de fidei 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.

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- (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 solicitor 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;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.

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

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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.

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 ^{M19}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 multiplepoinding, it shall not be necessary for the grant of a decree, warrant or order for payment under paragraph (1) that all of the taxes or duties payable on the estate of a deceased claimant have been paid or satisfied.

Marginal Citations

M19 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

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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 ^{M20}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

M20 1987 c.22.

When decrees extractable

30.4. (1) Subject to the following paragraphs:—

- (a) a decree in absence may be extracted after the expiry of 14 days from the date of decree;
- (b) 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.

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

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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

- 3.7. 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.”.

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.

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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).

Form of appeal and notice to parties

- [31.3. (1) An appeal shall be marked by writing a note of appeal on the interlocutor sheet, or other written record containing the interlocutor appealed against, or on a separate sheet lodged with the sheriff clerk, in the following terms:— “The pursuer [or applicant, claimant, defender, respondent or other party, as the case may be] appeals to the sheriff principal [or the Court of Session].”.
- (2) A note of appeal shall be—
- signed by the appellant;
 - bear the date on which it is signed; and
 - where the appeal is to the Court of Session and the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal.
- (3) The sheriff clerk shall transmit the process of a cause within 4 days after the appeal is marked—
- in an appeal to the sheriff principal, to him;
 - in an appeal to the Court of Session, to the Deputy Principal Clerk of Session.
- (4) Within the period specified in paragraph (3), the sheriff clerk shall—
- send written notice of the appeal to every other party; and
 - certify on the interlocutor sheet that he has done so.
- (5) Failure of the sheriff clerk to comply with paragraph (4) shall not invalidate the appeal.]

[^{F96} Reclaiming petition or oral hearing ordered or dispensed with]

- [^{F97}31.4. In an appeal to him, the sheriff principal may—
- order a reclaiming petition and answers;
 - hear parties orally; or
 - on the motion of the parties, if he thinks fit, dispose of the appeal without ordering either a reclaiming petition and answers or an oral hearing.]

Textual Amendments

F96 Rule 31.4 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

F97 Rule 31.4 omitted and replaced (1.11.1996) by virtue of S.I. 1996/2445, para. 3(43)(a)(d)

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^{F98} *Appeals in connection with custody, access or aliment]*

- ^{F99} 31.5. Where an appeal is marked against an interlocutor containing an award of custody, access or aliment, the marking of that appeal shall not excuse obedience to or implement of the award of custody, access or aliment unless by order of the sheriff, the sheriff principal or the Court of Session, as the case may be.]

Textual Amendments

F98 Rule 31.5 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

F99 Rule 31.5 omitted and replaced (1.11.1996) by virtue of S.I. 1996/2445, para. 3(43)(a)(d)

Interim possession etc. pending appeal

- 31.6. (1) 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.

Abandonment of appeal

- 31.7. 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.

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.

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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—
- assign a diet of taxation not earlier than 7 days from the date he receives the account from the sheriff clerk; and
 - 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)—
- send a copy of the account, and
 - 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—
- the diet of taxation; or
 - 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

[^{F100}CHAPTER32A

LIVE LINKS

Textual Amendments

F100 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)**

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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.

(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.]

VALID FROM 01/01/1994

SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES

CHAPTER 33

FAMILY ACTIONS

PART I

GENERAL PROVISIONS

Interpretation 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;
- (h) an action or application for any parental rights;
- (i) an action of affiliation and aliment;
- (j) an action of, or application for or in respect of, aliment;

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- (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 Matrimonial and Family Proceedings Act 1984 ^{F101};
- (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 Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 ^{F102}.

(2) In this Chapter, unless the context otherwise requires—

“the Act of 1975” means the Children Act 1975 ^{F103};

“the Act of 1976” means the Divorce (Scotland) Act 1976 ^{F104};

“the Act of 1981” means the Matrimonial Homes (Family Protection) (Scotland) Act 1981 ^{F105};

“the Act of 1985” means the Family Law (Scotland) Act 1985 ^{F106};

“child” means a person under the age of 16 years;

“local authority” means a regional or islands council;

“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;

“parental rights” has the meaning assigned in section 8 of the Law Reform (Parent and Child) (Scotland) Act 1986 ^{F107}.

(3) For the purposes of rules 33.2 (averments in actions of divorce or separation about other proceedings) and 33.3 (averments where custody sought) and, in relation to proceedings in another jurisdiction, Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 ^{F108} (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

F101 1984 c.42; Part IV was amended by the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraphs 12 and 13.

F102 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.

F103 1975 c.72.

F104 1976 c.39.

F105 1981 c.59.

F106 1985 c.37.

F107 1986 c.9.

F108 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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Averments where custody sought

- 33.3. (1) A party to a family action, who makes an application in that action for a custody order (within the meaning assigned in section 1(1)(b) of the Family Law Act 1986 ^{F109} 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 custody 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 custody 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 person 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

F109 1986 c.55.

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 contain an averment stating whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the ^{M21}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.

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Marginal Citations

M21 1987 c.18; section 106 was amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 8(7).

Warrants and forms for intimation

33.7. (1) 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
 - (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 Matrimonial Proceedings (Polygamous Marriages) Act 1972 ^{F110} 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 an order for any parental rights in respect of a child—

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- (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 exercises such rights de facto, 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 the custody of a child, 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 the custody 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 initial writ intimated to that authority;
- (h) in an action which affects a child, to that child if not a party to the action, and a notice of intimation in Form F9 shall be attached to the initial writ intimated to that child;
- (i) in an action where the pursuer makes an application for an order under section 8(1)(aa) of the Act of 1985 ^{F111} (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; and
- (k) in an action where the pursuer makes an application for an order under the Act of 1981 ^{F112}—
 - (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.

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- (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—
 - (a) craves for the custody of a child, and
 - (b) 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) 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 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.

Textual Amendments

F110 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.

F111 1985 c.37; section 8(1)(aa) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), **Schedule 8**, paragraph 34.

F112 1981 c.59.

Productions in action of divorce or where order for custody 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) in an action where the sheriff may make an order in respect of the custody of a child, 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.

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

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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) (custody sought by non-parent resident in Scotland) or 33.7(4) (custody 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,

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.

- (3) Where, by virtue of rule 33.7(1)(g), 33.7(4) or 33.15(2), intimation of an application for custody 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

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—

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- (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 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 Act of 1976 ^{F113} (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 service 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

F113 1976 c.39.

Orders for intimation by sheriff

[33.15(1) In any family action, the sheriff may order intimation to be made to such person as he thinks fit.

- (2) Where a party makes an application 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 lodge a motion for a warrant for intimation or to dispense with such intimation.]

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

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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 the 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
 - (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

- 33.17. An application for a sist, or the recall of a sist, under Schedule 3 to the ^{M22}Domicile and Matrimonial Proceedings Act 1973 shall be made by written motion.

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Marginal Citations

M22 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.

Consents to grant of custody

- [33.19(1) Where a party who requires a consent under section 47(2) of the Act of 1975 ^{F114} to the grant of custody, executes service on, or gives intimation to, a person who may give such consent, he shall—
- (a) include with the copy of the initial writ or other pleadings, as the case may be—
 - (i) a notice in Form F7; and
 - (ii) a form of notice of consent in Form F25; and
 - (b) in the certificate of service or intimation, as the case may be, state expressly that such notice and form of notice of consent was included.
- (2) Where a parent or guardian wishes to consent to the grant of an application for custody, he shall—
- (i) complete and sign the notice of consent in Form F25;
 - (ii) have his signature witnessed; and
 - (iii) send the notice of consent to the sheriff clerk.
- (3) Where a person, who has consented under paragraph (2) to the grant of such an application, wishes to withdraw that consent, he shall give notice by letter sent to the sheriff clerk stating that he withdraws his consent.
- (4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the applicant and to every other party.]

Textual Amendments

F114 1975 c.72; section 47(2) was amended by the [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c.9\)](#), [Schedule 1](#), paragraph 14(1).

Reports by local authorities under section 49(2) of the Act of 1975

- 33.20. (1) On completion of a report made under section 49(2) of the Act of 1975 (reports by local authority on child in certain custody applications), the local authority shall—
- (a) send the report, with a copy for each party, to the sheriff clerk; and
 - (b) where a curator ad litem has been appointed to the child in respect of whom the application for custody has been made, send a copy of the report to him.
- (2) On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.
- (3) Where intimation is given to a local authority under rule 33.7(1)(g) or (4) for the purposes of section 49(2) of the Act of 1975, an application for the custody of the child shall not be determined until the report of the local authority has been lodged.

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- (4) When disposing of an application for custody, the sheriff shall determine which party or parties are to be liable for the expenses of the local authority incurred in the preparation of any report made under section 49(2) of the Act of 1975.

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—
- (a) a local authority under section 11(1) of the Matrimonial Proceedings (Children) Act 1958 ^{F115} or section 12(2)(a) of the Guardianship Act 1973 ^{F116} (which both relate to a report on a child with respect to custody, 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 the custody 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

- F115** 1958 c.40; section 11(1) was amended by the [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c.9\)](#), [Schedule 2](#) and the [Family Law Act 1986 \(c.55\)](#), [Schedule 1](#), paragraph 7.
- F116** 1973 c.29; section 12(2)(a) was amended by the [Children Act 1975 \(c.72\)](#), [section 48\(4\)](#).

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Referral to family mediation and conciliation service

- [33.22. In any family action in which the custody of, or access to, a child is in dispute, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that dispute to a specified family mediation and conciliation service.]

Applications for orders to disclose whereabouts of children

- 33.23. (1) An application for an order under section 33(1) of the ^{M23}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

M23 1986 c.55.

Applications in relation to removal of children

- 33.24. (1) An application for leave under section 51(1) of the Act of 1975 ^{F117} (authority to remove a child from the care and possession of the applicant for custody) 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 Child Abduction and Custody Act 1985 ^{F118} (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

F117 Section 51(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), **Schedule 2**, paragraph 25.

F118 1985 c.60.

Status: Point in time view as at 04/05/1992. This version of this Act contains provisions that are not valid for this point in time.

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Intimation to local authority before supervised access

- 33.25. Where the sheriff, of his own motion or on the motion of a party, is considering making an award of access or interim access subject to supervision by the social work department of a local authority, he shall ordain the party moving for access or interim access 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 access 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.

Joint minutes

- 33.26. Where any parties have reached agreement in relation to—
- (a) any parental rights in respect of a child,
 - (b) aliment for a child, or
 - (c) an order for financial provision,
- a joint minute may be entered into expressing that agreement; and 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

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

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 any parental rights or aliment;
 - (ii) of affiliation and aliment;
 - (iii) for financial provision after an overseas divorce or annulment within the meaning of Part IV of the Matrimonial and Family Proceedings Act 1984 ^{F119}; or
 - (iv) for an order under the Act of 1981 ^{F120};

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- (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.

Textual Amendments

F119 1984 c.42; Part IV was amended by the Act of 1985 (c.37), Schedule 1, paragraphs 12 and 13.

F120 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.

Procedure in undefended family actions for parental rights

- 33.31. (1) Where no notice of intention to defend has been lodged in a family action for any parental rights or any right or authority relating to the welfare or upbringing of a child, 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.

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. Chapter 15 (motions) shall not apply to a family action in which no notice of intention to defend has been lodged.

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) an order relating to parental rights; or
 - (c) an order—
 - (i) under section 16(1)(b) or (3) of the Act of 1985 ^{F121} (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.

Textual Amendments

F121 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).

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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 to 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.

PART IV

APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS

Application and interpretation of this Part

- 33.38. (1) This Part applies to an action of divorce or separation.
- (2) In this Part, “the Act of 1958” means the Matrimonial Proceedings (Children) Act 1958 ^{F122}.

Textual Amendments

F122 1958 c.40.

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 any parental rights; and
 - (b) an order for aliment for a child.

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Intimation before committal to care or supervision

- 33.40. Where the sheriff is considering making an order under section 10(1) of the Act 1958 ^{F123} (committal of care of child to an individual other than one of the parties to the marriage or to a local authority) or under section 12(1) of that Act ^{F124} (placing child under supervision of a local authority), he shall ordain one of the parties to intimate to that person or to the chief executive of the appropriate local authority, as the case may be, where not already a party to the action and represented at the hearing at which the issue arises—
- (a) a copy of the pleadings (including any adjustments and amendments);
 - (b) the terms of any relevant motion; and
 - (c) notice of intimation in Form F28 requiring any representations which that person or that local authority wishes to make to the sheriff to be made by minute in the process of the action within the period specified.

Textual Amendments

F123 Section 10(1) of the Act of 1958 was amended by the [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c.9\)](#), [Schedule 2](#) and the [Family Law \(Scotland\) Act 1986 \(c.55\)](#), [Schedule 1](#), paragraph 6.

F124 Section 12(1) of the Act of 1958 was amended by the [Social Work \(Scotland\) Act 1968 \(c.49\)](#), [Schedule 9](#).

Care or supervision orders

- 33.41. Where the sheriff makes, varies or recalls an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958, the sheriff clerk shall send a copy of the interlocutor making the order and a notice of intimation in Form F29 to the chief executive of the local authority or other person concerned.

Intimation of certain applications to local authorities or other persons

- 33.42. Where a child is subject to an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958, any motion or minute lodged which relates to that child shall be intimated to the chief executive of the local authority or other person concerned.

Applications in depending actions by motion

- [33.43. An application by a party in an action depending before the court to which this Part applies—
- (a) for, or for variation of, an order—
 - (i) for interim aliment for a child under the age of 18 years, or
 - (ii) for interim custody of, or interim access to, a child, or
 - (b) for variation or recall of an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958,

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shall be made by motion.]

Applications after decree relating to parental rights, care or supervision

33.44. (1) An application after final decree—

- (a) for, or for the variation or recall of, an order relating to parental rights,
- (b) for an order under section 10(1) of the Act of 1958 (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or
- (c) an order under section 12(1) of the Act of 1958 (placing child under supervision of a local authority),

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

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 ^{M24}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.

Marginal Citations

M24 1985 c.37.

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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 ^{M25}Act of 1981 (transfer or vesting of tenancy).

Marginal Citations

M25 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
 - (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.

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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.

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.

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PART VII

FINANCIAL PROVISION AFTER OVERSEAS DIVORCE OR ANNULMENT

Interpretation of this Part

33.54. In this Part—

- “the Act of 1984” means the ^{M26}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

M26 1984 c.42.

Applications for financial provision

- 33.55. (1) An application under section 28 of the Act of 1984 ^{F125} 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 Act of 1981 ^{F126} (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 or 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.
- (4) 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

F125 Section 28 was extended by section 29A (inserted by the Act of 1985, Schedule 1, paragraph 12) to an annulment.

F126 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—
- to whom an obligation of aliment is owed under section 1 of the ^{M27}Act of 1985,
 - in whose favour an order for aliment while under the age of 18 years was made in an action of aliment, or
 - 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

M27 1985 c.37.

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PART IX

ACTIONS RELATING TO PARENTAL RIGHTS

Application and interpretation of this Part

[33.60(1) This Part applies to an application for any parental rights in a family action other than in an action of divorce or separation.

(2) In this Part, “the Act of 1973” means the Guardianship Act 1973 ^{F127}.]

Textual Amendments

F127 1973 c.29.

Form of applications

33.61. Subject to any other provision in this Chapter, an application for an order for any parental rights in respect of a child shall be made—

- (a) by an action for parental rights;
- (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.

Defences in actions for parental rights

33.62. In an action for parental rights, 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 accepted the child into his family;
- (d) any person having the de facto custody of the child;
- (e) any local authority in whose care or under whose supervision the child is; and
- (f) in any case where there is no person falling within paragraphs (a) to (e), the Lord Advocate.

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 interim custody or interim access 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.

Care and supervision by local authorities

33.64. (1) Where the sheriff is considering making an order under section 11(1) of the Act of 1973 ^{F128} (committal of care of child to a local authority or order that child be under supervision of a local authority), he shall ordain one of the parties to intimate to

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the chief executive of the appropriate local authority unless a party to the cause and represented at the hearing at which the issue arises—

- (a) a copy of the pleadings (including any adjustments and amendments);
- (b) the terms of any relevant motion;
- (c) a notice of intimation in Form F28 requiring any representations which the local authority wishes to make to the court to be made by minute in the process of the action within the period specified.

(2) Where the sheriff makes, varies or recalls an order placing a child under the supervision of a local authority under section 11(1) of the Act of 1973, the sheriff clerk shall send a copy of the interlocutor making the order and a notice of intimation in Form F29 to the chief executive of that local authority.

(3) Where a child is subject to an order made under section 11(1) of the Act of 1973, any motion or minute lodged which relates to that child shall be intimated to the chief executive of the local authority concerned.

Textual Amendments

F128 Section 11(1) was amended by the Act of 1975 (c.72), section 48(3).

Applications after decree

33.65. (1) An application after final decree—

- (a) for variation or recall of an order relating to parental rights, or
- (b) for, or for variation or recall of, an order under section 11(1) of the Act of 1973 (committal of care of child to a local authority or order that child be under the supervision of a local authority),

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.

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 ^{M28}Act of 1981 have the same meaning as in that Act.

Marginal Citations

M28 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—

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- (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.

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 ^{F129} (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 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
 - (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

F129 Section 15(4) was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c.40\)](#), [section 64\(b\)](#).

PART XI

SIMPLIFIED DIVORCE APPLICATIONS

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

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(b) the form of consent in Part 2 of Form F32 is signed by the party to the marriage giving consent.

(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.

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 ^{M29}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

M29 Cmnd. 3986 (1969).

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.

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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 ^{M30}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

M30 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, prorogue the time for lodging the certified copy of the interlocutor required under paragraph (1).

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;

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- (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. (1) In this Part—
- “the Act of 1991” means the Child Support Act 1991 ^{F130};
 - “child” has the meaning assigned in section 55 of the Act of 1991;
 - “maintenance assessment” has the meaning assigned in section 55 of the Act of 1991.

Textual Amendments

F130 1991 c.48.

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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.

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;
 - (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 ^{M31};
 - “the Act of 1995” means the Children (Scotland) Act 1995 ^{M32};
 - “the Act of 2004” means the Civil Partnership Act 2004 ^{M33};
 - “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 ^{M34};
 - “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 ^{M35};
 - “mental disorder” has the meaning assigned in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ^{M36};
 - “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;

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“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^{M37}.

- (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

M31 1985 c. 37.

M32 1995 c. 36.

M33 2004 c. 33.

M34 2004 c. 7.

M35 1994 c. 39; section 2(2) was amended by the [Environment Act 1995 \(c. 25\)](#), [Schedule 22](#), paragraph 232(1).

M36 2003 asp 13.

M37 [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.

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(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
 - (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.

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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 ^{F131}) 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

F131 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 ^{F132};
 - “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;
 - “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 ^{F133} (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

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(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

F132 1991 c. 48.

F133 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, 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 ^{M38},
 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

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- (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 ^{M39} (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–
 - (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 ^{M40} (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 ^{M41} (pension sharing orders), to the person responsible for the pension arrangement and a notice of intimation

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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
 - (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

M38 2000 asp 4.

M39 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).

M40 Section 8(1)(ba) was inserted by the [Pensions Act 1995](#) (c. 26), [section 167\(1\)](#).

M41 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.

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- (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.
- (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.

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- (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–

- (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.

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(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;
- (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.

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- (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
 - (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.

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 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,

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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.

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 ^{F134} (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—

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- (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

F134 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.

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 ^{F135} (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

F135 1986 c. 55.

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Applications in relation to removal of children

- 33A.23(1) An application in a civil partnership action for leave under section 51(1) of the Children Act 1975 ^{F136} (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 ^{F137} (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

F136 1975 c. 72.

F137 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;
 - (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;

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- (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.

^{F138}PART II

UNDEFENDED CIVIL PARTNERSHIP ACTIONS

Textual Amendments

F138 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;
- (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.

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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.

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 ^{F139} (setting aside or varying agreement as to financial provision);
 - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or

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- (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

F139 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.

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

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- (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.

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.

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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.

(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);

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- (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
- (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 ^{F140} (recall or variation of order in respect of a pension lump sum);
- (b) paragraph (7) of that section ^{F141} (variation of order in respect of pension lump sum to substitute trustees or managers); or

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(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

F140 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).

F141 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.

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.

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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.

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.

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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.

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

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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;
 - (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).

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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.

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.

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- (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—
- (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);

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- (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.

(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.

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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 ^{F142} 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

F142 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.

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.

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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 ^{M42}(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.

Marginal Citations

M42 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.

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- (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
 - (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.82(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.

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(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.83(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—

“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).

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- (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.

VALID FROM 04/05/2006

[^{F143}CHAPTER 33B

FINANCIAL PROVISION FOR FORMER COHABITANTS

Textual Amendments

F143 **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 ^{M43};
- “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;

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“the survivor” means the cohabitant referred to in section 29(1)(b) of the Act.

Marginal Citations

M43 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.]

CHAPTER 34

ACTIONS RELATING TO HERITABLE PROPERTY

CHAPTER 35

ACTIONS OF MULTIPLEPOINDING

Application of this Chapter

35.1. This Chapter applies to an action of multiplepoinding.

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 multiplepoinding:

- rule9.1 (notice of intention to defend),
- rule9.2 (fixing date for Options Hearing),

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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 multiplepinding 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 multiplepindings

- 35.5. The warrant of citation of the initial writ in an action of multiplepinding 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 multiplepinding 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.

Advertisement

- 35.7. The sheriff may make an order for advertisement of the action in such newspapers as he thinks fit.

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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.

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.

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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 multiplepointings

- 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.

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.

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- (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 ^{M44}Damages (Scotland) Act 1976.

Marginal Citations

M44 1976 c.13; Schedule 1 was amended by the Administration of Justice Act 1982 (c.53), section 14(4).

Averments

36.2. In an action to which this Part applies, the pursuer shall aver in the condescendence, 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

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(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).

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) Paragraphs (1) to (4) of rule 14.3 (procedure in minutes) shall not apply to a minute to which this rule applies.

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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.

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.
- (2) In this Part—
- “the Act of 1982” means the ^{M45}Administration of Justice Act 1982;
 - “further damages” means the damages referred to in section 12(4)(b) of the Act of 1982;

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“provisional damages” means the damages referred to in section 12(4)(a) of the Act of 1982.

Marginal Citations

M45 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 condescendence 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, 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 absolver.

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.
- (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.

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- (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 ^{M46}Trustee Investments Act 1961.

Marginal Citations

M46 1961 c.62.

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 Sex Discrimination Act 1975 ^{F144}(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 an action 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

F144 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 ^{M47}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.

Marginal Citations

M47 1977 c.27.

Status: Point in time view as at 04/05/1992. This version of this Act contains provisions that are not valid for this point in time.

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Parties to, and service and intimation of, actions of declarator

- 37.2. (1) The missing person shall be named as the defender in an action of declarator and, subject to paragraph (2), service on that person shall be executed in accordance with rule 5.6 (service where address of person is not known).
- (2) In the application of rule 5.6(1)(a) (advertisement where address of person not known) to service under paragraph (1) of this rule, for the reference to Form G3 there shall be substituted a reference to 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 summons 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.

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.

Status: Point in time view as at 04/05/1992. 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) 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 ^{F145} 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 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

F145 [S.I. 1992/272](#).

CHAPTER 38

EUROPEAN COURT

Interpretation of this Chapter

- 38.1. (1) In this Chapter—

Status: Point in time view as at 04/05/1992. 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)

“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 177 of the E.E.C. Treaty, Article 150 of the Euratom Treaty, or Article 41 of the E.C.S.C. Treaty; or
- (b) a ruling on the interpretation of the Conventions, as defined in section 1(1) of the Civil Jurisdiction and Judgments Act 1982 ^{F146}, 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 European Communities Act 1972 ^{F147}.

Textual Amendments

F146 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).

F147 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.
- (2) A reference shall be made in the form of a request for a preliminary ruling of the European Court in Form E1.

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.
- (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.

Status: Point in time view as at 04/05/1992. This version of this Act contains provisions that are not valid for this point in time.

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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.

VALID FROM 02/10/2000

^{F148}CHAPTER 39

PROVISIONS IN RELATION TO CURATORS AD LITEM

Textual Amendments

F148 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

- ^{F149}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.]

Status: Point in time view as at 04/05/1992. 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

F149 Sch. 1 Ch. 39 (rule 39(1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(24)

VALID FROM 01/03/2001

^{F150}CHAPTER 40

COMMERCIAL ACTIONS

Textual Amendments

F150 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;
 - (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.

Status: Point in time view as at 04/05/1992. This version of this Act contains provisions that are not valid for this point in time.

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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.
- (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.

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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.
- (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.

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- (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.
- (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

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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.

Parts of Process

- 40.17. All parts of process lodged in a commercial action shall be clearly marked “Commercial Action”.]

VALID FROM 08/03/2002

[^{F151}CHAPTER 41

PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

Textual Amendments

F151 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.I. 2002/7), {para. 2(2)}

Status: Point in time view as at 04/05/1992. 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

- 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; 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–
 - (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).

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).

Status: Point in time view as at 04/05/1992. 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)

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

[^{F152}CHAPTER 42

Textual Amendments

F152 Sch. 1 Ch. 42 inserted (20.8.2004) by Act of Sederunt (Ordinary Cause Rules) Amendment (Competition Appeal Tribunal) 2004 (S.I. 2004/350), art. 2

COMPETITION APPEAL TRIBUNAL

Interpretation

- 42.1. In this Chapter—
 “the 1998 Act” means the Competition Act 1998 ^{F153}; and
 “the Tribunal” means the Competition Appeal Tribunal established by section 12 of the Enterprise Act 2002.

Textual Amendments

F153 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 ^{F154} 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—
- transmit the process (or the appropriate part) to the clerk of the Tribunal;
 - notify each party to the proceedings in writing of the transmission under sub paragraph (a); and

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(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

F154 [Section 47A](#) was inserted by the Enterprise Act 2002, section 18.

VALID FROM 16/06/2006

[^{F155}CHAPTER 43

CAUSES RELATING TO ARTICLES 81 AND 82 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

Textual Amendments

F155 [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](#)

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—

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- (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

[^{F156}CHAPTER 44

EQUALITY ENACTMENTS

Textual Amendments

F156 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;
 - (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.

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- (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 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.]

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VALID FROM 01/11/2007

[^{F157} CHAPTER 45

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

Textual Amendments

F157 *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.
- (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;

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- (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.

(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,

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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.
- (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.

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- (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.

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.]

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F158 APPENDIX 1
FORMS

Textual Amendments

F158 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

<p>Form G1</p> <p>Rule 3.1(1)</p> <p>Form of initial writ</p> <p>INITIAL WRIT</p> <p>SHERIFFDOM OF (insert name of sheriffdom) AT (insert place of sheriff court)</p> <p>[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.</p> <p>The Pursuer craves the court (here state the specific decree, warrant or order sought).</p> <p>CONDESCENDENCE (State in numbered paragraphs the facts which form the ground of action)</p> <p>PLEAS-IN-LAW (State in numbered sentences)</p> <p>Signed [A.B.], Pursuer; or [X.Y.], Solicitor for the pursuer (state designation and business address)</p>	
<p>Form G2</p> <p>Rule 4.2(1)</p> <p>Form of caveat</p> <p>SHERIFFDOM OF (insert name of sheriffdom) AT (insert place of sheriff court)</p> <p>CAVEAT for [A.B.] (insert designation and address*)</p> <p>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 intimation to defend, it is requested that intimation be made to the caveator before any order is pronounced.</p> <p>Date (insert date)</p> <p>Signed [A.B.] or [X.Y.], Solicitor for [A.B.] (add designation and business address)</p> <p>Caveator's telephone and fax number (insert where caveat is not lodged by solicitor)</p> <p>Solicitor (insert name and address, telephone and fax number and references)</p> <p>Out of hours contacts:</p> <p>1. (insert name and telephone number) 2. (insert name and telephone number)</p> <p>*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).</p>	
<p>Form G3</p> <p>Rule 5.6(1)(a)</p> <p>Form of advertisement</p> <p>NOTICE TO [C.D.]</p> <p>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].</p> <p>Court ref. no.</p> <p>Signed [X.Y.], (add designation and business address) Solicitor for the pursuer or [P.Q.], (add business address) Sheriff officer</p>	
<p>Form G4</p> <p>Rules 5.6(1)(b) and 33.16(3)(b)</p> <p>Form of notice for walls of court</p> <p>NOTICE TO [C.D.]</p> <p>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].</p> <p>Court ref. no.</p> <p>Date (insert date)</p> <p>Signed Sheriff clerk (depute) Telephone no. (insert telephone number of sheriff clerk's office)</p>	

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FORM G5

Rules 9.2(7)(a) and 33.16(7)(b)

Form of intimation of Options Hearing

Sheriff Court (insert address and telephone number)
[A.B.] (designs) Pursuer against [C.D.] (designs) Defender
Court ref.no.
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 (deputee)
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)
AT (insert place of sheriff court)
Court ref.no.
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)

Form G7

Rule 15.2(1)

Form of intimation of motion

SHERIFFDOM OF (insert name of sheriffdom)
AT (insert place of sheriff court)
Court ref.no.
In the cause
[A.B.] (insert designation and address)
Pursuer
against
[C.D.] (insert designation and address)
Defender
(1) Date fixed for hearing motion (insert date and time)
(2) Last date for lodging notice of opposition (insert date)
APPLICATION IS MADE BY MOTION FOR THE ORDER(S) SOUGHT IN THE ATTACHED FORM (attach a copy of Form G6)
*A copy of the document(s) or part(s) of process referred to in Form G6 is 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 (insert date for lodging the notice of opposition). In that event the motion will be called to court (insert date and time fixed for hearing motion). A copy of the notice of opposition must be sent immediately to any other party in the action.
IF NO NOTICE OF OPPOSITION IS LODGED, the motion may be considered by the sheriff without the attendance of parties.
Date (insert date) Signed
Party (insert name and description of party)
or Solicitor for party
(insert designation and business address)
* Delete as appropriate.
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 receive 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.

Form G8

Rule 15.2(6)

Form of certificate of intimation of motion

CERTIFICATE OF INTIMATION OF MOTION
I certify that intimation of the motion 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).
Date (insert date) Signed
Solicitor or Sheriff officer
(add designation and business address)

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<p style="text-align: center;">Form G9</p> <p style="text-align: right;">Rule 15.3(1)(a)</p> <p style="text-align: center;">Form of notice of opposition to motion</p> <p style="text-align: center;">NOTICE OF OPPOSITION TO MOTION</p> <p>SHERIFFDOM OF (insert name of sheriffdom) Court ref. no. AT (insert place of sheriff court) in the cause</p> <p>[A.B.] (insert designation and address) Pursuer</p> <p style="text-align: center;">against</p> <p>[C.D.] (insert designation and address) Defender</p> <p>Date and time for hearing of motion (insert date and time)</p> <p>Notice of opposition to motion given by (insert name of party opposing motion) on (insert date of lodging of notice of opposition with sheriff clerk)</p> <p>Intimation of notice of opposition sent to (insert name of party) on (insert date)</p> <p>by (insert method of intimation; where intimation is made by facsimile transmission, insert fax number to which notice of opposition sent)</p> <p>Date (insert date) Signed</p> <p style="text-align: right;">Party (insert name and designation of party) or Solicitor for party (add designation and business address)</p>	
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<p style="text-align: center;">Form G10</p> <p style="text-align: right;">Rule 24.2(3)</p> <p style="text-align: center;">Form of intimation to a party whose solicitor has withdrawn</p> <p>SHERIFFDOM OF (insert name of sheriffdom) Court ref. no. AT (insert place of sheriff court) in the cause</p> <p>[A.B.] (insert designation), Pursuer</p> <p style="text-align: center;">against</p> <p>[C.D.] (insert designation) Defender</p> <p>The court has been informed that your solicitors have ceased to act for you.</p> <p>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.</p> <p>When you appear you will be asked by the sheriff to state whether you intend to proceed with your action [or defences or answers].</p> <p>Date (insert date) Signed</p> <p style="text-align: right;">Solicitor (add designation and business address)</p> <p>* Delete as appropriate</p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>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.</p> </div>	
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<p style="text-align: center;">FORM G11</p> <p style="text-align: right;">Rule 28.3(1)</p> <p style="text-align: center;">Form of notice in optional procedure for commission and diligence</p> <p>Order by the Sheriff Court at (insert address) Court ref. no.</p> <p style="text-align: center;">In the cause</p> <p>[A.B.] (insert) Pursuer</p> <p style="text-align: center;">against</p> <p>[C.D.] (insert) Defender</p> <p>To (insert name and designation of party or parties or haver, from whom documents are sought to be recovered)</p> <p>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. N.B. Rule 5.3(2) relating to postal service or intimation):</p> <p>(1) this order, which must be produced intact;</p> <p>(2) a certificate signed and completed in terms of the form appended to this notice; and</p> <p>(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.</p> <p>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.</p> <p>Date (insert date) Signed</p> <p style="text-align: right;">Solicitor for party (add designation and business address of the solicitor for the party in whose favour commission and diligence granted)</p> <p>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".</p> <p style="text-align: center;">*****</p> <p style="text-align: center;">CERTIFICATE</p> <p>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:</p> <p>(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]</p> <p>(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].</p> <p style="text-align: right;">Signed</p>	
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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)

FORM G13

Rules 28.4(4) and 29.7(4)

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 without reasonable excuse, having demanded and been paid your travelling expenses, you may be ordered to pay a penalty not exceeding £250 and 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 outlay 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.

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 ".

FORM G16

Rule 28.14(3)

Form of minute for letter of request

SHERIFFDOM OF (insert name of sheriffdom)
AT (insert place of sheriff court)

MINUTE FOR PURSUER (or DEFENDER)
in the cause

[A.B.] (insert designation and address)
Pursuer
against
[C.D.] (insert designation and address)
Defender

Court ref. no.

The Minister states that the evidence specified in the attached letter of request is required for the purpose of these proceedings and craves the court to issue a letter of request to (specify the court or tribunal having powers to obtain the evidence) to obtain the evidence specified.

Date (insert date)

Signed

Solicitor for the pursuer (or defender or third party)
(add designation and business address)

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. Pursuer
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, valued, etc.)

12. Any requirement that the evidence be given on oath or affirmation and any special form to be used (in the event that the evidence cannot be taken in the manner requested, specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence)

13. Special methods or procedure to be followed

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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 (insert name and address) will be borne by
- (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 obtains 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 obtains 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)

Form O3

Rules 3.3(3), 7.3(2) and 18.5(1)(a)(i)

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 DEFEND THE ACTION

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 overleaf 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".

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HOW TO COMPLETE THE APPLICATION																	
PLEASE WRITE IN INK USING BLOCK CAPITALS																	
<p>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.</p> <p>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).</p> <p>PART C - Give full details of your financial position in the space provided.</p> <p>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.</p> <p>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.</p>																	
WHAT WILL HAPPEN NEXT																	
<p>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.</p> <p>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.</p>																	
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)	Is an action raised by _____ _____ _____ PURSUER																
<p>PART B</p> <p>1. The applicant is a defender in the action brought by the above named pursuer.</p> <p>2. The defender admits the claim and applies to the court for a time to pay direction.</p> <p>3. The defender applies (1) To pay by instalments of £ _____</p> <p>(Tick one box only) EACH WEEK <input type="checkbox"/> FOURTEENIGHT <input type="checkbox"/> MONTH <input type="checkbox"/></p> <p style="text-align: center;">OR</p> <p>(2) To pay the sum ordered in one payment within _____ WEEKS/MONTHS</p>																	
<p>PART C</p> <p>4. Defender's financial position</p> <table style="width: 100%;"><tr><td style="width: 50%;">My weekly fortnightly monthly</td><td style="width: 50%;">My weekly fortnightly monthly</td></tr><tr><td>outgoings are: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></td><td>income is: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></td></tr><tr><td>Rent / mortgage £</td><td>Wages / pensions £</td></tr><tr><td>Heating £</td><td>Social security £</td></tr><tr><td>Food £</td><td>Other £</td></tr><tr><td>HIP £</td><td></td></tr><tr><td>Other £</td><td></td></tr><tr><td>Total £</td><td>Total £</td></tr></table> <p>Dependants: Children - how many <input type="checkbox"/> Dependent relatives - how many <input type="checkbox"/></p> <p>Here list all capital (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments.</p> <p>Here list any outstanding debts:</p>		My weekly fortnightly monthly	My weekly fortnightly monthly	outgoings are: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	income is: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Rent / mortgage £	Wages / pensions £	Heating £	Social security £	Food £	Other £	HIP £		Other £		Total £	Total £
My weekly fortnightly monthly	My weekly fortnightly monthly																
outgoings are: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	income is: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>																
Rent / mortgage £	Wages / pensions £																
Heating £	Social security £																
Food £	Other £																
HIP £																	
Other £																	
Total £	Total £																
<p>PART D</p> <p>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):-</p> <p>6. This application is made under sections 1(1) and 2(3) of the Debtors (Scotland) Act 1987.</p> <p>Therefore the defender asks the court</p> <p style="margin-left: 20px;">*a. to make a time to pay direction.</p> <p style="margin-left: 20px;">*b. to recall the above arrestment.</p> <p style="margin-left: 20px;">*c. to restrict the above arrestment (in which case state restriction wanted):-</p> <p>* Delete what does not apply</p> <p>Date (insert date) _____ Signed _____ Defender</p>																	
Form O4 Rule 5.2(1) Form of citation																	
<p>CITATION</p> <p>SHERIFFDOM OF (insert name of sheriffdom) AT (insert place of sheriff court)</p> <p>[A.B.] (insert designation and address) Pursuer, against [C.D.] (insert designation and address), Defender Court ref. no. _____</p> <p>(Insert place and date). You [C.D.] are hereby served with this copy writ and warrant, with Form O7 (notice of intention to defend).</p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"><p>Form O7 is served on you for use should you wish to intimate an intention to defend the action.</p><p>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 received, N.B. Rule 5.2(2) relating to postal services).</p><p>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.</p><p>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.</p></div> <p style="text-align: right; padding-right: 50px;">Signed _____ (P.Q.), Sheriff officer, or [X.Y.] (add designation and business address) Solicitor for the pursuer</p>																	

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<p>Form O5</p>	<p>Rule 5.2(2)</p>		
<p>Form of citation where time to pay direction may be applied for</p>			
<p>CITATION</p> <p>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.</p> <p>(Insert place and date.) You [C.D.], are hereby served with this copy writ and warrant, together with the following forms: Form O3 (application for time to pay direction); and Form O7 (notice of intention to defend).</p> <p>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.</p> <p>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 5.2(2) relating to postal service).</p> <p>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.</p> <p>Form O7 is served on you for use should you wish to intimate an intention to defend the action.</p> <p>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. Rule 5.2(2) relating to postal service).</p> <p>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.</p> <p>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.</p>			
<p>Signed [P.Q.], Sheriff officer, or [X.Y.], (add designation and business address) Solicitor for the pursuer</p>			
<p>Form O6</p>			
<p>Rule 5.2(3)</p>			
<p>Form of certificate of citation</p>			
<p>CERTIFICATE OF CITATION</p> <p>(Insert place and date [I.], hereby certify that upon the day of [I.], (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 where service executed by post state whether by registered post or the first class recorded delivery service).</p> <p>(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)</p> <p style="text-align: right;">Signed [P.Q.], Sheriff officer or [X.Y.], (add designation and business address) Solicitor for the pursuer</p>			
<p>Form O7</p>			
<p>Rules 5.2 (1) and 9.1(1)</p>			
<p>Form of notice of intention to defend</p>			
<p>NOTICE OF INTENTION TO DEFEND</p> <p>in an action raised at Sheriff Court</p> <p>*PART A Court Ref. No.</p> <table style="width: 100%;"> <tr> <td style="width: 60%;"> <div style="border: 1px solid black; padding: 5px; min-height: 40px;"> (insert name and business address of solicitor for the pursuer) </div> <p style="text-align: right;">Solicitor for the pursuer</p> </td> <td style="width: 40%;"> <p style="text-align: right;">Pursuer</p> <hr/> <p style="text-align: right;">Defender</p> </td> </tr> </table> <p>*(This section to be completed by the pursuer before service)</p> <p>DATE OF SERVICE : DATE OF EXPIRY OF PERIOD OF NOTICE:</p> <p>*PART B</p> <p>(* This section to be completed by the defender or the defender's solicitor and both parts of this form 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.)</p> <p>(Insert place and date)</p> <p>[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).</p> <p style="text-align: right;">Signed [C.D.], Defender or [X.Y.], (add designation and business address) Solicitor for the defender</p>		<div style="border: 1px solid black; padding: 5px; min-height: 40px;"> (insert name and business address of solicitor for the pursuer) </div> <p style="text-align: right;">Solicitor for the pursuer</p>	<p style="text-align: right;">Pursuer</p> <hr/> <p style="text-align: right;">Defender</p>
<div style="border: 1px solid black; padding: 5px; min-height: 40px;"> (insert name and business address of solicitor for the pursuer) </div> <p style="text-align: right;">Solicitor for the pursuer</p>	<p style="text-align: right;">Pursuer</p> <hr/> <p style="text-align: right;">Defender</p>		

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FORM 08

Rule 18.5(1a)(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. 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)
AT (insert place of sheriff court)

Court ref. no.

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 £ as damages in respect of (insert brief account 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 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 or persons whose defence 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 F1	Rule 33.7(1)(a)
<p>Form of intimation to children and next-of-kin in an action of divorce or separation where the defender's address is not known</p> <p>To (insert name and address as in warrant)</p> <p>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 as 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).</p> <p>Date (insert date) Signed Solicitor for the pursuer (add designation and business address)</p> <p>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.</p> <p>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.</p>	
<p>FORM F2 Rule 33.7(1)(b)</p> <p>Form of intimation to alleged adulterer in action of divorce or separation</p> <p>To (insert name and address as in warrant) Court ref. no.</p> <p>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).</p> <p>Date (insert date) Signed Solicitor for the pursuer</p> <p>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.</p> <p>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.</p>	
<p>FORM F3 Rule 33.7(1)(c)</p> <p>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</p> <p>To (insert name and address as in warrant) Court ref. no.</p> <p>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).</p> <p>Date (insert date) Signed Solicitor for the pursuer (insert designation and business address)</p> <p>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.</p> <p>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.</p>	
<p>FORM F4 Rule 33.7(1)(d)</p> <p>Form of intimation to additional spouse of either party in proceedings relating to a polygamous marriage</p> <p>To (name and address as in warrant) Court ref. no.</p> <p>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).</p> <p>Date (insert date) Signed Solicitor for the pursuer</p> <p>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.</p> <p>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.</p>	
<p>FORM F5 Rule 33.7(1)(e)(i) and (ii)</p> <p>Form of intimation to a local authority or third party who may be liable to maintain a child</p> <p>To (name and address as in warrant) Court ref. no.</p> <p>You are given NOTICE that in this action, the court may make an order in respect of the custody 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).</p> <p>Date (insert date) Signed Solicitor for the pursuer</p> <p>NOTE The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.</p> <p>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.</p>	

FORM F6

Rule 33.7(1)(x)(iii)

Form of intimation to person having de facto custody of a child

To (name and address as in warrant)

Court ref.no.

You are given NOTICE that in this action, the court may make an order in respect of the custody of (insert name and address) a child at present in your custody. 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 5.5(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

Rules 33.7(1)(f) and 33.19(1)(a)(i)

Form of notice to parent or guardian in action for custody of a child

1.You are given NOTICE that in this action, the pursuer seeks custody of the child (insert name of child). A copy of the initial writ is served on you and is attached to this notice.

2.*The pursuer being a relative (or step parent) of the child, has the consent of (or seeks the consent of) (insert name of parent or guardian) who is a parent (or guardian) of the child, and has had care and possession of the child for three months preceding the lodging of the initial writ on (insert date).

OR

*The pursuer has the consent of (or seeks the consent of) (insert name of parent or guardian) who is a parent (or guardian) of the child and has care and possession of the child, for a period or periods before lodging the writ which amount to at least twelve months including the three months preceding the lodging of the initial writ on (insert date).

OR

*The pursuer has had care and possession of the child for a period before the lodging of this writ which amount to at least three years, including the three years preceding the lodging of the initial writ on (insert date).

OR

*The pursuer intends to establish the following as showing cause why the pursuer should be granted custody of the child (state briefly the ground on which custody is sought or refer to the relevant article of concordance in the writ).

*Delete as appropriate.

3.*If you wish to consent to the pursuer being granted custody to the child in the event of the court deciding that that was appropriate, you should complete Form F25.

OR

*(Insert name of parent or guardian) has consented to the pursuer being granted custody of the child in the event of the court deciding that that was appropriate.

* Both alternative paragraphs should be struck out if the pursuer is a parent or guardian.

Insert if appropriate AND

The writ states that the child has been in the care and possession of the pursuer for a period or periods which amount to three years and accordingly, if that is correct, it is an offence to remove the child from the custody of the pursuer against the will of the pursuer except with the authority of the court or under the authority of any enactment or on the lawful arrest of the child.]

4.If you wish to oppose this action, and oppose the granting of custody of the child to the pursuer, 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.

FORM F8

Rules 33.7(1)(g), 33.7(4) and 33.12(2)

Form of notice to local authority under section 49(1) of the Children Act 1975

To (insert name and address)

Court ref.no.

You are given NOTICE that the pursuer has presented an initial writ to the sheriff court at (insert address) for the custody of the child (insert name of child). A copy of the initial writ is enclosed.

2. You are required under section 49(2) of the Children Act 1975 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)

FORM F9

Rule 33.7(1)(h)

Form of intimation in an action which affects a child

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 (insert details of the crave(s) that affect the child) which affect you. 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.

Status: Point in time view as at 04/05/1992. This version of this Act contains provisions that are not valid for this point in time.

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FORM F10	Rule 33.7(1)(i)	
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)(j)	
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 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 of (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.		

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. 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 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 ordains 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.		
[Meaning: 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 intention 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 3.3(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 (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 (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.

FORM F19

Rule 33.14(1)(b)(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 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 the Law Reform (Parent and Child) (Scotland) Act 1986 relating to parental rights (including custody and access) to 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 26).

4. If, after consideration, you wish to consent to decree, you should complete and sign the attached form of 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 3.3(2) relating to postal service).

5. If at a later stage you wish to withdraw your consent you must inform the sheriff clerk immediately in writing that you withdraw your consent to decree being granted against you in this action.

Date (insert date) Signed
Solicitor for the pursuer (add designation and business address)

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<p style="text-align: center;">FORM F 20</p> <p style="text-align: right;">Rule 33.14(1)(a)(i) and 33.18(1)</p> <p style="text-align: center;">Court ref. no.</p> <p>Form of notice of consent in actions of divorce under section 1(2)(d) of the Divorce (Scotland) Act 1976</p> <p>[A.B.], (insert designation and address), Pursuer, against [C.D.], (insert designation and address), Defender</p> <p>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.</p> <p>Date (insert date) Signed Defender</p>	
<p style="text-align: center;">FORM F21</p> <p style="text-align: right;">Rule 33.14(1)(a)(ii)</p> <p>Form of notice to defender where it is stated that defender consents to the granting of decree of separation</p> <p>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.</p> <p>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.</p> <p>2. If you do consent to the grant of decree you may 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 the Law Reform (Parent and Child) (Scotland) Act 1986 relating to parental rights (including custody and access) to 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.</p> <p>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 26).</p> <p>4. If after consideration, you wish to consent to decree, you should complete and sign the attached Form of 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 3.3(2) relating to postal service or intimation).</p> <p>5. If at a later stage you wish to withdraw your consent you must inform the sheriff clerk immediately in writing that you withdraw your consent to decree being granted against you in this action.</p> <p>Date (insert date) Signed Solicitor for the pursuer (add designation and business address)</p>	
<p style="text-align: center;">FORM F22</p> <p style="text-align: right;">Rules 33.14(1)(a)(iii) and 33.18(1)</p> <p style="text-align: center;">Court ref. no.</p> <p>Form of notice of consent in actions of separation under section 1(2)(d) of the Divorce (Scotland) Act 1976</p> <p>[A.B.], (insert designation and address), Pursuer against [C.D.], (insert designation and address), Defender</p> <p>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.</p> <p>Date (insert date) Signed Defender</p>	
<p style="text-align: center;">FORM F23</p> <p style="text-align: right;">Rule 33.14(1)(b)(i)</p> <p>Form of notice to defender in an action of divorce where it is stated there has been five years' non-cohabitation</p> <p>You are given NOTICE that —</p> <p>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.</p> <p>2. 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. You may also lose your rights of succession to the pursuer's estate.</p> <p>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 the Law Reform (Parent and Child) (Scotland) Act 1986 relating to parental rights (including custody and access) to 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.</p> <p>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 26).</p> <p>Date (insert date) Signed Solicitor for the pursuer (add designation and business address)</p>	

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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 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 the Law Reform (Parent and Child) (Scotland) Act 1986 relating to parental rights (including custody and access) to any child of the marriage, or any child accepted as such, who is under 16 years of age; or

(d) 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 26).

Date (insert date) _____ Signed _____

Solicitor for the pursuer (add designation and business address)

FORM F25

Rules 33.19(1)(a)(i) and 33.19(2)(i)

Form of consent of parent or guardian in proceedings for custody of children under section 47 of the Children Act 1975

Court ref.no. _____

[A.B.], (insert designation and address), Pursuer, against [C.D.], (insert designation and address), Defender

I, (insert name and address) confirm that I am the mother [or father or guardian] of the child (insert full name of the child as given on birth certificate, and the child's present address). I understand that if I consent to the granting of custody to the pursuer, the care, possession and control of the child may be granted to the pursuer by the court. I hereby consent to the making of a custody order in relation to the child (insert name of child) in favour of (insert name and address of pursuer).

Dated at (insert place) on the _____ day of _____ 19 ____.

Signature of person consenting _____

Signature of Witness _____ Signature of Witness _____

*Full Name _____ *Full Name _____

*Designation _____ *Designation _____

*Address _____ *Address _____

* Please complete in block capitals.

FORM F26

Rules 33.11(1) and 33.34(2)

Form of notice of intention to defend in a family action

NOTICE OF INTENTION TO DEFEND

*PART A

Court ref. no. _____

(Insert name and business address of solicitor for the pursuer)

In an action raised at Sheriff Court

Pursuer

Solicitor for the pursuer

Defender

*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 solicitor, and both parts of the form 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, against him [or her].

Signed _____

[C.D.], Defender

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

Solicitor for the defender

FORM F27

Rule 33.28(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)

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<p>FORM F28 Rules 33.40(c) and 33.64(1)(c)</p> <p>Form of notice of intimation to local authority or third party to whom care of a child is to be given</p> <p>To (name and address as in warrant) Court ref. no.</p> <p>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) no later than 14 days after the date of the intimation. 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).</p> <p>Date (insert date) Signed Solicitor for the pursuer</p> <p>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.</p> <p>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.</p>	
<p>FORM F29 Rules 33.41 and 33.64(2)</p> <p>Form of notice of intimation to local authority of supervision order</p> <p>[A.B.], (insert designation and address), Pursuer, against [C.D.], (insert designation and address), Defender</p> <p>To (insert name and address of local authority) Court ref. no.</p> <p>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 1958 (or section 11(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.</p> <p>Date (insert date) Signed Sheriff clerk (depute)</p>	
<p>FORM F30 Rules 33.72(1) and 33.72(2)</p> <p>Form of certificate of delivery of documents to chief constable</p> <p>(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 service).</p> <p>Signed Solicitor for the pursuer (add designation and business address)</p>	
<p>FORM F31 Rule 33.74 (1)</p> <p>Form of simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976</p> <p>Sheriff Clerk Sheriff Court House (Telephone).....</p> <p>APPLICATION FOR DIVORCE WITH CONSENT OF OTHER PARTY TO THE MARRIAGE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST TWO YEARS)</p> <p>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 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.</p> <p>Directions for making application</p> <p>WRITE IN INK, USING BLOCK CAPITALS</p> <p>Application (Part 1) 1. Complete and sign Part 1 of the form (pages 3-7), paying particular attention to the notes opposite each section.</p> <p>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)</p> <p>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.</p> <p>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 completed form SP15, claiming exemption from the court fee.</p> <p>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.</p>	

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<p>PART 1</p> <p>WRITE IN INK, USING BLOCK CAPITALS</p> <p>1. NAME AND ADDRESS OF APPLICANT</p> <p>Surname Other name(s) in full Present address Daytime telephone number (if any)</p> <p>2. NAME AND ADDRESS OF SPOUSE</p> <p>Surname Other name(s) in full Present address Daytime telephone number (if any)</p> <p>3. JURISDICTION</p> <p>Please indicate with a tick () in the appropriate box or boxes which of the following apply:</p> <p>PART A</p> <p>(i) I consider myself to be domiciled in Scotland <input type="checkbox"/></p> <p>(ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application <input type="checkbox"/></p> <p>(iii) My spouse considers himself or herself to be domiciled in Scotland <input type="checkbox"/></p> <p>(iv) My spouse has lived in Scotland for a period of at least 12 months immediately before the date of signing this application <input type="checkbox"/></p> <p>PART B</p> <p>(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 <input type="checkbox"/></p> <p>(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 <input type="checkbox"/></p> <p>4. DETAILS OF PRESENT MARRIAGE</p> <p>Place of Marriage (Registration District)</p> <p>Date of Marriage: Day month year</p> <p>5. PERIOD OF SEPARATION</p> <p>(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</p> <p>(ii) Have you lived with your spouse since that date? * [YES / NO]</p> <p>(iii) If yes, for how long in total did you live together before finally separating again? months</p> <p>6. RECONCILIATION</p> <p>Is there any reasonable prospect of reconciliation with your spouse? * [YES / NO]</p> <p>Do you consider that the marriage has broken down irretrievably? * [YES / NO]</p> <p>7. CONSENT</p> <p>Does your spouse consent to a divorce being granted? * [YES / NO]</p> <p>8. MENTAL DISORDER</p> <p>Is your spouse suffering from any mental disorder (whether illness or handicap)? * [YES / NO]</p> <p>9. CHILDREN</p> <p>Are there any children of the marriage under the age of 16? * [YES/NO]</p> <p>10. OTHER COURT ACTIONS</p> <p>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]</p> <p style="text-align: right;">*Delete as appropriate</p> <p>11. REQUEST FOR DIVORCE AND DISCLAIMER OF FINANCIAL PROVISION</p> <p>I confirm that the facts stated in paragraphs 1-10 above apply to my marriage.</p> <p>I do NOT ask the sheriff to make any financial provision in connection with this application.</p> <p>I request the sheriff to grant decree of divorce from my spouse.</p> <p>Date Signature of applicant</p> <p>IMPORTANT</p> <p>Part 1 MUST be completed, signed and dated before sending the application form to your spouse.</p>	
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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 F32

Rule 33.74(1)(b)

Form of consent to simplified divorce application under section 1(2)(d) of the Divorce (Scotland) Act 1976

(Insert name and address of consenting spouse)

CONSENT TO APPLICATION FOR DIVORCE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST TWO YEARS.)

In Part 1 of the enclosed application form your spouse is applying for divorce on the ground that the marriage has broken down irretrievably because you and he (or she) have lived apart for at least two years and you consent to the divorce being granted.

Such consent must be given formally in writing at Part 2 of the application form. BEFORE completing that part, you are requested to read it over carefully so that you understand the effects of consenting to divorce. Thereafter if you wish to consent -

- (a) check the details given by the Applicant at Part 1 of the form to ensure that they are correct to the best of your knowledge;
(b) complete Part 2 (Consent by Applicant's spouse to divorce) by entering your name and address at the appropriate place and adding your signature and the date; and
(c) return the whole application form to your spouse at the address given in Part 1.

Once your husband or wife has completed the remainder of the form and has submitted it to the court, a copy of the whole application (including your consent) will later be served upon you formally by the sheriff clerk.

In the event of the divorce being granted, you will automatically 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.)

If you do NOT wish to consent please return the application form, with Part 2 uncompleted, to your spouse and advise him or her of your decision. The sheriff will NOT grant a divorce under this application if part of the form is not completed by you.

Sheriff clerk (depute)
Sheriff Court (insert address)

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FORM F33

Rule 33.74(2)

Form of simplified divorce application under section 1 (2) (e) 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.

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

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<p>7. DETAILS OF PRESENT MARRIAGE</p> <p>Place of Marriage (Registration District)</p> <p>Date of Marriage (Day).....(month).....(year).....</p> <p>8. PERIOD OF SEPARATION</p> <p>(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.....</p> <p>(ii) Have you lived with your spouse since that date? * [YES/ NO]</p> <p>(iii) If yes, for how long in total did you live together before finally separating again? months</p> <p>9. RECONCILIATION</p> <p>Is there any reasonable prospect of reconciliation with your spouse? * [YES /NO]</p> <p>Do you consider that the marriage has broken down irretrievably? * [YES/ NO]</p> <p>10. MENTAL DISORDER</p> <p>Is your spouse suffering from any mental disorder (whether illness or handicap)? * [YES / NO] (If yes, give details)</p> <p>11. CHILDREN</p> <p>Are there any children of the marriage under the age of 16? * [YES/ NO]</p> <p>12. OTHER COURT ACTIONS</p> <p>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]</p> <p>* Delete as appropriate</p> <p>13. DECLARATION AND REQUEST FOR DIVORCE</p> <p>I confirm that the facts stated in paragraphs 1-11 above apply to my marriage.</p> <p>I do NOT ask the sheriff to make any financial provision in connection with this application.</p> <p>I believe that no grave financial hardship will be caused to my spouse as a result of the granting of this application.</p> <p>I request the sheriff to grant decree of divorce from my husband or wife.</p> <p>Date.....</p> <p>Signature of Applicant</p>	
<p>PART 2</p> <p>APPLICANT'S AFFIDAVIT</p> <p>(To be completed by the Applicant only after Part 1 has been signed and dated.)</p> <p>I, (insert full name)</p> <p>residing at (insert present home address).....</p> <p>.....</p> <p>SWEAR that to the best of my knowledge and belief that the facts stated in Part 1 of this Application are true.</p> <p>Signature of Applicant</p> <p>SWORN at (insert place)</p> <p>To be completed by Justice of the Peace, Notary Public or Commissioner for Oaths</p> <p>this day of 19</p> <p>before me (insert full name)</p> <p>of (insert full address)</p> <p>.....</p> <p>Signature</p> <p>* Justice of the Peace / Notary Public / Commissioner for Oaths</p> <p>* Delete as appropriate</p>	

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FORM F34

Rule 33.76c3(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.

FORM F35

Rule 33.76c3(b)

Form of citation in application relying on the facts in section 1(2)(e) 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 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.

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 5.3(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.

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<p>FORM F38 Rule 33.80(2)</p> <p>Form of extract decree of divorce in simplified divorce application</p> <p>At (insert place and date)</p> <p>in an action in the Sheriff Court of the Sheriffdom of (insert name of sheriffdom) at (insert place of sheriff court)</p> <p>at the instance of [A.B.], (insert full name of applicant), Applicant,</p> <p>against (insert full name of respondent), Respondent,</p> <p>who were married at (insert place) on (insert date),</p> <p>the sheriff pronounced decree divorcing the Respondent from the Applicant.</p> <p>Extracted at (insert place and date)</p> <p>by me, sheriff clerk of the Sheriffdom of (insert name of sheriffdom).</p> <p>Signed Sheriff clerk (depute)</p>	
<p>FORM F39 Rule 33.90</p> <p>Form of certificate relating to the making of a maintenance assessment under the Child Support Act 1991</p> <p>Sheriff Court (insert address)</p> <p>Date (insert date)</p> <p>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).</p> <p>Signed Sheriff clerk (depute)</p>	
<p>FORM F40 Rule 33.90</p> <p>Form of certificate relating to the cancellation or ceasing to have effect of a maintenance assessment under the Child Support Act 1991</p> <p>Sheriff Court (insert address)</p> <p>Date (insert date)</p> <p>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).</p> <p>Signed Sheriff clerk (depute)</p>	
<p>FORM H1 Rule 34.1(2)</p> <p>Form of notice informing defender of right to apply for certain orders under the Debtors (Scotland) Act 1987 on sequestration for rent</p> <p>Sheriff Court (insert address) Court ref. no.</p> <p>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.</p> <p>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:</p> <p>(a) it is exempt from sequestration for rent (articles which are exempt are listed in section 16 of the Debtors (Scotland) Act 1987); or</p> <p>(b) its inclusion in the sequestration for rent or its subsequent sale is unduly harsh.</p> <p>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.</p> <p>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.</p>	
<p>FORM H2 Rule 34.6(1)</p> <p>Form of notice of removal</p> <p>To (insert name, designation, and address of party in possession). You are required to remove from (describe the 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].</p> <p>Date (insert date) Signed (add designation and address)</p>	
<p>FORM H3 Rule 34.6(2)</p> <p>Form of letter of removal</p> <p>To (insert name and designation of addressee)</p> <p>(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)</p> <p>[K.L.] (add designation and address).</p> <p>(If not holograph, to be attested thus- [M.N.] (add designation and address), witness).</p>	
<p>FORM H4 Rule 34.7</p> <p>Form of notice of removal under section 37 of the 1907 Act</p> <p>NOTICE OF REMOVAL UNDER SECTION 37 OF THE SHERIFF COURTS (SCOTLAND) ACT 1907</p> <p>To (insert designation and address):</p> <p>You are required to remove from (insert description of heritable subjects, land, ground etc.) at the term of [Whitsunday or Martinmas], (insert date)</p> <p>Date (insert date) Signed (add designation and address)</p>	

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FORM M1	Rule 35.5
Form of warrant of citation in an action of multiplepoinding	
<p><i>(Insert place and date)</i> Grants warrant to cite the defender (<i>insert name and address</i>) by serving a copy of the writ and warrant upon a period of notice of (<i>insert period of notice</i>) days, and obtains him [<i>or her</i>], if he [<i>or she</i>] intends to lodge:</p> <p>(a) defences challenging the jurisdiction of the court or the competence of the action; or</p> <p>(b) objections to the condescendence on the fund <i>in medio</i>; or</p> <p>(c) a claim on the fund,</p> <p>to lodge a notice of appearance with the sheriff clerk at (<i>insert name and address of sheriff court</i>) within the said period of notice after such service and grants warrant to arrest on the dependence).</p> <p>[Where the holder of the fund <i>in medio</i> is a defender, insert: Appoints the holder of the fund <i>in medio</i> to (a) lodge with the sheriff clerk at (<i>insert place of sheriff court</i>) within the said period of notice after such service (i) a detailed condescendence on the fund <i>in medio</i>; 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.]</p>	
FORM M2 Rule 35.6(1)	
Form of citation in an action of multiplepoinding	
CITATION	
<p>SHERIFFDOM OF (<i>insert name of sheriffdom</i>) Court ref. no.</p> <p>AT (<i>insert place of sheriff court</i>)</p> <p>[A.B.], (<i>insert designation and address</i>), Pursuer against [C.D.], (<i>insert designation and address</i>) Defender</p> <p><i>(Insert place and date)</i> You [C.D.] are hereby served with this copy writ and warrant, together with Form M4 (notice of appearance).</p> <p>[Where the defender is the holder of the fund <i>in medio</i>, insert the following paragraph:- As holder of the fund <i>in medio</i> you must lodge with the sheriff clerk at the above address within (<i>insert period of notice</i>) days of (<i>insert date on which service was executed N.B. Rule 3.3(2) relating to postal service</i>):-</p> <p>(a) a detailed condescendence on the fund <i>in medio</i>; and</p> <p>(b) a list of parties having an interest in the fund.</p> <p>You must at the same time intimate to all other parties to the action a copy of</p> <p>(a) the detailed condescendence on the fund; and</p> <p>(b) the list of parties having an interest in the fund.]</p>	
<p>Form M4 is served on you for use should you wish to intimate that you intend to lodge:-</p> <p>(a) defences challenging the jurisdiction of the court or the competence of the action; or</p> <p>(b) objections to the condescendence on the fund <i>in medio</i>; or</p> <p>(c) a claim on the fund.</p> <p>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 (£<i>insert amount</i>) must be lodged with the sheriff clerk at the above address within (<i>insert appropriate period of notice</i>) days of (<i>insert the date on which service was executed N.B. Rule 3.3(2) relating to postal service</i>).</p>	
<p>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.</p> <p>PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as having no interest in the fund <i>in medio</i> and will proceed accordingly.</p>	
<p>Signed</p> <p>[P.Q.], Sheriff officer,</p> <p>or [X.Y.] (<i>add designation and business address</i>)</p> <p>Solicitor for the pursuer</p>	
Form M3 Rule 35.6(2)	
Form of certificate of citation in an action of multiplepoinding	
CERTIFICATE OF CITATION	
<p>(<i>Insert place and date</i>), hereby certify that upon the _____ day of _____</p> <p>I duly cited [C.D.], Defender, to answer to the foregoing writ. This I did by (<i>state method of service: if by officer and not by post, add: in presence of [L.M.], (insert designation), witness: herein with me subscribing, and where service is executed by post state whether made by registered post or the first class recorded delivery service</i>).</p>	
<p>Signed</p> <p>[P.Q.], Sheriff officer</p> <p>[L.M.], witness</p> <p>or [X.Y.], (<i>add designation and business address</i>)</p> <p>Solicitor for the pursuer</p>	
FORM M4 Rule 35.6(1) and 35.8	
Form of notice of appearance in an action of multiplepoinding	
*Part A	
Court ref. no.	
<div style="border: 1px solid black; padding: 5px; min-height: 100px;"><p>(<i>Insert name and business address of solicitor for the pursuer</i>)</p></div> <p style="text-align: center;">Solicitor for the pursuer</p>	<p>in an action raised at Sheriff Court</p> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <p style="text-align: right;">Pursuer</p> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <p style="text-align: right;">Defender</p>
<p>*This part to be completed by the pursuer before service</p>	
<p>DATE OF SERVICE : _____ DATE OF EXPIRY OF PERIOD OF NOTICE: _____</p>	
*PART B	
<p>*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 (<i>insert address of sheriff clerk</i>) on or before the expiry of the period of notice referred to in PART A above)</p> <p>(<i>Insert place and date</i>)</p> <p>[C.D.] (<i>design</i>), Defender, intends to lodge :</p>	
<p>Tick the appropriate box(es)</p>	<div style="display: flex; align-items: flex-start;"><div style="width: 20px; margin-right: 10px;"><input type="checkbox"/></div><div>defences challenging the jurisdiction of the court or the competence of the action.</div></div> <div style="display: flex; align-items: flex-start;"><div style="width: 20px; margin-right: 10px;"><input type="checkbox"/></div><div>objections to the condescendence on the fund <i>in medio</i></div></div> <div style="display: flex; align-items: flex-start;"><div style="width: 20px; margin-right: 10px;"><input type="checkbox"/></div><div>a claim on the fund <i>in medio</i>.</div></div> <p>Signed</p> <p>[C.D.] Defender,</p> <p>or [X.Y.] (<i>add designation and business address</i>)</p> <p>Solicitor for the defender</p>

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Form M5 <small>Rules 35.9(b) and 35.10(5)</small>	Form M5 <small>Rules 35.9(b) and 35.10(5)</small>
Form of intimation of first hearing in an action of multipointing	
<p>SHERIFFDOM OF (<i>insert name of sheriffdom</i>) Court ref.no. AT (<i>insert place of sheriff court</i>)</p> <p>[A. B.] (<i>insert designation and address</i>), Pursuer, against, [C. D.] (<i>insert designation and address</i>), Defender</p> <p>You are given notice that in this action of multipointing</p> <div style="border: 1px solid black; padding: 2px; display: inline-block;"> <i>(Insert date, time and place)</i> </div> is the date, time and place for the first hearing. <p>Date (<i>insert date</i>) Signed Sheriff clerk (depute)</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>NOTE</p> <p>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 it 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.</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>NOTE TO BE ADDED WHERE PARTY UNREPRESENTED</p> <p>NOTE</p> <p>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.</p> </div>	

Form M6 <small>Rule 35.10(4)(b)</small>	Form M6 <small>Rule 35.10(4)(b)</small>
Form of citation of person having an interest in the fund in an action of multipointing	
<p>CITATION</p> <p>SHERIFFDOM OF (<i>insert name of sheriffdom</i>) Court ref.no. AT (<i>insert place of sheriff court</i>)</p> <p>[A.B.] (<i>insert designation and address</i>), Pursuer, against [C.D.] (<i>insert designation and address</i>), Defender</p> <p>(<i>Insert place and date</i>) In the above action the court has been advised that you (<i>insert name and address</i>) have an interest in (<i>insert details of the fund in medio</i>). You are hereby served with a copy of the pleadings in this action, together with Form M4 (notice of appearance).</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Form M4 is served on you for use should you wish to intimate that you intend to lodge:-</p> <p>(a) defences challenging the jurisdiction of the court or the competence of the action; or</p> <p>(b) objections to the co-respondence on the fund in medio; or</p> <p>(c) a claim on the fund.</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>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 £ (<i>insert amount</i>) must be lodged with the sheriff clerk at the above address within days of (<i>insert date on which service was executed N.B. Rule 5.3(2) relating to postal service</i>).</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>NOTE</p> <p>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.</p> <p>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.</p> </div> <p style="text-align: right;">Signed (P.Q.) Sheriff officer, or [X.Y.] (<i>add designation and business address</i>) Solicitor for the pursuer</p>	

Form D1 <small>Rule 36.3(2)</small>	Form D1 <small>Rule 36.3(2)</small>
Form of intimation to connected person in damages action	
<p>SHERIFFDOM OF (<i>insert name of sheriffdom</i>) Court ref.no. AT (<i>insert place of sheriff court</i>)</p> <p>You are given NOTICE that an action has been raised in the above sheriff court by (<i>insert name and designation of pursuer</i>) against (<i>insert name and designation of defender</i>).</p> <p>A copy of the initial writ is attached.</p> <p>It is believed that you may have a title or interest to sue the said (<i>insert name of defender</i>) in an action based upon [the injuries from which the late (<i>insert name and designation</i>) died] [or the death of the late (<i>insert name and designation</i>)]. 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 stated as an additional pursuer within (<i>insert the appropriate period of notice</i>) days of (<i>insert the date on which service was executed N.B. Rule 5.3(2) relating to postal service</i>).</p> <p style="text-align: right;">Signed Solicitor for the pursuer</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>NOTE</p> <p>The minute must be lodged with the sheriff clerk with the court fee of (<i>insert amount</i>) 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.</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>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.</p> </div>	

FORM D2 <small>Rule 36.17(1)</small>	FORM D2 <small>Rule 36.17(1)</small>
Form of receipt for payment into court	
<p>RECEIPT</p> <p>In the Sheriff Court of (<i>insert name of sheriffdom</i>) at (<i>insert place of sheriff court</i>) in the cause, (<i>state names of parties or other appropriate description</i>) [A.B.] (<i>insert designation</i>) has this day paid into court the sum of (<i>insert sum concerned</i>) 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.</p> <p>[If the payment is made under rule 36.15(c) add: [the custody of which money has been accepted at the request of (<i>insert name of court making request</i>).]</p> <p>Date (<i>insert date</i>) Signed Sheriff clerk (depute)</p>	

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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 int 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 cited 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 1 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 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. 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.

FORM E1

RULE 38.2(2)

Form of request for preliminary ruling of the Court of Justice of the European Communities

SHERIFFDOM OF (insert name of sheriffdom) Court ref. no.

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 statement of the case for the European Court, giving brief particulars of the case and issues between the parties, and relevant facts found by the court, any relevant rules and provisions of Scots Law, and the relevant Treaty provisions, acts, instruments or rules of Community Law giving rise to the reference.)

The preliminary ruling of the Court of Justice of the European Communities is accordingly sought on the following questions (insert in numerical sequence the questions on which the ruling is sought):

Date (insert date) Signed Sheriff (insert designation)

VALID FROM 01/01/1994

Rule 30.6(1)

F159 APPENDIX 2

FORMS FOR EXTRACT DECREES

Textual Amendments

F159 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)

C22 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
FORMS FOR EXTRACT DECREES
FORM 1
Form of extract decree for payment
EXTRACT DECREE FOR PAYMENT
Sheriff Court
Date of decree
Pursuer(s)
Court ref. no.
* In absence
Defender(s)
The sheriff granted decree against the of the undersigned pursuer, for payment to the of the undersigned pursuer, Sum decreed for £ with interest at per cent a year from until payment of £ 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 instalments 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 hereon.
Date * Delete as appropriate. Sheriff clerk (depute)

FORM 2
Form of extract decree ad factum praestandum
EXTRACT DECREE AD FACTUM PRAESTANDUM
Sheriff Court
Date of decree
Pursuer(s)
Court ref. no.
* In absence
Defender(s)
The sheriff ordered 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 3
Form of extract decree of removing
EXTRACT DECREE OF REMOVING
Sheriff Court
Date of decree
Pursuer(s)
Court ref. no.
* In absence
Defender(s)
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 premises at the undersigned address and to leave those premises vacant ** (and that after a charge of days).
In the event that the defender(s) fail(s) 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 hereon.
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

Date of decree

Pursuer(s)

Court ref. no.

* In absence

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 (signature)

* Delete as appropriate.

FORM 5

Form of extract decree of forthcoming

EXTRACT DECREE OF FORTHCOMING

Sheriff Court

Date of decree

Date of original decree

Pursuer(s)

Court ref. no.

* In absence

Defender(s)/Arrester(s)

Common Debtor(s)

The sheriff granted decree against the arrested(s) for payment of the undermentioned sums.

Sum decreed for £ or such other sum(s) as may be owing by the arrested(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 (signature)

* Delete as appropriate.

FORM 6

Form of extract decree of absolution

EXTRACT DECREE OF ABSOLUTOR

Sheriff Court

Date of first warrant

Pursuer(s)

Court ref. no.

Date of decree

Defender(s)

(Insert the nature of crave(s) in the above action)

The sheriff absolved 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 (signature)

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FORM 7

Form of extract decree of dismissal

EXTRACT DECREE OF DISMISSAL

Sheriff Court

Date of first warrant

Pursuer(s)

Court ref. no.

Date of decree

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

Date of decree

Pursuer(s)

Court ref. no.

* In absence

Defender(s)

The sheriff granted warrant to the pursuer(s) to enter into possession of the subjects situated at the unfornished 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(s) 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

* Delete as appropriate.

Sheriff clerk (depute)

FORM 9

Form of general extract decree

EXTRACT DECREE

Sheriff Court

Date of decree

Pursuer(s)

Court ref. no.

* In absence

Defender(s)

The sheriff

and granted decree against the

for payment of expenses of £

This extract is warrant for all lawful execution hereon.

Date

* Delete as appropriate.

Sheriff clerk (depute)

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FORM 10

Form of extract decree of divorce

EXTRACT DECREE OF DIVORCE

Sheriff Court

Date of decree

Pursuer

Court ref. no.

* In absence

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, 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;

* (e) finding the liable to the in expenses as the same may be subsequently found

This extract is warrant for all lawful execution hereon.

Date

Sheriff clerk (deput)

* Delete as appropriate.

FORM 11

Form of extract decree of separation and aliment

EXTRACT DECREE OF SEPARATION AND ALIMENT

Sheriff Court

Date of decree

Pursuer

Court ref. no.

* In absence

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 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 the rate of 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, 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.

and granted decree against the for payment of expenses of £

This extract is warrant for all lawful execution hereon.

Date

Sheriff clerk (deput)

* Delete as appropriate.

FORM 12

Form of extract decree of custody and aliment

EXTRACT DECREE OF CUSTODY AND ALIMENT

Sheriff Court

Date of decree

Pursuer

Court ref. no.

* In absence

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 the rate of 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 (deput)

* Delete as appropriate.

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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 sum(s) underlined.

Full name of child	Place of birth
Date of birth	Birth entry no.
Registration district	
Aliments of £	per commencing on
including 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.	

INTRODUCTION

Dispensing power of sheriff

- 1 The sheriff may in his discretion relieve any party from the consequences of any failure to comply with the provisions of these Rules which is shown to be due to mistake, oversight or other cause, not being wilful non-observance of the same, on such terms and conditions as seem just; and in any such case the sheriff may make such order as seems just by way of extension of time, lodging or amendment of paper or otherwise so as to enable the cause to proceed as if such failure had not happened.

Representation

- [^{F160}2 (1) Subject to paragraph (2) of this rule, a party to any proceedings arising solely under the provisions of the Debtors (Scotland) Act ^{M48}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 the party.
- (2) Paragraph (1) shall not apply to appeals to the sheriff principal.
 - (3) Where a party to any cause is represented by a solicitor, any reference in the rules to that party shall, where appropriate, be construed as a reference to the solicitor representing that party.]

Textual Amendments

F160 Rule 2 substituted by S.I. 1988/1978, para. 3

Marginal Citations

M48 1987 c.18(45:2).

Status: Point in time view as at 04/05/1992. This version of this Act contains provisions that are not valid for this point in time.

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INITIAL PROCEDURE

COMMENCEMENT OF CAUSE

The initial writ

[^{F161}3 (1)] All ordinary causes shall be commenced by initial writ as nearly as may be in accordance with Form A as set out in the Appendix to this Schedule.

[^{F162}(2) The initial writ shall contain averments about any agreement which the pursuer has reason to believe may exist prorogating jurisdiction over the subject matter of the cause to another court.

(3) The initial writ shall contain averments about any proceedings which the pursuer has reason to believe may be pending before another court involving the same cause of action and between the same parties as those named in the initial writ.

[An article of condescendence shall be included in the initial writ stating the ground
^{F163}(4) of jurisdiction of the court.]]

[^{F164} In an action of divorce or of separation . . . ^{F166} the initial writ shall contain an article of
^{F165}(5) condescendence specifying whether to the knowledge of the pursuer any proceedings are continuing in Scotland or in any other country which are in respect of the marriage to which the initial writ relates or are capable of affecting its validity or subsistence, and, if such proceedings are continuing, shall further specify—

- (a) the court, tribunal or authority before which they have been commenced;
- (b) the date of commencement;
- (c) the names of the parties;
- (d) whether any proof or other hearing has been appointed, and, if so, the date; and
- (e) any other relevant facts in connection with such proceedings which might assist the sheriff to determine whether the action before him should be sisted in terms of his powers under Schedule 3 to the ^{M49}Domicile and Matrimonial Proceedings Act 1973 (sisting of consistorial actions).

[For the purposes of [^{F167}paragraph (5)], proceedings shall be treated as continuing
^{F165}(6) where proceedings, in respect of that marriage or capable of affecting its validity, have been instituted before a court, tribunal or other authority and such proceedings have not been finally disposed of.

[The information required by [^{F167}paragraph (5)] shall, in all actions of divorce or of
^{F165}(7) separation . . . ^{F166}, be inserted in any defences or minute lodged by any party in such action, insofar as that information is additional to or contradictory of any such particulars provided by the pursuer in the action, or in any case in which the pursuer has provided no such statement.

[Any application made by any party in an action of divorce or separation . . . ^{F166}
^{F165}(8) for an order in terms of Schedule 2 (ancillary and collateral orders), or for a sist of such an action or the recall of a sist in terms of Schedule 3, to the ^{M50}Domicile and Matrimonial Proceedings Act 1973, shall be made by written motion.

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- [Unless the sheriff on cause shown otherwise directs, in an action of divorce a warrant
^{F168} for citation shall not be granted without there being produced with the initial writ—
^{F165}(9)] (a) an extract of the relevant entry in the register of marriages; and
 (b) where appropriate, an extract of the relevant entry in the register of births.]]
- [^{F169} In an action relating to the custody of a child by a person by virtue of section 47 of
^{F165}(10)] the ^{M51}Children Act 1975—
 (a) the parents of the child shall be named and designed in the initial writ as
 defenders in the cause; and
 (b) if their address is known, citation of and service upon them shall proceed in
 accordance with rules 8 to 10, 12, and 15 to 17.
- [In an action for custody of a child in which consent of the parent [^{F170}tutor, curator]
^{F165}(11)] or guardian of the child is required by [^{F171}section 47] of the Children Act 1975, a
 form of consent as nearly as may be in accordance with Form T1 as set out in the
 Appendix to this Schedule shall be lodged in process.]

Textual Amendments

- F161** Rule 3 renumbered as rule 3(1) by S.I. 1984/255, para. 3(2)
F162 Rule 3(2)–(4) added by S.I. 1986/1946, para. 2(2)(b)
F163 Rule 3(4) substituted by S.I. 1988/1978, para. 4(1)
F164 Paragraphs added by S.I. 1984/255, para. 3(2)
F165 Paragraph renumbered by S.I. 1986/1946, para. 2(2)(a)
F166 Words repealed by S.I. 1986/1230, para. 3(2)(a)
F167 Words substituted by S.I. 1988/1978, para. 4(2)
F168 Paragraph substituted by S.I. 1986/1230, para. 3(2)(b)
F169 Paragraphs inserted by S.I. 1986/513, para. 2(2)
F170 Words inserted by S.I. 1986/1966, para. 2(2)(a)
F171 Words substituted by S.I. 1986/1966, para. 2(2)(b)

Modifications etc. (not altering text)

- C23** Sch. 1 rule 3 excluded (5.4.1993) by S.I. 1993/920, rule 2(1)

Marginal Citations

- M49** 1973 c.45(49:4).
M50 1973 c.45(49:4).
M51 1975 c.72(49:9,10).

Signature and backing of initial writ

- 4 The initial writ shall be signed by the pursuer or his solicitor and the name and
 address of that solicitor, if any, shall be stated upon the back of every service copy.

Warrant of citation

- 5 (1) The warrant of citation [^{F172} in any ordinary cause other than an action of divorce and
 of separation [^{F173} or an action in which a time to pay direction under the ^{M52}Debtors
 (Scotland) Act 1987 may be applied for by the defender] . . . ^{F174}] shall be framed

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as nearly as may be in accordance with Form B as set out in the Appendix to this Schedule.

[^{F175}(2) In an action of divorce or of separation . . . ^{F174} the warrant of citation shall be framed as nearly as may be in accordance with Form B1 as set out in the Appendix to this Schedule.]

[^{F176}(3)] [^{F177} subject to paragraph 4, in] a summary application, where citation is necessary, the warrant of citation shall be framed as nearly as may be in accordance with Form B2 as set out in the Appendix to this Schedule.

[^{F178}(4) In a summary application in which a time to pay direction under the ^{M53} Debtors (Scotland) Act 1987 may be applied for by the defender, the warrant of citation shall be framed as nearly as may be in accordance with Form B3 as set out in the Appendix to this Schedule.

(5) In an ordinary cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, the warrant of citation shall be framed as nearly as may be in accordance with Form B4 as set out in the Appendix to this Schedule.

(6) In any cause in which warrant for citation in accordance with Forms B3 or B4, as the case may be, is appropriate, there shall be served on the defender (along with the initial writ and warrant) a notice in accordance with Form B5 (ordinary action) or B6 (summary application), as the case may be, as set out in the Appendix to this Schedule.]

Textual Amendments

- F172** Words inserted by [S.I. 1984/255, para. 3\(3\)\(a\)](#)
F173 Words inserted by [S.I. 1988/1978, para. 5\(1\)](#)
F174 Words repealed by [S.I. 1986/1230, para. 3\(3\)](#)
F175 [Rule 5\(2\)](#) inserted by [S.I. 1984/255, para. 3\(3\)\(c\)](#)
F176 Paragraph renumbered by [S.I. 1984/255, para. 3\(3\)\(b\)](#)
F177 Words substituted by [S.I. 1988/1978, para. 5\(2\)](#)
F178 [Rule 5\(4\)–\(6\)](#) inserted by [S.I. 1988/1978, para. 5\(3\)](#)

Marginal Citations

- M52** [1987 c.18\(45:2\)](#).
M53 [1987 c.18\(45:2\)](#).

Application for a warrant for arrestment to found jurisdiction

- 6 (1) Application for a warrant for arrestment to found jurisdiction may be made in the crave of the initial writ.
- (2) Averments to justify the granting of a warrant for arrestment to found jurisdiction shall be included in the condescendence.

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PERIOD OF NOTICE

Period of notice after citation

- 7 (1) Subject to Rule 11(2)(a) and to paragraph (2) of this rule causes shall proceed after the following periods of notice have been given to the defender—
- [^{F179}(a)] 21 days where the defender is resident or has a place of business within Europe;
 - [^{F180}(b)] 42 days when the defender is resident or has a place of business outside Europe.
- (2) The sheriff may, on cause shown, shorten or extend the period of notice on such conditions as to the form or manner of service as the sheriff may direct, but in any case where the period of notice is reduced at least 2 days notice shall be given.
- (3) Where a period of notice expires on a Saturday, Sunday, public or court holiday the period of notice shall be deemed to expire on the first following day on which the sheriff clerk's office is open for civil court business.

Textual Amendments

F179 Rule 7(1)(a) substituted for rule 7(1)(a)(b) by S.I. 1988/1978 para. 6

F180 Sub-paragraph relettered as sub-paragraph (b) by S.I. 1988/1978, para. 6

CITATION AND SERVICE

Signature of warrants

- 8 (1) Warrants for citation or for arrestment on the dependence may be signed by the sheriff or the sheriff clerk.
- (2) Warrants containing an order shortening or extending the period of notice or any other order may only be signed by the sheriff.
- (3) If for any reason the sheriff clerk refuses to sign a warrant, the writ may be presented to the sheriff for his consideration and signature if appropriate.

Form of citation and certificate

- 9 [^{F181}Subject to rule 11:]—
- (1) Citation [^{F182}in any ordinary cause other than an action of divorce or of separation [^{F183}or an action in which a time to pay direction under the ^{M54}Debtors (Scotland) Act 1987 may be applied for by the defender] . . . ^{F184}] shall be given as nearly as may be in accordance with Form C as set out in the Appendix to this Schedule which shall be prefixed to a copy of the initial writ and warrant of citation.
- [^{F185}(2) In an action of divorce or of separation . . . ^{F184} citation shall be given as nearly as may be in accordance with Form C1 as set out in the Appendix to this Schedule which shall be prefixed to a copy of the initial writ and warrant of citation.]

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- [^{F186}(2A)] In any ordinary cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be given as nearly as may be in accordance with Form C2 as set out in the Appendix to this Schedule which shall be prefixed to a copy of the initial writ and warrant of citation.]
- [^{F187}(2B)] In a summary application in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the respondent, citation shall be given as nearly as may be in accordance with Form C3 set out in the Appendix to this Schedule and in any other summary application shall be given as nearly as may be in accordance with Form C4 set out in the Appendix to this Schedule.]
- [^{F188}(3)] The certificate of citation shall be as nearly as may be in accordance with Form D as set out in the Appendix to this Schedule which shall be annexed to the initial writ.
- [^{F188}(4)] When citation is by an officer of court, one witness shall be sufficient for the execution of citation.
- [^{F188}(5)] The certificate of citation shall be signed by the officer and the witness [^{F189}and] shall specify whether the citation was personal, or, if otherwise, the mode of citation and the name of any person to whom the citation was delivered.
- [^{F188}(6)] When citation is effected in terms of paragraph 2 of rule 10 the certificate shall also contain a statement of the mode of service previously attempted, the circumstances which prevented such service being effected and a statement that a copy was sent in accordance with the provisions of paragraph (3) of that rule.

Textual Amendments

- F181** Words inserted by S.I. 1986/1230, **para. 3(4)(a)**
- F182** Words inserted by S.I. 1984/255, **para. 3(4)(a)**
- F183** Words inserted by S.I. 1988/1978, **para. 7(1)**
- F184** Words repealed by S.I. 1986/1230, **para. 3(4)(b)**
- F185** Rule 9(2) inserted by S.I. 1984/255, **para. 3(4)(c)**
- F186** Rule 9(2A) inserted by S.I. 1988/1978, **para. 7(2)**
- F187** Rule 9(2B) inserted by S.I. 1992/249, **para. 2(2)**
- F188** Paragraph renumbered by S.I. 1984/255, **para. 3(4)(b)**
- F189** Word inserted by S.I. 1986/1230, **para. 3(4)(c)**

Marginal Citations

- M54** 1987 c.18(45:2).

Service within Scotland by officer of court

- 10 (1) Any initial writ, decree, charge, warrant or other order or writ following upon such initial writ or decree may be served by an officer of court on any person:—
- (a) personally, or
 - (b) by being left in the hands of an inmate of or employee at the person's dwelling place or place of business.
- (2) Where an officer of court has been unsuccessful in effecting service in accordance with either sub-paragraphs (a) or (b) of paragraph (1), he may, after making diligent enquiries, serve the document in question either—

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- (a) by depositing it in that person's dwelling place or place of business by means of a letterbox or by other lawful means, or
 - (b) by affixing it to the door of that person's dwelling place or place of business.
- (3) ^{F190} Except where rule 111 applies and has been complied with, if service is effected under paragraph (2) the 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 document.

Textual Amendments

F190 Words in [rule 10\(3\)](#) substituted by [S.I. 1992/249](#), [para. 2\(3\)](#)

Citation of persons whose address is unknown

- 11 ^{F191} (1) Without prejudice to the provisions of rule 11A, where a defender's address is unknown to the pursuer, the sheriff shall grant warrant to cite the defender—
- (a) by the publication in a newspaper circulating in the area of the defender's last known address of an advertisement as nearly as may be in accordance with Form E as set out in the Appendix to this Schedule: or
 - (b) by displaying on the walls of court a copy of the instance and crave of the initial writ, warrant of citation and notice as nearly as may be in accordance with Form E1 as set out in the Appendix to this Schedule,
- and the period of notice, which shall 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.
- (2) Where citation requires to be effected under paragraph (1), the pursuer shall lodge a service copy of the initial writ and a copy of the warrant of citation with the sheriff clerk from whom they may be uplifted by the defender.]
- (3) If a defender has been cited 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 condition as to re-service, intimation, expenses, or transfer of the cause as seems just.
- (4) ^{F192} Where advertisement in a newspaper is required for the purpose of citation under this rule, a copy of the newspaper containing said advertisement shall be lodged with the sheriff clerk.
- ^{F193} (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 the warrant of citation.]

Textual Amendments

F191 [Rule 11\(1\)\(2\)](#) substituted by [S.I. 1986/1230](#), [para. 3\(5\)\(a\)](#)

F192 Word substituted by [S.I. 1986/1230](#), [para. 3\(5\)\(b\)](#)

F193 [Rule 11\(5\)](#) inserted by [S.I. 1986/1230](#), [para. 3\(5\)\(c\)](#)

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[^{F195}Intimation to] persons in actions of divorce or of separation . . . ^{F196} where defender is suffering from mental disorder or his whereabouts are unknown.

[^{F194}11A —In an action of divorce or an action of separation . . . ^{F196}, where the defender's address is unknown or the defender is a person suffering from a mental disorder within the meaning of the ^{M55}Mental Health (Scotland) Act [^{F197}1984], warrant for citation shall, subject to paragraph (2), include an order for intimation of the initial writ to—

- (a) every child of the marriage between the parties who has reached the age of 12 years in the case of a girl and 14 years in the case of a boy;
- (b) one of the defender's next-of-kin who has reached the above age; and
- (c) the curator *bonis* to the defender, if any.

(2) Intimation to a person mentioned in sub-paragraphs (a) to (c) of paragraph (1) shall not be required under that paragraph if—

- (a) the address of that person is unknown to the pursuer; and
- (b) there is an averment to that effect in the initial writ.

[Intimation to a person mentioned in sub-paragraphs (a) to (c) of paragraph (1) shall
^{F198}(3) be as nearly as may be in accordance with Form V1 (where the defender is suffering from mental disorder) or Form V2 (where the defender's address is unknown) as set out in the Appendix to this Schedule.]

(4) In any action to which this rule applies, where the defender suffers or appears to suffer from a mental disorder and is resident in a hospital or other similar institution, citation shall be executed by addressing the registered or recorded delivery letter to the medical officer in charge of that hospital or institution enclosing a certificate in accordance with Form V with a request set out in Form W that he either—

- (a) deliver the copy of the initial writ with warrant thereon personally to the defender together with any notice sent therewith in accordance with the provisions of rule 131 and explain the contents to him; or
- (b) certify that such delivery or explanation would be dangerous to the health or mental condition of the defender,

and complete the certificate accordingly and return it to the solicitor to the pursuer to be attached to the initial writ lodged for calling.

(5) Where the certificate returned under paragraph (4) bears that no delivery of the initial writ was made to the defender, it shall be competent for the sheriff at any stage in the proceedings before decree to order such further medical enquiry and such further service as he may think fit.

[A person receiving intimation under paragraph (1) may apply within the period of
^{F199}(6) notice by minute craving to be sisted as a party and for leave to lodge defences or answers as the case may be.]]

Textual Amendments

- F194** Rule 11A inserted by S.I. 1984/255, para. 3(6)
- F195** Words substituted by S.I. 1986/1230, para. 3(6)(a)
- F196** Words repealed by S.I. 1986/1230, para. 3(6)(b)
- F197** “1984” substituted by S.I. 1986/1230, para. 3(6)(c)
- F198** Rule 11A(3) substituted by S.I. 1986/1230, para. 3(6)(d)
- F199** Rule 11A(6) inserted by S.I. 1986/1230, para. 3(6)(e)

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Marginal Citations

M55 1984 c.36(85).

Citation of or service on persons outwith Scotland

^{F200}12(1) Subject to the following provisions of this rule, an initial writ or decree, or any other writ or order following upon such initial writ or decree or any charge or warrant, may be served outwith Scotland on any person—

- (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 effected; or
 - (ii) by posting in Scotland a copy of the document in question in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence or place of business;
- (b) in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965 or the European Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as set out in Schedule 1 to the ^{M56}Civil Jurisdiction and Judgments Act 1982—
 - (i) 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;
 - (ii) by or through a central authority in the country where service is to be effected at the request of the Foreign Office;
 - (iii) by or through a British Consular authority at the request of the Foreign Office;
 - (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 or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence; or
 - (v) where the law of the country in which service is to be effected permits, service by *anhuissier*, other judicial officer or competent official of the country where service is to be made;
- (c) in a country with whom 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.

(2) Any document which requires to be posted in Scotland for the purposes of this rule shall be posted by a solicitor or an officer of court, and the forms for citation and certificate of citation in rule 9 shall apply to a postal citation under this rule as they apply to a citation under that rule.

(3) On the face of the envelope used for postal service under this rule, there shall be written or printed a notice in the same or similar terms as that required in the case of ordinary service under rule 15(3).

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- (4) Where service is effected by a method specified in paragraph (1)(b)(ii) or (iii), the pursuer shall—
 - (a) send a copy of the writ and warrant for service with citation 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.
- (5) Where service is effected by the method specified in paragraph (1)(b)(v) the pursuer, his solicitor or the officer of court, shall—
 - (a) send to the official in the country in which service is to be effected a copy of the writ and warrant for service with citation attached, or other document, with a request for service to be affected by delivery to the defender or his residence; and
 - (b) the pursuer shall lodge in process a certificate of execution of service by the official who has effected service.
- (6) Where service is effected in accordance with paragraph (1)(a)(i) or (1)(b) (i), the pursuer shall lodge a certificate by a person who is conversant with the law of the country concerned and who practices or has practised as an advocate or solicitor in that country or is a duly accredited representative of the Government of that country, stating that the form of service employed is in accordance with the law of the place where the service was effected. It shall not be necessary to lodge a certificate where service has taken place in another part of the United Kingdom, the Channel Isles or the Isle of Man.
- (7) Every writ or document and every citation and notice on the face of the envelope referred to in paragraph (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.
- (8) A translation referred to in paragraph (7) shall be certified as a correct translation by the person making it and the certificate shall contain the full name, address and qualifications of the translator and be lodged along with the execution of citation or certificate of execution.]

Textual Amendments

F200 Rule 12 substituted by S.I. 1986/1946, para. 2(3)

Marginal Citations

M56 1982 c.27(45:3).

Days of charge

- [^{F201}13(1) The period for payment specified in any charge following on a decree for payment granted in an ordinary cause shall be 14 days if the person on whom it is served is within the United Kingdom and 28 days if he is outside the United Kingdom or his whereabouts are unknown.

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- (2) The period in respect of any other form of charge in respect of an ordinary cause decree shall be 14 days.]

Textual Amendments

F201 Rule 13 substituted by S.I. 1988/1978, para. 8

Service of charge where defender's address is unknown

[^{F202}13A] (1) Where a defender's address is unknown to the pursuer, a charge shall be deemed to have been served on the defender if it is served on the sheriff clerk of the sheriff court district where the defender's last known address is located and is displayed by the sheriff clerk on the walls of that 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.
- (3) The period specified in the charge shall run from the first date on which it was displayed on the walls of court and it shall remain displayed for the period of charge.
- (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 officer of court by whom service was effected.]

Textual Amendments

F202 Rule 13A inserted (9.4.1990) by S.I. 1990/661, para. 2(2)

Persons carrying on business under a trading or descriptive name

- 14 (1) Any person or persons carrying on a business under a trading or descriptive name, may sue or be sued in such trading or descriptive name alone, and any extract of a decree pronounced in the sheriff court, or 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 competently proceed, recorded in the sheriff court books against such person or persons, under such trading or descriptive name, shall be a valid warrant for diligence against such person or persons.
- (2) Any initial writ or decree, or any other writ or order following upon such initial writ or decree or any charge or warrant issued in any cause to which this rule applies may be served 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, in the event of there being no place of business within that sheriffdom, service may be effected 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).

Postal citation

- 15 (1) In any case in which it is competent to serve or intimate any document or to cite any person by recorded delivery, such service, intimation of citation, when made by recorded delivery, shall only be competent if it is made by recorded delivery first class service.

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[^{F203}(2) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882 ^{F204}, where service is by post the period of notice shall run from the beginning of the day next following the date of posting.]

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

“This letter contains a citation to or intimation from (specify the Court). If delivery of the letter cannot be made at the address shown it is to be returned immediately to (give the official name and office or place of business of the Clerk of Court)”.

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

Textual Amendments

F203 Sch. 1 rule 15(2) substituted (4. 5. 1992) by S.I. 1992/249, para. 2(4)

F204 45 & 46 Vict. c.77; rule 59 was amended by S.I. 1984/255 and 1986/1230.

Endorsation unnecessary

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

Re-service

17 If it appears to the sheriff that there has been any failure or irregularity in service upon a defender, the sheriff may authorise the pursuer to re-serve the initial writ upon such conditions as seem just.

Personal bar

18 (1) A party who appears may not state any objection to the regularity of the service upon himself, and his appearance shall remedy any defect in the service.

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

TRANSFER OF CAUSES

Transfer to another Sheriff court

19 (1) Subject to paragraph (c), 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.

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- (b) Subject to paragraph (c), where a plea of no jurisdiction is sustained the sheriff may transfer the cause to the sheriff court before which it appears to him it ought to have been brought.
 - (c) The sheriff shall not transfer a cause to another sheriff court under paragraphs (a) and (b) above except on the motion of one or more of the parties and unless he considers it expedient to do so having regard to the convenience of the parties and their witnesses;
 - (d) The sheriff may upon sufficient cause remit any cause to another sheriff court.
- (2) On making an order under paragraph (1) transferring a cause to another sheriff court the sheriff—
- (a) shall state his reasons for doing so in the interlocutor;
 - (b) may make the order subject to such conditions as to expenses or otherwise as he thinks fit.
- (3) The sheriff court to which a cause is transferred under paragraph (1) shall accept the cause.
- (4) A transferred cause shall proceed in all respects as if it had been originally brought in the court to which it is transferred.
- (5) An interlocutor transferring a cause shall, with leave of the sheriff, be subject to review by the sheriff principal but shall not be further subject to review.

Remit of cause to the Court of Session

- 20 (1) The sheriff clerk shall, within the period of 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 that period send written notice of the remit to the party or parties and certify on the interlocutor sheet that he has done so, but failure to do so shall not affect the validity of the remit.

Remit of cause from the Court of Session

- [^{F205}20A] (1) On receipt of the process in an action which has been remitted from the Court of Session, the sheriff clerk shall—
- (a) record the date of such receipt on the interlocutor sheet;
 - (b) enrol the cause for further procedure on the first court day occurring not earlier than 14 days after the date of receipt of the process; and
 - (c) forthwith send written notice of the date of calling of the action to the parties.
- (2) The action shall thereafter proceed on the existing process unless the sheriff otherwise directs.]

Textual Amendments

F205 Rule 20A inserted by S.I. 1986/1966, para. 2(3)

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UNDEFENDED CAUSES

Minute for granting of decree without attendance

2[F²⁰⁶(1)] Subject to paragraph (2) [F²⁰⁷ of this rule and rule 21A], if the defender does not lodge a notice of intention to defend or a minute under rule 34 [F²⁰⁸ or an application for a time to pay direction under the ^{M57} Debtors (Scotland) Act 1987 or if the defender has lodged such application and the pursuer does not object thereto or to any recall or restriction of an arrestment sought therein.], the sheriff may on the pursuer endorsing a minute in that behalf on the initial writ at any time after the expiry of the period for lodging that notice or minute grant decree or other order in terms of the minute so endorsed without requiring the attendance of the pursuer in court [F²⁰⁹: provided that the sheriff shall not grant decree in the cause unless it appears *facie* of the initial writ that a ground of jurisdiction exists under the ^{M58} Civil Jurisdiction and Judgments Act 1982].

[F²¹⁰(b)] In the case of a defender 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 sub-paragraph—

- (i) the question as to 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;
- (ii) the question as to whether a person is domiciled in another Contracting State shall be determined in accordance with article 52 of Schedule 1 to that Act; and
- (iii) the term “Contracting State” has the meaning assigned to it by section 1 of that Act.]

[F²¹¹(2)] Paragraph (1) does not apply to actions—

- (a) of divorce or of separation;
- (b) relating to tutory, curatory, custody or access or any right or authority relating to the welfare or upbringing of a child conferred on a parent by any rule of law;
- (c) for declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy.]

Textual Amendments

- F206** “(a)” inserted by S.I. 1986/1946, para. 2(4)(a)
F207 Words inserted by S.I. 1986/1946, para. 2(4)(b)
F208 Words inserted by S.I. 1988/1978, para. 9
F209 Words inserted by S.I. 1986/1946, para. 2(4)(c)
F210 Rule 21(1)(b) inserted by S.I. 1986/1946, para. 2(4)(d)
F211 Rule 21(2) substituted by S.I. 1986/1966, para. 2(4)

Marginal Citations

- M57** 1987 c.18(45:2).
M58 1982 c.27(45:3).

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Decree in causes to which the Hague Convention applies

[^{F212}21A Where in any civil proceedings (including proceedings for divorce, separation and aliment and actions for custody of children), the initial writ has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 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.]

Textual Amendments

F212 Rule 21A inserted by S.I. 1986/1946, para. 2(5)

Applications for time to pay directions in undefended causes

[^{F213}21B) This rule applies to ordinary causes in which a time to pay direction may be applied for under the ^{M59}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, may complete and lodge with the sheriff clerk the relevant part of form B5 before the expiry of the period of notice.
- (3) Where the pursuer does not object to the defender's application, he shall minute accordingly and for decree in accordance with rule 21; and the sheriff may grant decree or other order in terms of the application and minute.
- (4) Where the pursuer objects to the defender's application he shall minute accordingly and for decree in terms of rule 21; and the sheriff clerk shall thereafter enrol the cause for hearing of the defender's application and intimate the hearing to the defender and pursuer.
- (5) The sheriff shall consider the application on the date fixed for hearing or at any continuation thereof and may then or after further consideration grant or refuse it as may seem to him appropriate whether or not any of the parties appear and grant decree accordingly.]

Textual Amendments

F213 Rules 21B, 21C inserted by S.I. 1988/1978, para. 10

Marginal Citations

M59 1987 c.18(45:2).

Applications for time to pay directions in summary applications

21C (1) This rule applies in summary applications in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987.

- (2) A defender may apply for a time to pay direction and, where appropriate, for recall or restriction of an arrestment—
 - (a) by appearing and making the appropriate motion at the diet fixed;

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- (b) except where the period of notice has been shortened in accordance with rule 7(2), by completing and returning to the sheriff clerk at least 7 days before the diet fixed for hearing the appropriate portion of form B6; or
- (c) by application to the court at any stage in the proceedings prior to final decree being granted.

Procedure in undefended actions . . . ^{F214}[^{F215}relating to parental rights]

- 22 (1) If no notice of intention to defend has been lodged in an action . . . ^{F214}[^{F215}relating to tutory, curatory, custody or access or any right or authority relating to the welfare or upbringing of a child conferred on a parent by any rule of law] and the pursuer has returned the initial writ to the sheriff clerk the action shall be called in court.

. . . ^{F216}

[^{F217}(2)] [^{F215}In any such action] decree may be granted after such inquiry as the sheriff thinks necessary.

Textual Amendments

F214 Words repealed by S.I. 1986/1230, para. 3(8)

F215 Words substituted by S.I. 1986/1966, para. 2(5)

F216 Rule 22(2) repealed by S.I. 1986/1230, para. 3(8)(c)

F217 Paragraph renumbered Rule 22(2) by S.I. 1986/1230, para. 3(8)(c)

[^{F219}Procedure where actions of divorce or separation or actions affecting parentage are undefended]

[^{F218}23(1) This rule—

- (a) applies to all actions of divorce [^{F220}actions of separation and actions for declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy] . . . ^{F221}in which no notice of intention to defend has been lodged;
 - (b) may apply to any [^{F220}such action] . . . ^{F221}which proceeds at any stage as undefended if the court so directs;
 - (c) may apply to the merits of any such action as is mentioned in subparagraph (b) if the court so directs, notwithstanding that the action is defended on an ancillary matter.
- (2) Proof in all such actions, unless in any particular action the sheriff otherwise directs, shall be by way of evidence submitted in the form of affidavits and such evidence shall not be treated as being insufficient for the purposes of proof by reason only that it is not supported by parole evidence.
- (3) The sheriff may, at any time after the endorsonation of the minute referred to in rule 72(5), without requiring the appearance of parties before him—
- (a) grant decree in terms of the motion for decree; or
 - (b) remit the cause for such other procedure, including proof by parole evidence, as the sheriff may deem appropriate.

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- (4) The sheriff clerk shall, on the expiry of fourteen days after the granting of decree in terms of paragraph (3), issue to each party to the action an extract of the decree of divorce.]

Textual Amendments

- F218** Rule 23 substituted by S.I. 1984/255, para. 3(9)
F219 Heading substituted by S.I. 1986/1966, para. 2(6)(a)
F220 Words substituted by S.I. 1986/1966, para. 2(6)
F221 Words repealed by S.I. 1986/1230, para. 3(9)

Decree for expenses

- 24 At the same time as granting a decree in absence or thereafter the sheriff may grant a decree for expenses.

Issue of extract decree

- 25 (1) On the expiry of 14 days following the granting of a decree in absence the sheriff clerk may issue an extract of the decree.
 (2) The sheriff may on cause shown order the extract to be issued at an earlier date.

Finality of decree in absence

- 26 Subject to section 9(7) of the ^{M60}Land Tenure Reform (Scotland) Act 1974, a decree in absence which has not been recalled or brought under review by suspension or by reduction shall become final, and be entitled to all the privileges of a decree *in foro*—
 (a) on the expiry of six months from its date or from the date of the charge under it, where the service of the initial writ or of the charge has been personal;
 (b) in any event, on the expiry of 20 years from its date.

Marginal Citations

- M60** 1974 c.38(74:1).

Amendment of initial writ

- 27 (1) In an undefended action the sheriff may—
 (a) allow the pursuer to amend the initial writ in any way permitted by rule 64;
 (b) order the amended initial writ to be re-served on the defender on such a 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 otherwise directs.
 (3) No such amendment shall have the effect of validating diligence used on the dependence of the action so as to prejudice creditors of the defender, but it shall have the effect of obviating objections to such diligence when stated by the defender himself or by any person representing him by a title, or in right of a debt contracted

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by him subsequent to the using of such diligence; and any diligence which was competent on the original initial writ shall be competent on the amended initial writ.

REPONING

Defender may be reponed against decree in absence

- 28 [^{F222}In any action other than an action of divorce or of separation . . . ^{F223},] At any time before implement in full of a decree in absence, the defender may apply to be reponed by lodging with the sheriff clerk a note setting forth his proposed defence and his explanation of his failure to appear and by serving a copy of the note on the pursuer.

Textual Amendments

F222 Words inserted by [S.I. 1984/255, para. 3\(10\)](#)

F223 Words repealed by [S.I. 1986/1230, para. 3\(10\)](#)

Consignation and recall of decree

- 29 (1) On lodging a reponing note under rule 28, the defender shall consign the sum of £10 in the hands of the sheriff clerk.
- (2) On consignation under paragraph (1) the sheriff, if satisfied with the defender's explanation, may recall the decree so far as not implemented, and the cause shall thereafter proceed in all respects as if the defender had appeared.

Sist of diligence

- 30 A reponing note, when duly lodged and served upon the pursuer shall have effect to sist diligence.

Consigned money and expenses

- 31 On the disposal of the reponing note—
- (a) the pursuer shall be entitled to uplift the consigned money unless the sheriff otherwise directs, and
 - (b) the sheriff may make such order as to expenses as seems just.

Judgment to be final

- 32 Any interlocutor or order recalling, or incidental to the recall of a decree in absence, shall be final and not subject to review.

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DEFENDED CAUSES TO PROOF

INTENTION TO DEFEND

Notice of intention to defend

- 33 If a defender intends [^{F224}to challenge the jurisdiction of the court or] to state a defence he shall before the expiry of the appropriate period of notice exhibit to the sheriff clerk the service copy of the initial writ and lodge with him a notice of intention to defend as nearly as may be in terms of Form F as set out in the Appendix to this Schedule [^{F225}and shall at the same time intimate the lodging of that notice to the pursuer]. [^{F224}The lodging of such notice of intention to defend shall not imply acceptance of the jurisdiction of the court.]

Textual Amendments

F224 Words inserted by S.I. 1986/1946, para. 2(6)

F225 S. 33: words inserted (4. 5. 1992) by S.I. 1992/249, para. 2(5)

Minute relating to aliment, periodical allowance, capital payment or transfer of property

- [^{F226}34(1) In an action of separation, affiliation and aliment or for custody of a child, a defender who intends only to dispute the amount of aliment may, in place of lodging a notice of intention to defend, lodge a minute to that effect condescending on the relevant facts.
- (2) In action of divorce, a defender who intends only to dispute liability for, or the amount of, or raise other matters relating to, aliment, periodical allowance, capital payment or transfer of property may, in place of lodging a notice of intention to defend, lodge a minute condescending on the relevant facts.
- (3) In an action of divorce or of separation, a defender may, without lodging a notice of intention to defend, apply to the court by minute craving an order for aliment, periodical allowance, capital payment or transfer of property and such minute shall crave the order which he claims the sheriff should make, and condescend on the relevant facts.
- (4) On the lodging of a minute under paragraph (1), (2) or (3)—
- the sheriff clerk shall enrol the cause for a hearing, and the defender shall send a copy of the minute and intimate the date of the hearing to the pursuer; and
 - the pursuer shall return the initial writ to the sheriff clerk at or before the hearing, but shall not, unless the sheriff otherwise directs, require to lodge a process.
- (5) At the hearing, the sheriff may resolve the matter or continue the cause for such further procedure as he considers appropriate.
- (6) In an action referred to in this rule, the sheriff may grant decree in terms of a joint minute dealing with aliment, periodical allowance, capital payment or transfer of property whether or not these have been craved in the initial writ or minute.]

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Textual Amendments

F226 Rule 34 substituted by S.I. 1986/1230, para. 3(11)

Tabling

- 35 (1) Where a notice of intention to defend has been lodged, the sheriff clerk shall enrol the cause for tabling on the first court day occurring after the expiry of the appropriate period of notice.
- (2) A cause which has not been tabled, and in which protestation has not been craved, shall drop from the roll, but within three months the sheriff may direct it to be again enrolled for tabling under such conditions as to notice, or re-service, or expenses, or otherwise as seem just.
- (3) At tabling, the sheriff may, on the motion of either party, continue the cause without ordering defences to be lodged.

Protestation

- 36 (1) On any occasion on which the cause is enrolled for tabling and not tabled, the defender or his agent, upon producing the service copy of the writ, may crave protestation for not insisting, which the sheriff may grant, and shall fix the amount of protestation money payable to the defender.
- (2) Protestation shall not be extracted before the expiry of seven clear days from the date of its granting, except where arrestments have been used, in which case it may be extracted after the expiry of 48 hours from that date.
- (3) Upon protestation being extracted, the instance shall fall.
- (4) Before extract, protestation may be recalled, and the sheriff may allow the pursuer to proceed with the cause upon making payment to the defender of the amount of protestation money, and upon such other conditions as the sheriff thinks fit.

THE PROCESS

Lodging of process by pursuer

- 37 In a cause in which a notice of intention to defend has been lodged, the pursuer shall at or before tabling lodge with the sheriff clerk the principal initial writ and a copy initial writ with warrant thereon certified by the pursuer, principal and duplicate interlocutor sheets, and principal and borrowing inventory of process, and the sheriff clerk shall endorse on all documents lodged in process the date of lodging.

Custody of process

- 38 (1) The principal initial writ, the principal interlocutor sheets and borrowing inventory of process shall remain in the custody of the sheriff clerk.

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- (2) The sheriff may make a special order to the contrary in respect of the principal initial writ.

Borrowing of process

- 39 (1) A process may be borrowed only by a solicitor or by his authorised clerk for whom he shall be responsible.
- (2) All remedies competent to enforce the return of a borrowed process may proceed on the warrant of the court from whose custody the process was obtained, whether the borrower is or is not within its jurisdiction.
- (3) A party litigant shall not borrow a process except by leave of the sheriff and subject to such conditions as the sheriff may impose but may inspect a process and obtain copies, where practicable, from the sheriff clerk.
- (4) All numbers of process borrowed shall be returned to the sheriff clerk not later than two days before the date of the proof.

Failure to return process

- 40 (1) When a solicitor or party litigant has borrowed a process, or any part of a process, and fails to return it for any diet at which it is required, the sheriff may impose upon 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 who granted it.
- (2) Orders made under this rule shall not be subject to appeal.

Replacement of lost documents

- 41 When any part of process is lost or destroyed, a copy thereof, authenticated in such manner as the sheriff may require, may be substituted and shall, for the purposes of the action to which the process relates, be treated as having the same force and effect as the original.

Borrowing of certified copy initial writ for purposes of arrestment and issue of precepts of arrestment

- 42 (1) The certified copy initial writ with warrant thereon may be borrowed by any party to the action and shall be sufficient warrant to arrest on the dependence if it is otherwise competent to do so.
- (2) Separate precepts of arrestment may be issued by the sheriff clerk on production to him of an initial writ, containing claims for payment of money, on which a warrant of citation has been granted, or of a liquid document of debt.

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DEFENCES AND ADJUSTMENT

Defences

43 (1) Where defences have not been lodged at tabling, the sheriff, in the interlocutor pronounced at tabling or otherwise, shall appoint a period within which defences shall be lodged.

(2) On lodging defences the defender shall send a copy to the pursuer.

Form of defences

44 Defences shall be in the form of answers in paragraphs corresponding to the paragraphs of the condescendence, and shall have appended a note of the defender's pleas-in-law.

Implied admissions

45 Every statement of fact made by one party shall be answered by the other party, and if a statement made by one party of a fact within the knowledge of the other party is not denied by that other party, the latter shall be held as admitting the fact so stated.

Adjustment of pleadings

46 Subject to the provisions of rules 47 and 48 all adjustments of the pleadings shall be made by parties only on the certified copy of the initial writ, the defences or answers, as the case may be, and shall be immediately intimated in writing to all other parties.

Open record

47 (1) The sheriff may at any time before the closing of the record, on the application of a party to the action *orex proprio motu*, order the pursuer to lodge in process a record of the pleadings as adjusted to the date of the order and to intimate a copy to all other parties.

(2) Any adjustments made after that date shall be made on that record and intimated to all other parties.

Alteration of sum sued for

48 (1) In a cause in which all other parties have lodged defences or answers the pursuer may, prior to the closing of the record and without leave of the sheriff, alter any sum sued for by amending the crave of the initial writ, the certified copy of the initial writ and any record.

(2) The pursuer shall immediately intimate any such amendment in writing to all other parties.

Adjustment period

49 (1) In the interlocutor pronounced at tabling or otherwise the sheriff shall appoint the date on which the cause shall appear on the adjustment roll.

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- (2) No continuation of the adjustment after the first shall be allowed except on cause shown.
- (3) Cause shall not be shown under paragraph (2) by reason only that parties agree to a continuation.
- (4) In considering whether cause has been shown under paragraph (2) the sheriff shall take into account any additional time which may have been available for adjustment owing to a court vacation occurring (in whole or in part) after the lodging of defences.

THIRD PARTY PROCEDURE

Third party notice

- 50 (1) Where in any cause, a defender claims that he has any right of contribution, relief, or indemnity against any person who is not already a party to the cause, or that a person whom the pursuer is not bound to call as a defender should be made a party to the cause along with the defender in respect that such person is either solely liable or jointly and severally liable with the defender to the pursuer in respect of the subject matter of the cause, the defender may set forth in his defences or in a separate statement of facts the grounds upon which he maintains that any such person (hereinafter called a third party) is liable to him by way of contribution, relief, or indemnity, or should be made a party to the cause and the defences or statement of facts shall also contain appropriate pleas-in-law directed against such third party.
- (2) Thereafter the defender may lodge a motion for the purpose of obtaining an order for the service of a third party notice upon such third party upon such period of notice as is referred to in rule 7, and if the motion is granted, the third party shall be a party to the cause and may lodge answers on or before a date appointed by the sheriff for the regulation of further procedure.
- (3) Averments directed against a third party shall be made prior to the closing of the record, or, at the discretion of the sheriff and subject to such conditions as to the sheriff seem just, at a later stage, but in no event later than the commencement of the hearing of the cause on its merits.
- (4) A third party notice shall be as nearly as may be in terms of Form G as set out in the Appendix to this Schedule and the answers by 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 the following provisions of this rule shall apply to the procedure under the notice.
- (5) A third party notice shall be served on the third party in any manner and on such period of notice in which an initial writ may competently be served on a defender and shall be accompanied by a copy of the initial writ and defences, or the record, if any.
- (6) A copy of the third party notice with a certificate of execution thereon shall be lodged in process.
- (7) The order granting leave to serve a third party notice may contain a warrant for arrestment to found jurisdiction, or for arrestment on the dependence.

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- (8) Averments to justify the granting of a warrant for arrestment to found jurisdiction shall be included in the defences or the separate statement of facts referred to in paragraph (1) of this rule.
- (9) On the date appointed by the sheriff for the regulation of further procedure or at any time thereafter the sheriff may grant such decree, interlocutor or order as seems just.
- (10) Any decree, interlocutor, or order against the third party shall take effect and be extractable in the same way as a decree, interlocutor or order against the defender.
- (11) This rule also applies to a claim—
 - (a) by a third party; or
 - (b) by a pursuer in respect of a counter-claim by a defender, as it applies to a claim by a defender.

[^{F227}PARTY MINUTER PROCEDURE]

Textual Amendments

F227 Sch. 1 rule 50A and heading inserted (4.5.1992) by S.I. 1992/249, para. 2(6)

^{F228}Party minuter

- 50A (1) Any person who has not been called as a defender or third party may apply by minute to the sheriff for leave to enter a process as a party minuter and to lodge defences.
- (2) An application under this rule shall specify—
 - (a) the applicant's title and interest to enter the process; and
 - (b) the grounds of the defence which he proposes to state.
 - (3) On the lodging of a minute under this rule, the sheriff shall appoint a date for hearing the minute; and the applicant shall forthwith serve a copy of the minute and of the order for a hearing on the parties to the cause.
 - (4) After hearing the applicant and any party to the cause, the sheriff may, 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 may make such order as to expenses or otherwise as he considers appropriate.
 - (5) Where an application under this rule is made after the closing of the record, the sheriff—
 - (a) shall only grant leave under paragraph (4) if he is satisfied as to the reason why earlier application was not made; and
 - (b) may make such further order as to expenses or otherwise as he considers appropriate.

Textual Amendments

F228 Sch. 1 rule 50A inserted (4. 5. 1992) by S.I. 1992/249, para. 2(6)

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COUNTER-CLAIM PROCEDURE

Counter-Claim

- 51 The defender may make a counter-claim against the pursuer by lodging in process a separate document headed “Counter-claim for the Defender” a copy of which shall be sent to the pursuer.

Form of counter-claim

- 52 The counter-claim shall contain a crave or craves in a form which if the counter-claim had been enforced by way of a separate cause would have been appropriate in that cause; it shall also contain a statement of facts setting out in numbered paragraphs the facts on which the counter-claim is founded and shall have appended a note of the pleas-in-law which are necessary to support the counter-claim.

Warrants of counter-claim

- 53 (1) The defender may apply for warrant to use any form of diligence by way of arrestment which could be used on the dependence of a separate cause brought to enforce the matter of the counter-claim.
- (2) Such application shall be made by appending to the crave of the counter-claim the words “warrant for arrestment on the dependence applied for”, and shall be granted by the sheriff clerk who receives the counter-claim adding the words “Grants warrant as craved”, and adhibiting his signature together with the date below those words.
- (3) Any such warrant shall have the like effect as it would have in an initial writ.

Disposal of counter-claim

- 54 The sheriff may—
- (a) deal with the counter-claim as if it had been stated in a substantive cause;
 - (b) regulate procedure as he thinks fit; and
 - (c) grant decree for the counter-claim in whole or in part, or for the difference between it and the sum claimed.

Abandonment where counter-claim

- 55 (1) A pursuer shall not be prevented from abandoning a cause by reason only of a counter-claim by the defender.
- (2) The abandoning of any cause by the pursuer shall not effect a counter-claim made in respect of that cause; and the counter-claim shall continue as a separate cause.
- (3) Any expenses payable by the pursuer as a condition of, or in consequence of abandoning the cause shall not include the expenses of the counter-claim.
- (4) A defender who has counter-claimed may abandon his counter-claim by lodging in process a minute to that effect, and thereafter the sheriff may, on payment by the defender of the expenses incurred by the pursuer in connection with the counter-claim, dismiss the counter-claim.

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- (5) If the defender fails, within 14 days of the date of taxation, to pay those expenses, the pursuer shall be entitled to decree of absolvitor with expenses in the counter-claim.

Counter-claim . . . ^{F229} for custody, access or maintenance

56^{F230}(1) In any cause in which custody of, access to, or maintenance for, a child is sought [^{F231}or could competently be sought] the defender may make [^{F232}any claim relating to such matters of a kind] which a pursuer may make in such a cause; and rules 51 to 55 shall apply to any such claim as they apply to a counter-claim.

[^{F233}(2) Where a defender makes a counter-claim under paragraph (1), he may, where it would otherwise be competent, incorporate a crave for an order for aliment, periodical allowance, capital payment or transfer of property rather than proceed by way of separate minute under rule 34.

- (3) In a cause referred to in this rule, the sheriff may grant decree in terms of a joint minute dealing with custody of, access to, or maintenance for, a child, aliment, periodical allowance, capital payment or transfer of property whether or not those have been craved in the initial writ or counter-claim.]

Textual Amendments

- F229** Words repealed by S.I. 1984/255, para. 3(12)(a)
F230 “—(1)” inserted by S.I. 1986/1230, para. 3(12)(a)
F231 Words inserted by S.I. 1984/255, para. 3(12)(b)
F232 Words substituted by S.I. 1986/1230, para. 3(12)(b)
F233 Rule 56(2)(3) inserted by S.I. 1986/1230, para. 3(12)(c)

INCIDENTAL PROCEDURE

Motions

- 57 Any motion endorsed as unopposed may be granted by the sheriff in chambers without hearing the parties.

Applications for time to pay directions and for recall or restriction of arrestments in defended causes

- [^{F234}57A In any undefended cause in which it is competent to do so, the sheriff may, on a motion by the defender at any time before decree is granted, grant a time to pay direction and, where appropriate, an order recalling or restricting an arrestment.]

Textual Amendments

- F234** Rule 57A inserted by S.I. 1988/1978, para. 11

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Abandonment of cause

- 58 (1) A pursuer may at any stage of a cause before an interlocutor granting absolvitor or dismissing the cause has been pronounced offer to abandon the cause by lodging in process a minute to that effect and thereafter the sheriff may, on payment to the defender of his expenses, dismiss the cause.
- (2) If the pursuer fails, within 14 days of the date of taxation, to pay the defender's expenses, the defender shall be entitled to decree of absolvitor, with expenses.

Decree by default

- 59^{F235} (1) In a defended cause other than an action of divorce or of separation . . . ^{F236} if any production or step of process has not been lodged or an order has not been implemented within the time required by any enactment or order of the sheriff, or if one party fails to appear or be represented at a diet, the sheriff may grant decree as craved or decree of *absolvitor*, or may dismiss the cause, with expenses,]
- (2) If none of the parties appears the sheriff may dismiss the cause.
- [^{F237} (3) In any action the sheriff may, on cause shown, prorogate the time for lodging any production or step of process or for implementing any order.]

Textual Amendments

F235 Rule 59(1) substituted by S.I. 1984/255, para. 3(13)(a)

F236 Words repealed by S.I. 1986/1230, para. 3(13)

F237 Rule 59(3) inserted by S.I. 1984/255, para. 3(13)(b)

^{F238X3} Summary decree

- [59A (1) This rule applies to any cause other than—
- (a) a consistorial action;
 - (b) an action of multiplepoinding; or
 - (c) an action under the Presumption of Death (Scotland) Act 1977 ^{F239}.
- (2) A pursuer may, at any time after the defender has lodged defences, apply by written motion to the court—
- (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 action,
- on the ground that there is no defence to the action or a part of it disclosed in the defences.
- (3) A motion under this rule shall be intimated to all other parties to the cause on a period of notice of 14 days.
- (4) After hearing a motion under this rule, the sheriff may, if he is satisfied that there is no defence to the action or to any part of it to which the motion relates—
- (a) grant summary decree against the defender in terms of the motion in whole or in part; or
 - (b) order any party or a partner, director, officer or office bearer of any party—

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- (i) to produce any document or article; or
 - (ii) to lodge an affidavit or affidavits in support of any averment of fact made in the pleadings or at the hearing of the motion.
- (5) Notwithstanding the grant or refusal of a motion under this rule a further motion under this rule may be made by the pursuer on cause shown by reason of a change of circumstances.
- (6) Where—
- (a) a defender has lodged a counter-claim; or
 - (b) a defender or third party has made a claim against another defender or against a third party, who has lodged defences or answers,
- he may apply by motion in accordance with this rule for summary decree on that counterclaim or claim or part of it, on the ground that the other party has no defence to it; and the terms of paragraphs (1) to (5) of this rule shall apply to a motion by a defender or third party as they apply to a motion by a pursuer.]

Editorial Information

X3 Rule 59A (as inserted by S.I. 1984/255, para. 3(14) and substituted by S.I. 1986/1230, para. 3(14)) renumbered as rule 59B and a new rule 59A inserted after rule 59 by S.I. 1992/249, para. 2(7)(8).

Textual Amendments

F238 Rule 59A inserted in Sch. 1 (4.5.1992) by S.I. 1992/249, para. 2(7).

F239 1977 c.77.

Late appearance by defender in actions of divorce and of separation

[^{F240} (1) The sheriff may make an order, with or without conditions, allowing a defender in an ^{X4F241}59B] action of divorce or of separation who has not lodged a notice of intention to defend or defences—

- (a) to appear and be heard at a diet of proof;
 - (b) to lodge defences and to lead evidence at any time before decree of divorce or of separation has been pronounced; or
 - (c) to appeal within 14 days of the decree of divorce or of separation.
- (2) Where an order is made under paragraph (1)(a), a defender may not lead evidence without the consent of the pursuer.
- (3) Where an order is made under paragraph (1)(b), the pursuer may lead further evidence, by recalling witnesses already examined or otherwise, whether or not he closed his proof before the order was made.]

Editorial Information

X4 Rule 59A (as inserted by S.I.1984/255, para. 3(14) and substituted by S.I. 1986/1230, para. 3(14)) renumbered as rule 59B and a new rule 59A inserted after rule 59 (4.5.1992) by S.I. 1992/249, para. 2(7)(8)

Textual Amendments

F240 Rule 59A inserted by S.I. 1984/255, para. 3(14) and substituted by S.I. 1986/1230, para. 3(14)

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F241 Rule 59A renumbered as rule 59B (4.5.1992) by S.I. 1992/249, para. 2(8)

Transfer of cause on death of party

- 60 (1) Where any depending cause cannot proceed owing to the death of any party and that party's representatives do not sist themselves in his place, any other party may lodge a minute craving transfer of the cause against those representatives.
- (2) The sheriff may on the lodging of any such minute, grant warrant for serving a copy of the initial writ upon those representatives, and if he does so, shall at the same time allow them to lodge a minute of objections to such transference within such time as may be specified in the interlocutor, and shall order intimation of his interlocutor to be made to any other parties to the cause.
- (3) The sheriff may, after considering any objections to the minute, pronounce an interlocutor transferring the cause against their representatives.

Effect of absence of interlocutors

- 61 A cause shall not be held to have fallen asleep by reason only that no interlocutor has been pronounced therein within a year and a day of the date of the last interlocutor.

CLOSING OF RECORD TO PROOF

Closing of the record

- 62 (1) When the pleadings have been adjusted the sheriff shall close the record and make such further order as he thinks fit.
- (2) Not later than 14 days after the closing of the record the pursuer shall lodge in process a certified copy of the closed record.

Preliminary Pleas

- 63 (1) At the time of the closing of the record the parties shall state the preliminary pleas, if any, on which they insist and the sheriff shall fix a date for a debate on any such plea that is insisted in except where, upon a motion by the parties to reserve their pleas, he allows a proof before answer.
- (2) The sheriff shall repel any such plea that is not insisted in.

Amendment of pleadings: powers of the sheriff

- 64 (1) In any defended cause the sheriff may at any time before final judgment—
- (a) allow any amendment of the initial writ or other writ which may be necessary for the purpose of determining in the existing cause the real question in controversy between the parties, notwithstanding that in consequence of such amendment a different remedy from the originally craved is thereby sought, or, after the closing of the record, that the sum sued for is increased or restricted;

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- (b) allow any amendment which may be necessary to correct or supplement the designation of any party to the cause, or to enable any party who has sued or has been sued in his own right to sue or be sued in a representative capacity, or to enable any party who has sued or who has been sued in a representative capacity to sue or be sued in his own right or in a different representative capacity, or to add the name of an additional pursuer or of a person whose concurrence is necessary, or where the cause has been commenced in the name of the wrong person as pursuer or where it is doubtful whether it has been commenced in the name of the right person, to allow any other person to be sisted as pursuer in substitution for, or in addition to, the original pursuer;
 - (c) in any case in which it appears that all parties having an interest have not been called, or that the cause has been directed against the wrong person, allow any amendment inserting in the initial writ or writ an additional or substitute defender and containing averments directed against said defender and to order the record as so amended to be served on such additional or substitute defender along with a notice in terms of Form H as set out in the Appendix to this Schedule specifying the date by which defences or answers must be lodged [^{F242}]; provided that in any case in which a time to pay direction under the Debtors (Scotland) Act ^{M61} 1987 may be applied for by the defender a notice in terms of form HH as set out in the Appendix to this Schedule together with form B5 shall be served on such additional or substitute defender in place of Form H]; and thereafter a copy of the said notice shall be lodged in process with a certificate of execution thereon and the cause as so amended shall proceed in every respect as if such defender had originally been made a party to the cause;
 - (d) allow any amendment of the condescendence, defences, answer or pleas-in-law which may be necessary for determining in the existing cause the real question in controversy between the parties.
- (2) In allowing an amendment under paragraph (1), the sheriff may attach such conditions as seem just, and shall find the party making the amendment liable in the expenses thereby occasioned unless it is just and equitable that the expenses occasioned by the amendment should be otherwise dealt with.
- (3) No amendment allowed under paragraph (1) shall prejudice the rights of creditors of the defender by giving validity to diligence used on the dependence of the cause; but no objections to such diligence shall have effect when stated by the defender himself or by any person representing him by a title, or in right of a debt contracted by him, subsequent to the execution of such diligence.

Textual Amendments

F242 Words inserted by [S.I. 1988/1978, para. 12](#)

Marginal Citations

M61 [1987 c.18\(45:2\)](#).

Renouncing of probation

- 65 If at any time on or after closing the record the parties wish to renounce probation they may do so by lodging with the sheriff clerk a joint minute to that effect with

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or without a statement of admitted facts and productions, and on the lodging of the joint minute the sheriff may order the cause to be debated.

Ordering of proof

- 66 If proof is necessary, the sheriff shall fix a date for taking the proof, and may limit the mode of proof.

Reference to oath

- 67 (1) Where any party desires to refer any matter to his opponent's oath he shall lodge with the sheriff clerk a minute to that effect.
- (2) If the party to whose oath reference has been made fails to appear at the diet for taking his deposition the sheriff may hold him as confessed and grant decree accordingly.

Objection to documents

- 68 (1) When a deed or writing is founded on by any party in a cause, all objections to the deed or writing may be stated and maintained by way of exception, without reducing it.
- (2) The sheriff may, where an objection is stated under paragraph (1) and where an action of reduction would be competent, order the objector to find caution, or to make consignment as he shall direct.

Remit to person of skill

- 69 (1) Where all compearing parties to the cause concur the sheriff may remit to any person of skill or other person to report on any matter of fact and the report of such person shall be final and conclusive with respect to the matter of the remit.
- (2) Before the sheriff so remits, the parties shall lodge in process a joint minute setting out the matters which are to be the subject of the remit.
- (3) The expense of the execution of the remit shall in the first instance be paid by the parties equally unless the sheriff otherwise directs.
- (4) In undefended causes the sheriff may on the motion of the pursuer remit to a man of skill or other person.

PROOF

EVIDENCE

Evidence to liein retentis

- 70 Evidence in danger of being lost may be taken to *liein retentis* and, if satisfied that it is desirable so to do, the sheriff may, upon the motion of any party at any time, either take such evidence himself, or grant authority to a commissioner to take it.

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Evidence taken on commission

- 71 The evidence of any witness or haver resident beyond the jurisdiction of the court, or who although resident within the jurisdiction resides at some place remote from the court, or who is by reason of illness, age or infirmity, or other sufficient cause, unable to attend the diet of proof may be taken by commission in like manner as evidence to lie *in retentis*.

Affidavit evidence

- 72^{F243}(1) The provisions of this rule—
- (a) apply to all parts of actions of [^{F244}divorce, of separation and of declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy] which proceed as undefended and to opposed interim orders under the ^{M62}Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - (b) do not apply to any action of [^{F244}divorce, of separation or of declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy] where it appears to the sheriff that [^{F245}a] defender is a person who is suffering from a mental disorder within the meaning of the ^{M63} Mental Health (Scotland) Act [^{F246}1984] except where the curator *ad litem* for the defender has lodged a minute intimating that he does not intend to defend the action.]
- (2) Evidence submitted in the form of affidavits shall, subject to the provisions of this rule, be admissible in place of parole evidence.
- (3) For the purpose of this rule—
- (a) “affidavit” includes affirmation and statutory or other declaration;
 - (b) an affidavit shall be treated as admissible if it is duly emitted before a notary public or any other competent authority.
- (4) Evidence submitted in the form of a written statement bearing to be that of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence.
- (5) Where it is intended to submit evidence only by means of affidavits the sheriff, at any time after the expiry of the period within which a notice of intention to defend or a minute under rule 34 must be lodged, the pursuer having lodged the necessary evidence on affidavit and having endorsed a minute [^{F247}in accordance with Form X] on the initial writ, may grant decree or other order in terms of that minute, without requiring the attendance of the pursuer in court.
- (6) ^{F248}

Textual Amendments

- F243** Rule 72(1) substituted by S.I. 1984/255, para. 3(15)(a)
F244 Words substituted by virtue of S.I. 1986/1230, para. 3(15)(a) and S.I. 1986/1966, para. 2(7)
F245 Word substituted by S.I. 1986/1966, para. 2(7)(b)(ii)
F246 “1984” substituted by S.I. 1986/1230, para. 3(15)(b)
F247 Words inserted by S.I. 1984/255, para. 3(15)(b)
F248 Rule 72(6) repealed by S.I. 1984/255, para. 3(15)(c)

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Marginal Citations

M62 1981 c.59(49:6).

M63 1984 c.36(85).

Conditions for receiving written statements in evidence without being spoken to by a witness

- [^{F249}72A] Any written statement (including an affidavit) or report, admissible under section 2(1)(b) of the ^{M64}Civil Evidence (Scotland) Act 1988 may be received in evidence in any ordinary cause without being spoken to by a witness subject to the provisions of this rule.
- (2) The following provisions of this rule do not apply to any such written statement or report in respect of which express provision is made in these rules for its admissibility in evidence in relation to a particular category of ordinary cause.
 - (3) Application to the sheriff to receive any such written statement or report in evidence without being spoken to by a witness shall be made by way of motion.
 - (4) Subject to paragraph (5), on enrolling any such motion, the applicant shall lodge—
 - (a) the written statement or report as a production;
 - (b) in any case where the other party or parties have not agreed to the written statement or report in question being received in evidence without being spoken to by a witness, an affidavit or affidavits in support of the motion stating—
 - (i) the name, designation, and qualifications (if any) of the author of the statement or report in question;
 - (ii) the circumstances in which it was written; and
 - (iii) the reasons for the application.
 - (5) Paragraph (4) does not apply to an application made in respect of a written statement or report in the form of an affidavit which includes the information specified in subparagraph (b) of paragraph (4).
 - (6) On the hearing of any such motion, the sheriff may grant the motion, with or without conditions, or may refuse it, or may continue the motion to enable such further information to be obtained as he may require for the purpose of determining the application.
 - (7) For the purpose of this rule—
 - (a) expressions used in this rule and in the ^{M65}Civil Evidence (Scotland) Act 1988 shall have the meaning they have in that Act;
 - (b) “affidavit” includes affirmation and statutory or other declaration;
 - (c) an affidavit shall be treated as admissible if it is duly emitted before a notary public or any other competent authority.]

Textual Amendments

F249 Rule 72A inserted by S.I. 1989/436, para. 2

Marginal Citations

M64 1988 c.32(47).

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M65 1988 c.32 (47).

Recording of evidence

- 73 (1) In every defended cause the evidence shall be recorded by a shorthand writer, approved by the sheriff, unless the parties shall by agreement and with the consent of the sheriff dispense with the recording of such evidence. The responsibility for instructing a shorthand writer for a proof shall lie with the pursuer.
- (2) Evidence adduced before a commissioner may be recorded by a shorthand writer or clerk approved by the commissioner. The responsibility for instructing a shorthand writer shall lie with the party moving for the commission.
- (3) Where evidence is recorded by a shorthand writer or clerk the sheriff or commissioner shall administer the oath *de fidei administratione* to the shorthand writer or clerk who shall record the evidence by question and answer. The extended notes of evidence certified by such shorthand writer shall be the notes of the oral evidence in the case.
- (4) It shall be unnecessary to record evidence in an undefended proof.
- (5) If the correctness of the notes of evidence or of a deposition is questioned, the sheriff may satisfy himself in regard thereto by the examination of witnesses or otherwise, and may amend the record of evidence or a deposition.
- (6) When a shorthand writer is so employed to record evidence, he shall in the first instance be paid, as regards commissions by the party moving for the commission, and as regards proofs by the parties equally. The solicitors of parties shall be personally liable for the shorthand writer's fees and the sheriff may make an order directing payment to be made.

WITNESSES AND HAVERS

Citation

- 74 (1) A copy of an interlocutor certified by the sheriff clerk allowing a proof or fixing a diet for the trial of any cause or for the examination of witnesses or havers shall be sufficient warrant for citation of witnesses or havers.
- (2) If any witness or haver duly cited on a period of notice of at least 7 days and after having been paid his travelling expenses if the same shall have been demanded, fails to attend a diet, either before the sheriff or before his commissioner, such witness or haver may be ordained by the sheriff to forfeit and pay a penalty not exceeding £250, unless a reasonable excuse be offered and sustained, and the sheriff may grant decree for said penalty in favour of the party on whose behalf said witness or haver was cited.

Form of citation

- 75 (1) Witnesses and havers may be cited as nearly as may be in terms of Form I as set out in the Appendix to this Schedule and the certificate of citation shall be as nearly as may be in terms of Form J as set out in the Appendix to this Schedule.

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- (2) A solicitor who cites a witness or haver shall be personally liable for his fees and expenses.
- (3) In the event of a solicitor who has cited a witness or haver intimating to him that his citation is cancelled, the solicitor shall advise him that said cancellation is not to affect any other citation which he may have received from another party in that cause.

Second diligence against witness

- 76 (1) The sheriff may grant second diligence to compel the attendance of a witness or haver under pain of arrest and imprisonment until caution can be found as the sheriff may require for his due attendance.
- (2) The warrant for a second diligence shall be effective in any sheriffdom without endorsement and the expenses thereof may be decerned for against the witness or haver.

Warrant to arrest

- 77 Where any witness or haver fails to answer a citation after having been duly cited the sheriff may, upon production of a relevant certificate of citation, grant warrant for the apprehension of the witness or haver and for bringing him to the court, and the expenses thereof may be decerned for against the witness or haver.

PRODUCTIONS

Production and recovery of documents

- 78 (1) Each party shall, along with his pleadings, or at latest before the closing of the record, if required by any other party in the cause or by the sheriff, lodge any documents founded upon in the pleadings, so far as the same are within his custody or power.
- (2) Where such documents are not produced by any party to the cause or are in the hands of third parties, the sheriff may, on the motion of any party, grant commission and diligence for their recovery and may on that account delay closing the record.
- (3) At any time after tabling, the sheriff, on the motion of either party, may grant commission and diligence for the recovery of such documents contained in a specification as he shall deem relevant to the cause.

Lodging productions for proofs

- 79 In all causes in which a proof has been allowed, all documents, plans, maps, models and other productions which are intended to be used or put in evidence at the proof, shall be lodged along with an inventory with the sheriff clerk on or before the fourteenth day prior to the day appointed for the proof, and notice of the lodging thereof shall at the same time be sent to the other party or parties; and no other production shall be used or put in evidence at the proof unless by consent of parties or by permission of the sheriff presiding thereat, on cause shown to his satisfaction, and on such terms as to expenses or otherwise as seems just.

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Ordering of production of documents by sheriff

- 80 The sheriff may order production of documents at any state of the cause, and the sheriff may allow a party, at any time before judgment, to produce any document which he has failed to produce timeously, on such conditions as to payment of expenses and allowing further proof as to the sheriff shall seem just.

Optional procedure before executing commission and diligence

- 81 (1) Any party who has obtained a commission and diligence for the recovery of documents may, at any time, before executing the same against another party or other parties to the cause, or against any haver, serve upon such party, or parties, or haver, an order with certificate attached in terms of Form K as set out in the Appendix to this Schedule.
- (2) Such order shall be served by registered or recorded delivery letter, and may be addressed to the care of the known solicitor or solicitors for the party or parties, or for the haver, from whom the documents are sought to be recovered.
- (3) Such order shall be obtempered by such party, or parties, or by such haver, in the manner and within the time specified therein.
- (4) When the order, certificate in terms thereof and inventoried documents (if any) are received by the sheriff clerk, official intimation shall be given by him forthwith to the solicitor or solicitors of the party or parties to the cause that the order has been served and obtempered; and it shall not be competent for any party, other than the party who served the order, to borrow any of the documents until after the expiry of 7 days from the date of such official intimation.
- (5) If the party who served the order is not satisfied that full production has been made under the specification, or that adequate reasons for non-production have been given, he may execute the commission and diligence in normal form, notwithstanding his adoption in the first instance of the foregoing procedure by order.
- (6) In the event of the production under such order as aforesaid of extracts from books whether such extracts are certified or not, the sheriff may, on cause shown, order that the party who served the order shall be at liberty to inspect and take copies of any entries in any books falling under the specification, subject, in the event of any question of confidentiality arising, to the inspection being made, and the copies being taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence; and the sheriff may, on cause shown, order the production of any books (not being bankers' books or books of public record) falling under a specification, notwithstanding the production of certified extracts therefrom.

Confidentiality

- 82 In any cause in which, either under the optional procedure provided in rule 81 or in the execution of a commission and diligence in normal form, confidentiality is claimed for any of the documents produced, such documents shall be enclosed in a separate sealed packet, which shall not be opened or put in process except by authority of the sheriff obtained on the application of the party serving the order, or executing the commission and diligence, after opportunity has been given to the party, parties or haver, making production, to be heard.

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Warrant for production of original documents from public records

- 83 (1) Where any party to a cause desires to obtain from the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland production of the originals of any register or deed under his custody, he shall apply by motion to the sheriff before whom the cause depends, after 7 days' notice of such application given in writing to the Keeper in charge of the originals.
- (2) Upon such application the sheriff may by interlocutor, certify that it is necessary for the ends of justice that the application should be granted, and the party may make application by letter (enclosing a copy of the interlocutor duly certified by the sheriff clerk or one of his deposes) addressed to the principal clerk of session, for an order from the Lords of Council and Session authorising the Keeper to exhibit the original of any register or deeds to the sheriff, and that in the hands of an officer to be selected by the said Keeper.
- (3) The principal clerk of session shall submit the same to a Lord Ordinary in Chambers, who, if satisfied, shall grant a warrant on behalf of the Lords of Council and Session. A certified copy of said warrant shall be served upon the Keeper.
- (4) The expense attending the transmission and exhibition of such original registers or deeds shall be defrayed in the first instance by the party or parties on whose application they are exhibited.

Orders for inspection

- 84 (1) Any application to the sheriff for an order for the inspection, photographing, preservation, custody or detention of documents or other property (including, where appropriate, land) or for the production, recovery or the taking of samples thereof or the carrying out of any experiment thereon or therewith made in any civil proceedings which have been commenced before that sheriff shall be made by minute craving that the sheriff should grant such an order and specifying the order sought.
- (2) Upon such minute being lodged, the sheriff shall forthwith appoint—
- (a) the application to be heard at a diet to be fixed by him, and
 - (b) appoint intimation to other parties to the proceedings and to such other persons as appear to him to have an interest relevant to the application.
- (3) After hearing parties, the sheriff may either grant or refuse the order sought, in whole or in part, or as amended, and may order the applicant to find such caution for any loss, damage or expenses which may be incurred as a result of the application as to the sheriff seems just.
- (4) Any application to the sheriff for such an order as is referred to in paragraph (1), made where proceedings have not been commenced, by any person who appears to the sheriff to be likely to be a party to or minuter in proceedings which are likely to be brought, shall be made by initial writ served upon all persons who are likely to be parties to such proceedings when commenced; and such application shall be and shall be dealt with as a summary application, provided that the sheriff may make an order for such intimation to such other persons as appear to him to have an interest relevant to the application, and may order the applicant to find such caution for any loss, damage or expense which may be incurred as a result of the application as to the sheriff seems just.

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- (5) Any party who has obtained an order under this rule shall serve by registered or recorded delivery letter a certified copy of the interlocutor granting such order upon—
- (a)
 - (i) in the case of an order made under paragraph (3), any other party or parties to the cause;
 - (ii) in the case of an order made under paragraph (4), any person upon whom service has been made; and
 - (b) such other persons to whom the sheriff has appointed intimation of the application to be made;
- but it shall not be necessary to serve such certified copy on any person who was present or represented when the application was heard; and such order shall be obtempered by the party or parties to whom it is directed in the manner and within the time specified therein.

Orders to disclose identity of persons

- [^{F250}84A] (1) An application for an order under section 1(1A) of the ^{M66}Administration of Justice (Scotland) Act 1972 requiring a person to disclose such information as he has as to the identity of any person who might be a witness in a cause in dependence before that sheriff court shall be made by minute in the process of that cause craving such an order and specifying the order sought.
- (2) On a minute being lodged under paragraph (1), the sheriff shall appoint forthwith—
- (a) the application to be heard at a diet to be fixed by him; and
 - (b) intimation to be made to any other party to the cause and to such other person as appears to him to have an interest in the application.
- (3) After hearing parties, the sheriff may either grant or refuse the order sought in whole or in part, or as amended, and subject to such conditions, including caution, as he thinks fit.
- (4) An application for an order under section 1(1A) of the ^{M67}Administration of Justice (Scotland) Act 1972 requiring a person to disclose such information as he has as to the identity of any person who might be a witness or defender in any civil proceedings which are likely to be brought, shall be made by summary application.
- (5) A summary application under paragraph (4) shall crave the order which is sought and shall specify the nature of the proposed proceedings and the information required.
- (6) On presentation of a summary application under paragraph (4), the sheriff may make an order for intimation to such persons as appear to him to have an interest in the application.
- (7) After the hearing of the summary application, the sheriff may grant the order sought in whole or in part, or as amended, subject to such conditions, including caution, as he thinks fit.
- (8) Subject to paragraph (9), a certified copy interlocutor granting an order made under this rule shall—
- (a) be served upon the person to whom it is directed; and
 - (b) be intimated to any other person to whom intimation of the minute or application, as the case may be, has been made,
- by the party in whose favour it has been granted.

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- (9) An interlocutor granting an order under this rule shall not be served upon, or intimated to, a person who was present or represented when the application under this rule was determined.
- (10) An interlocutor of the court under this rule shall be obtempered by the person to whom it is directed in the manner and within the time specified.]

Textual Amendments

F250 Rule 84A inserted by S.I. 1986/1966, para. 2(8)

Marginal Citations

M66 1972 c.59(36:1).

M67 1972 c.59(36:1).

PROCEDURE AT PROOF

Proof to be taken continuously

- 85 The proof shall be taken so far as possible continuously, but the sheriff may adjourn the diet from time to time.

Objections

- 86 (1) All objections to the admissibility of oral or documentary evidence or to the production of documents, the submissions of parties in relation thereto and the decision of the sheriff or commissioner thereon shall be recorded by the shorthand writer and be extended with the notes of evidence; provided that the sheriff or commissioner may also, if he considers it necessary or desirable to do so, dictate to the shorthand writer a short note of the objection and decision.
- (2) The sheriff or commissioner if he considers an objection of sufficient importance may direct that the evidence to which the objection relates should be recorded separately from the remainder of the evidence or report of proceedings.
- (3) Where the recording of evidence has been dispensed with in terms of rule 73, the sheriff, if called upon to do so, shall—
 - (i) in the case of objections to the admissibility of evidence on the ground of confidentiality or to producing a document on any ground, record in a note the terms of such objections and his decision thereon; and
 - (ii) in all other cases record, in the note to his interlocutor disposing of the merits of the cause the terms of any objections and his decision thereon.

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

- 87 (1) Where a party to the cause or other person objects to the admissibility of oral or documentary evidence on the ground of confidentiality or to producing a document on any ground, any party or person may, if dissatisfied with the ruling of the sheriff respecting the objection, express immediately his formal dissatisfaction and, with leave of the sheriff, appeal to the sheriff principal, who shall dispose of the appeal

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with the least possible delay; but otherwise it shall not be competent during a proof to submit to review any decision of the sheriff as to the admissibility of evidence or the production of documents.

- (2) The incidental appeal referred to in paragraph (1) shall not remove the cause from the sheriff who may proceed with the cause as regards points not necessarily dependent upon the ruling appealed against.

Parties to be heard at close of proof

- 88 At the close of the proof, or at an adjourned diet if for any reason the sheriff shall have seen fit to postpone the hearing, the sheriff shall hear parties and thereafter shall pronounce judgment with the least possible delay.

PROCEDURE AFTER JUDGMENT

JUDGEMENT

Judgment

- 89 (1) The sheriff shall append to all interlocutors, except those of a formal nature, a note setting out the grounds upon which he has proceeded and in his final interlocutor on the merits he shall set out his findings in fact and in law separately [^{F251}: Provided always that this paragraph shall not apply to decrees in actions of divorce and of separation and aliment which have proceeded as undefended.]
- (2) Where an interlocutor with note appended thereto is pronounced by the sheriff otherwise than in the presence of the parties, the sheriff clerk shall forthwith provide the parties with a copy of such interlocutor and note free of charge.
- (3) The sheriff may produce or sign any interlocutor when furth of his sheriffdom, but the date of every interlocutor shall be deemed to be the date upon which it is entered in the books of the court.
- (4) At any time before extract, or before the transmission of a process in which an appeal has been taken the sheriff may correct any clerical or incidental error in his interlocutor or note.

Textual Amendments

F251 Words inserted by [S.I. 1984/255](#), [para. 3\(16\)](#)

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EXTRACT

Extract

- 90 (1) Subject to the provisions of paragraph (3) hereof, any decree, interlocutor or order pronounced in a defended cause may be extracted at any time at which it is not possible for any party to mark or pursue an appeal or apply for leave to appeal.
- (2) Where, following the pronouncing of any decree, interlocutor or other order the sheriff has reserved any question of expenses, extract may be issued only after the expiry of 14 days from the date of the interlocutor disposing of such expenses, unless the sheriff directs otherwise.
- (3) The sheriff on cause shown may grant a motion to allow extract to be applied for and issued earlier than is provided for in paragraphs (1) and (2) provided the motion is made either in the presence of parties or the sheriff is satisfied that proper intimation of the terms of the motion has been made in writing to all other parties.
- (4) Nothing in this rule shall affect the power of the sheriff to supersede extract.

Extract decree of divorce

- [^{F252}90A Every extract decree of divorce shall be as nearly as may be in accordance with Form Z as set out in the Appendix to this Schedule.]

Textual Amendments

F252 Rule 90A inserted by S.I. 1984/255, para. 3(17)

APPEAL

Time limit for appeal

- 91 Any appealable interlocutor may be appealed within 14 days of the date of that interlocutor if not sooner extracted following a motion for early extract.

Application for leave to appeal and appeal therefrom

- 92 (1) Application for leave to appeal against an interlocutor of a sheriff shall only be competent if made within 7 days of the date of the interlocutor against which it is desired to appeal, but such application shall not be competent if the interlocutor has been extracted following a motion for early extract.
- [^{F253}(2) Where leave to appeal has been granted, an appeal shall be made—
- (a) where the appeal relates to a time to pay direction or any order connected therewith, within 14 days; or
 - (b) in any other case, within 7 days,
- of the granting of leave.

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- (3) An application for leave to appeal relating to a time to pay direction or the recall or restriction of an arrestment shall specify the question of law upon which the appeal is to proceed.]

Textual Amendments

F253 Rule 92(2)(3) substituted for rule 92(2) by S.I. 1988/1978, para. 13

Form of appeal and giving of notice to parties

- 93 (1) An appeal shall be taken by note of appeal which shall be written by the appellant on the interlocutor sheet, or other written record containing the interlocutor appealed against, or on a separate sheet lodged with the sheriff clerk; and such note of appeal shall be as nearly as may be in the following terms:—
- “The (pursuer, applicant, claimant, defender, respondent or other party) appeals to the sheriff principal/or/to the Court of Session”.
- and such note of appeal shall be signed by the appellant, and shall bear the date on which it is signed.
- (2) Where the appeal is an appeal to the Court of Session the note of appeal shall specify the name and address of the solicitors in Edinburgh who will be acting for the appellant in the appeal.
- (3) On an appeal being taken to the sheriff principal the sheriff clerk shall transmit the process within 4 days to the sheriff principal, and on an appeal to the Court of Session he shall transmit the process within 4 days to the deputy principal clerk of session.
- (4) Within the period of 4 days the sheriff clerk shall send written notice of the appeal to the other party or parties and certify on the interlocutor sheet that he has done so; but failure to give such notice shall not invalidate the appeal.

Reclaiming petition or oral hearing may be ordered or dispensed with

- 94 The sheriff principal may order a reclaiming petition and answers, or may hear parties orally or may, on the motion of all parties and if to the sheriff principal it seems just, dispose of the appeal without ordering either a reclaiming petition and answers or an oral hearing.

Interim possession may be regulated pending appeal

- 95 Notwithstanding an appeal, the sheriff or sheriff principal from whose decision appeal has been taken shall have power to regulate all matters relating to interim possession, to make any order for the preservation of any property to which the action relates or for its sale if perishable, or for the preservation of evidence, or to make in his discretion any interim order which a due regard to the interests of the parties may require. Such orders shall not be subject to review except by the Appellate Court at the hearing of the appeal.

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Abandonment of appeal

- 96 After an appeal to the sheriff principal has been noted the appellant shall not be entitled to abandon it unless of consent of all parties, or by leave of the sheriff principal.

EXPENSES

Decree for expenses may be extracted in solicitor's name

- 97 Expenses allowed in any cause, whether in absence or *in foro*, unless modified at a fixed amount, shall be taxed before decree is granted for them, and the sheriff may allow a decree for expenses to be extracted in the name of the solicitor who conducted the cause.

Objection to auditor's report

- 98 (1) Where an account of expenses [^{F254}awarded in any cause] is lodged for taxation, the account and process shall be transmitted by the sheriff clerk to the auditor of court, and the auditor shall assign a diet of taxation not earlier than 7 days from the date he receives the account and intimate that diet forthwith to the party who lodged the account.
- (2) The party who lodged the account of expenses shall then, forthwith, send a copy thereof and intimate the date, time and place of the diet of taxation to each of the other parties and when the account has been taxed the auditor shall re-transmit the process with the account and his report to the sheriff clerk.
- (3) Where the auditor has reserved consideration of the account at the date of the taxation he shall inform the parties who attended the taxation of his decision.
- (4) A party may lodge a note of objections to an account as taxed only where he attended the diet of taxation, and the note of objections shall be lodged within 7 days from the date of the taxation of the account, and the sheriff shall dispose of such objection in a summary manner, with or without answers.
- (5) If no note of objections is lodged within said period the sheriff may grant decree for the expenses as taxed.

Textual Amendments

F254 Words in rule 98(1) inserted by S.I. 1992/249, para. 2(9)

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PARTICULAR PROCEDURES

SEQUESTRATION FOR RENT

Actions craving payment of rent

- 99 ^{F255}(1) In actions for sequestration and sale in respect of non-payment of rent, for recovery, or 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 thereof when due and payable, may be pronounced and extracted in common form.
- [^{F256}(2) There shall be served on the defender in such actions, along with the initial writ, warrant and citation, a notice in accordance with form H8 as set out in the Appendix to the Schedule.]

Textual Amendments

F255 “(1)” inserted by S.I. 1988/1978, para. 14(a)

F256 Rule 99(2) inserted by S.I. 1988/1978, para. 14(b)

Warrant to inventory and secure

- 100 (1) In the first deliverance on an initial writ for sequestration for rent the sheriff may sequester the effects of the tenant, and grant warrant to inventory and secure them.
- (2) All warrants to sequester, inventory, sell, eject or relet shall include authority to open shut and lockfast places for the purpose of carrying such warrant into execution.

Sale of effects

- 101 (1) The sheriff may order the sequestered effects to be sold at the sight of an officer of court or other named person.
- (2) When a sale follows it shall be reported within 14 days and the pursuer shall lodge with the sheriff clerk the roup rolls or certified copies thereof 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.

Care of effects

- 102 The sheriff may at any stage appoint a fit person to take charge of the sequestered effects, or may require the tenant to find caution that they shall be made available.

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REMOVING

Action of removing where fixed term of removal

- 103 (1) Subject to section 24 of the ^{M68}Agricultural Holdings (Scotland) Act 1949, an action of removing may be raised at any time, provided the tenant has bound himself to remove by writing, dated and signed within 12 months of the term of removal, or, where there is more than one ish, of the ish first in date to remove.
- (2) Subject to the said section 24, when the tenant has not so bound himself an action or removing may be raised at any time, but—
- (a) in the case of a lease of lands exceeding 2 acres in extent for 3 years and upwards, an interval of not less than one year nor more than 2 years shall elapse between the date of notice of removal and the term of removal first in date;
 - (b) in the case of a lease of lands exceeding 2 acres in extent, whether written or verbal, held from year to year [^{F257}or] under tacit relocation, or for any other period less than 3 years, an interval of not less than 6 months shall elapse between the date of notice of removal and the term of removal first in date; and
 - (c) in the case of houses let with or without land attached not exceeding 2 acres in extent, as also of land not exceeding 2 acres in extent without houses, as also of mills, fishings, shootings, and all other heritable subjects excepting land exceeding 2 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.
- (3) In any defended action of removing the sheriff may order the defender to find caution for violent profits.
- (4) In actions of 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 prior to the raising of the action and the expense of the search shall form part of the pursuer's expenses of process.

Textual Amendments

F257 Word substituted by S.I. 1983/1546, para. 2(a)

Marginal Citations

M68 1949 c.75(2:3).

Form of notice of removal

- 104 Notices under sections 34, 35 and 36 of the ^{M69}[^{F258}Act of 1907] shall be as nearly as may be in terms of Form L as set out in the Appendix to this Schedule, and a letter of removal may be in terms of Form M as set out in the Appendix to this Schedule.

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Textual Amendments

F258 Words substituted by [S.I. 1983/1546](#), [para. 2\(b\)](#)

Marginal Citations

M69 [1907 c.51\(36:3\)](#).

Form of notice under section 37

- 105 Notices under section 37 of the [^{F259}Act of 1907] shall be as nearly as may be in terms of Form N as set out in the Appendix to this Schedule, and such form may be used also for notices to the proprietor by or on behalf of the tenant.

Textual Amendments

F259 Words substituted by [S.I. 1983/1546](#), [para. 2\(b\)](#)

Removal notices

- 106 Removal notices under sections 34, 35, 36, 37 and 38 of the [^{F260}Act of 1907] may be given by a messenger-at-arms or sheriff officer, or by registered letter signed by the person entitled to give such notice, or by the law agent or factor of such person, posted at any post office within the United Kingdom in time to admit of its being delivered at the address thereon on or prior to the last date upon which by law such notice must be given, addressed to the person entitled to receive such notice, and bearing the particular address of such person at the time if the same be known, or, if the same be not known, then to the last known address of such person.

Textual Amendments

F260 Words substituted by [S.I. 1983/1546](#), [para. 2\(b\)](#)

Evidence of notice to remove

- 107 (1) A certificate of notice under rule 104 dated and endorsed upon the lease or extract, or upon the letter of removal, and signed by the sheriff officer, messenger-at-arms, or by the person giving the notice, or his law agent, or factor, or an acknowledgement of notice endorsed on the lease or extract of 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 endorsed upon a copy of the notice or letter, certified to be correct, by the person, sheriff officer, messenger-at-arms, law agent, or factor sending the same, which certificate shall be signed by such party sending the notice or letter, shall also be sufficient evidence that notice has been given.
- (3) A certificate of notice under rule 105 dated and endorsed upon a copy of the notice or letter signed by the party sending the notice, shall be sufficient evidence that such notice has been given.

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Applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970

- [^{F261}107A] An application or counter-application to the sheriff under Part II of the ^{M70}Conveyancing and Feudal Reform (Scotland) Act 1970 shall be brought—
- (a) as an ordinary cause, where any other remedy is craved; or
 - (b) as a summary application, where no other remedy is craved.
- (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 as to any other remedy granted.]

Textual Amendments

F261 **Rule 107A** inserted (9.4.1990) by **S.I. 1990/661**, **para. 2(3)**

Marginal Citations

M70 **1970 c.35(31:1).**

SUMMARY SUSPENSION

Summary application for suspension of charge

- 108 Where a charge has been given on a decree of court granted by the sheriff or a decree of registration proceeding upon a bond, bill, contract, or other form of obligation registered in any sheriff court books, or in the Books of Council and Session, or any others competent or on letters of horning following on such decree, for payment of any sum of money the person so charged may apply in the sheriff court having jurisdiction over him for suspension of such charge and diligence.

Sist of diligence

- 109 On sufficient caution being found in the hands of the sheriff clerk for the sum charged for with interest thereon, and expenses, and a further sum to be fixed by the sheriff in respect of expenses to be incurred in the suspension process, the sheriff may sist diligence, order intimation and answers, and proceed to dispose of the cause in a summary manner.

Objections

- 110 If objections are taken to the competency or regularity of suspension proceedings, the judgement of the sheriff, on such objections, may be appealed to the sheriff principal whose judgement thereon shall be final.

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ARRESTMENT

Service of schedule of arrestment

- 111 If a schedule of arrestment has not been personally served upon an arrestee, the arrestment shall only have effect if a copy of the schedule is also sent in a registered or recorded delivery letter to the last known place of residence of the arrestee, or, if such place of residence is unknown, 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 officer shall in his execution certify that this has been done and specify the address in question.

Report of arrestment

- 112 (1) An arrestment on the dependence of a cause used prior to service shall fall unless the cause shall have been served within 20 days from the date of arrestment and
- (a) in the case of defended causes, has been tabled within 20 days of the first ordinary court day occurring subsequent to the expiry of the period of notice, or
 - (b) in the case of undefended causes, decree in absence has been taken within 20 days of the expiry of the period of notice.
- (2) when such an arrestment has been executed the party using it or his agent shall forthwith report the execution to the sheriff clerk.

MULTIPLEPOINDING

Action of multiplepoinding

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

Service of initial writ

- 114 The pursuer shall serve the initial writ on all persons so far as known to him having an interest in the fund *in medio*, including the holder of the fund where the pursuer is not the holder.

Order or advertisement

- 115 The sheriff may make an order for advertisement of the action in such newspapers as he considers necessary.

Condescence on the fund

- 116 If the pursuer is the holder of the fund *in medio* he shall condescend in detail on the said fund in the condescence of the initial writ.

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Lodging of notice of appearance

- 117 If any party intends to lodge defences to the competency of the action, objections to the condescendence of the fund *in medio* or a claim on the fund *in medio*, he shall, before expiry of the appropriate period of notice lodge a notice of appearance, which shall be as nearly as possible in terms of Form O as set out in the Appendix to this Schedule, and shall specify therein the purpose of his intended appearance.

Lodging of process

- 118 Where a notice of appearance has been lodged, the cause shall table, and the pursuer shall lodge a process in accordance with rule 37.

Lodging of defences, objections and claims where the holder is the pursuer

- 119 (1) Where the holder of the fund *in medio* is the pursuer, the sheriff at tabling shall appoint a period within which any defences, objections or claims shall be lodged, and appoint a date on which the cause shall appear on the procedure roll.
- (2) Defences, objections and claims shall be lodged with the sheriff clerk in a single document under separate headings.
- (3) Each claimant shall lodge with his claim any documents founded on in his claim, so far as the same are within his custody or power.

Condescendence on the fund by holder who is not pursuer

- 120 Where the holder of the fund *in medio* is not the pursuer, the sheriff, at tabling shall appoint a period within which he is to lodge in process a detailed condescendence of the fund in his hands together with a list of all persons, so far as known to him, having an interest in the said fund, and shall appoint a date on which the cause shall appear on the procedure roll; and the procedure for the lodging of defences, objections and claims specified in rule 119 shall be followed.

Disposal of defences

- 121 (1) At the hearing on the procedure roll, where defences have been lodged, the sheriff may order the initial writ and defences to be adjusted in accordance with rule 122 and thereafter shall close the record thereon 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

- 122 (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 shall close the records thereon 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, without order for intimation to any party, may on the motion of the holder of the fund approve the condescendence on the fund and find the holder liable only in once and single payment.

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Consignation of the fund

- 123 (1) At any time after the [^{F262}condescence] of the *fundin medio* has been approved, the sheriff may order it to be consigned or deposited in the hands of the sheriff clerk, or may order the whole or any part of the fund to be sold and the proceeds of sale to be consigned as aforesaid.
- (2) After such consignation or deposit, it shall be competent for the holder of the *fundin medio* to apply for his exoneration and discharge.

Textual Amendments

F262 Word substituted by S.I. 1983/1546, para. 2(c)

Expenses

- 124 The sheriff may allow the holder of the *fundin medio*, on his exoneration and discharge, his expenses out of the said fund as a first charge thereon.

Further service or advertisement

- 125 The sheriff may, on the motion of any party *orex proprio motu*, at any time order further advertisement or service on any person.

Ranking of claims

- 126 (1) After disposal of any defences, and after approval on the condescence of the *fundin medio*, the sheriff, where there is no competition on the fund, may rank and prefer the claimants and grant decree in terms of said ranking.
- (2) Where there is competition the sheriff may order claims to be adjusted in accordance with rule 122 and thereafter shall close the records thereon and regulate further procedure.

Remit to Reporter

- 127 (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 upon the fund to be deducted before division.

DISPOSAL OF MONEY PAYABLE TO PERSONS UNDER LEGAL DISABILITY

Disposal of money payable to persons under legal disability

- 128 (1) Where in any action of damages by or on behalf of a person under legal disability, arising out of injury sustained by such person, or out of the death of some other person in respect of whose death the person under legal disability is entitled to damages, a sum of money becomes payable to such person, such sum shall unless otherwise ordered, be paid into court and shall be invested, applied, or otherwise dealt with and

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administered by the court for the benefit of the person entitled thereto, and the receipt of the sheriff clerk shall be a sufficient discharge in respect of the amount paid in.

- (2) The sheriff clerk of any sheriff court is also authorised at the request of any competent court to accept custody of any sum of money paid into such court in any action of damages by or for behoof of a person under legal disability provided always that such person is then resident within the jurisdiction of such sheriff court and such sum shall be invested or otherwise dealt with as in this rule.
- (3) Where any money is paid into the court under this rule it shall thereafter be paid out by the sheriff clerk or otherwise applied for the benefit of the person entitled thereto after such intimation and service and such enquiry as the sheriff may direct.
- (4) On payment into court under this rule of money which has become payable to a person under legal disability, the sheriff clerk shall:—
 - (a) issue to the person making the payment a receipt in or as nearly as may be in terms of Form P as set out in the Appendix to this Schedule to which receipt there shall be added a form in terms of Form Q as set out in the Appendix to this Schedule;
 - (b) transmit forthwith to the Secretary of State a copy of the said receipt, having appended thereto the additional particulars specified in Form R as set out in the Appendix to this Schedule and the person making the payment shall forthwith complete and transmit to the Secretary of State Form Q intimating the payment into court.
- (5) Any sum which in terms of this rule is ordered to be invested, shall be invested in any manner in which trustees are authorised to invest by virtue of the ^{M71}Trustee Investments Act 1961, and no such sum shall be invested otherwise than in accordance with this rule.

Modifications etc. (not altering text)

C24 Sch. 1 rule 128(1)–(3)(5) extended by S.I. 1988/110, **rules 82, 125(10)**

Marginal Citations

M71 1961 c.62(98:4,128).

MISCELLANEOUS

Recall or variation of decrees for aliment or orders for financial provision and of decrees regarding the custody of and access to children

[^{F263}1291] Subject to paragraph (4), applications to which paragraph (2) applies shall be made by minute lodged in the original process in which decree was pronounced or an order granted.

- (2) This rule applies to applications for—
 - (a) the recall or variation of a sheriff court decree for payment of aliment whether pronounced in favour of a spouse, a parent, or any other person or pronounced in respect of a legitimate or illegitimate child; or
 - (b) recall or variation of a periodical allowance;

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- (c) variation of the date or method of payment of a capital sum;
 - (d) variation of the date of transfer of property;
 - (e) the recall or variation of any decree regulating the custody of or access to legitimate or illegitimate children; or
 - (f) the recall or variation of an incidental order as defined in section 14(2) of the ^{M72}Family Law (Scotland) Act 1985 made before, on, or after, the date of the decree of divorce.
- (3) The sheriff shall order the minute to be served on any other party and appoint answers to be lodged within a specified time and shall thereafter without closing the record, and after such proof or other procedure as to the sheriff seems necessary, dispose of the application.
- (4) In an action of divorce or of separation, a party may, without making application under paragraph (1), crave an order relating to custody, aliment of or access to the children of the marriage, or aliment of one of the parties, notwithstanding that an order to the same or different effect has been made in a previous sheriff court process whether in the same or another sheriff court and the sheriff may make such new order thereanent as the circumstances at the date of the order require, whereupon the previous order shall cease to apply.]

Textual Amendments

F263 Rule 129 substituted by S.I. 1986/1230, para. 3(16)

Marginal Citations

M72 1985 c.37(49:3).

Intimation

[^{F264}130] In an action where—

- (i) adultery is averred by the pursuer or defender;
- (ii) the name of the person with whom adultery is alleged to have been committed is disclosed in the action; and
- (iii) such person is not a party to the action,

the sheriff shall not allow inquiry until a copy of the initial writ and a form of intimation as nearly as may be in accordance with Form H1 as set out in the Appendix to this Schedule have been intimated to such person or until the sheriff is satisfied that the address of such person is unknown.

- (b) An order for such intimation may be contained in the original warrant of citation or intimation may be appointed to be made at a later stage.
 - (c) The requirement to intimate under this paragraph shall not apply where the pursuer alleges rape upon, or incest with, a named person by the defender.
- (2) In an action in which the pursuer alleges sodomy or any homosexual relationship between the defender and a named person, the pursuer shall, immediately after the expiry of the period of notice, enrol a motion for intimation to that person, and the sheriff, at the hearing of the motion, may make such order for intimation or for dispensing with intimation to that person as seems just.
- (b) Where intimation is ordered under this paragraph, a form of intimation as nearly as may be in accordance with Form H2 as set out in the Appendix to

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this Schedule and a copy of the initial writ shall be intimated to the named person.

- (3) Where the sheriff makes an order dispensing with intimation under paragraph (2), he may also make an order that the name of that person be deleted from the condescendence in the initial writ.

- (4) In an action in which the sheriff may make an order in respect of the custody of a child—

- (a) who is in the care of a local authority; or
- (b) who is a child of one spouse (including an illegitimate or an adopted child), being a child under the age of 16 years and who is liable to be maintained by a third party,

the pursuer shall intimate a copy of the initial writ and form of intimation as nearly as may be in accordance with Form H3 as set out in the Appendix to this Schedule to the local authority or third party concerned.

- (5) In an action relating to a marriage which was entered into under a law which permits polygamy and in which a decree of separation or a decree of divorce is sought, and either party to the marriage in question has any spouse additional to the other party, the warrant of citation shall include an order for intimation of the action to such additional spouse and the pursuer shall intimate a copy of the initial writ and form of intimation as nearly as may be in accordance with Form H4 as set out in the Appendix to this Schedule to such additional spouse.

- (6) In an action in which the sheriff may make an order in respect of the custody of a child who is *inde facto* custody of a third party, the pursuer shall intimate a copy of the initial writ and form of intimation as nearly as may be in accordance with Form H5 as set out in the Appendix to this Schedule to the third party concerned.

- (7) In an action in which the sheriff—

- (a) proposes to commit the care of a child to an individual other than one of the parties to the marriage or to a local authority under section 10 of the ^{M73}Matrimonial Proceedings (Children) Act 1958 or section 11(1)(a) of the ^{M74}Guardianship Act 1973; the pursuer shall intimate a copy of the initial writ and form of intimation as nearly as may be in accordance with Form H6 as set out in the Appendix to this Schedule to the individual or local authority concerned; or
- (b) has made an order placing a child under the supervision of a local authority under section 12 of the ^{M75}Matrimonial Proceedings (Children) Act 1958 or section 11(1)(b) of the ^{M76}Guardianship Act 1973; the sheriff clerk shall send a form of intimation thereof as nearly as may be in accordance with Form H6A as set out in the Appendix to this Schedule to the local authority concerned.

- (8) In an action for custody of a child by a person by virtue of [^{F265}section 47] of the ^{M77}Children Act 1975, that person shall give notice to—

- (a) the local authority within whose area that person resides within seven days of lodging the action; or
- (b) in any other case, such local authority as the court may direct under section 49(1) of the ^{M78}Children Act 1975,

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by intimating to the local authority a copy of the initial writ together with a notice as nearly as may be in accordance with Form T2 as set out in the Appendix to this Schedule.

- (9) In an action in which an order is sought by a pursuer or defender under section 8(1) of the ^{M79}Family Law (Scotland) Act 1985 for the transfer of property subject to security in which the consent of the creditor has not been obtained, the party seeking the order shall intimate a copy of the initial writ and form of intimation as nearly as may be in accordance with Form H7 as set out in the Appendix to this Schedule, to the creditor.
- (10) Intimation under paragraph (4) or (5) may be dispensed with if the sheriff is satisfied that the address of the person to whom intimation is to be made is unknown.
- (11) Intimation under this rule shall be on a period of notice of [^{F266}21] days unless the sheriff shall consider it appropriate in the circumstances to appoint another period; provided that in no circumstances shall the period of notice be less than forty eight hours.
 - (b) All warrants for intimation except those under paragraph (2), or where the period of notice is varied, may be signed by the sheriff clerk in conjunction with a warrant of citation under rule 8(1).
- (12) A person receiving intimation under paragraph (1), (2), (4), (5), (6), (7)(a) or (9) may apply within the period of notice by minute craving to be sisted as a party and for leave to lodge defences of answers as the case may be.
- (13) A minute lodged under paragraph (12) shall be accompanied by the service copy of the intimation.
 - (b) On receiving such a minute, the sheriff clerk shall assign a diet in the cause for a date after the expiry of the period of notice and the sheriff shall, at the diet, regulate the further procedure in the cause.
 - (c) The sheriff may authorise proof by affidavit evidence in respect of any matter not in dispute between the parties.]

Textual Amendments

F264 Rule 130 inserted by S.I. 1986/1230, para. 3(17)

F265 Words substituted by S.I. 1986/1966, para. 2(9)

F266 “21” substituted by S.I. 1988/1978, para. 15

Marginal Citations

M73 1958 c.40(49:3).

M74 1973 c.29(49:9,10).

M75 1958 c.40(49:3).

M76 1973 c.29 (49:9,10).

M77 1975 c.72(49:9,10).

M78 1975 c.72(49:9,10).

M79 1985 c.37(49:3).

Notices in actions of [^{F267}divorce and] separation . . . ^{F268}

- 13^{F269}(1)] Where the facts set out in section 1(2)(d) (two years’ non-cohabitation and the defender’s consent to decree) of the ^{M80}Divorce (Scotland) Act, 1976, are relied on

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in an action of separation . . . ^{F268}, a notice as nearly as may be in terms of Form S as set out in the Appendix to this Schedule shall be sent with the copy of the initial writ served on the defender, together with a notice as nearly as may be in terms of Form T as set out in the Appendix to this Schedule.

[^{F270}(2) Where the facts set out in section 1(2)(d) of the ^{M81}Divorce (Scotland) Act 1976 (two years non-cohabitation and the defender’s consent to decree) are relied upon in an action of divorce, a notice as nearly as may be in terms of Form S1 as set out in the Appendix to this Schedule shall be sent with the copy of the initial writ served on the defender together with a notice as nearly as may be in terms of Form T as set out in the Appendix to this Schedule.

(3) Where the facts set out in section 1(2)(e) of the Divorce (Scotland) Act 1976 (five years non-cohabitation) are relied upon in an action of separation . . . ^{F268}, a notice as nearly as may be in terms of Form S2 as set out in the Appendix to this Schedule shall be sent with the copy of the initial writ served on the defender.

(4) Where the facts set out in section 1(2)(e) of the Divorce (Scotland) Act 1976 (five years non-cohabitation) are relied upon in an action of divorce, a notice as nearly as may be in terms of Form S3 as set out in the Appendix to this Schedule shall be sent with the copy of the initial writ served on the defender.]

Textual Amendments

F267 Words inserted by [S.I. 1984/255](#), [para. 3\(20\)\(a\)](#)

F268 Words repealed by [S.I. 1986/1230](#), [para. 3\(18\)](#)

F269 “—(1)” inserted by [S.I. 1984/255](#), [para. 3\(20\)\(b\)](#)

F270 [Rule 131\(2\)–\(4\)](#) inserted by [S.I. 1984/255](#), [para. 3\(20\)\(c\)](#)

Marginal Citations

M80 [1976 c.39\(49:3\)](#).

M81 [1976 c.39\(49:3\)](#).

Consent to grant of decree

132 (1) Where in an action of [^{F271}divorce or an action of] separation . . . ^{F272} in which the facts set out in section 1(2)(d) of the ^{M82}Divorce (Scotland) Act, 1976, (two years non-cohabitation and the defender’s consent to decree) are relied on, the defender wishes to indicate to the court that he consents to the grant of a decree, he shall do so by giving notice in writing to that effect to the sheriff clerk at the sheriff court referred to in the initial writ who shall, on receipt of such notice, lodge it in process.

(2) For the purposes of paragraph (1) a notice of consent in the form set out in Form T containing a statement that the defender consents to the grant of a decree shall be treated as notice under that paragraph if it is signed by the defender; and the evidence of one witness shall be sufficient for establishing that the signature on the notice of consent bearing to be that of the defender is in fact that of the defender.

(3) Where in an action of [^{F271}divorce or an action of] separation . . . ^{F272} the initial writ contains an averment for the purposes of the said section 1(2)(d) that the defender consents to the grant of a decree, he may give notice in writing to the court that he has not consented to a decree being granted or that he withdraws any consent which he has already given.

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- (4) In a case where the defender gives notice under paragraph (3) the sheriff clerk shall intimate its terms to the pursuer.
- (5) On receiving intimation under paragraph (4) of a notice given under paragraph (3) the pursuer shall if none of the other facts mentioned in section 1(2) of the Divorce (Scotland) Act, 1976, are averred in the initial writ, lodge a motion for the action to be sisted, and the sheriff may grant that motion.
- (6) If such a motion 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.

Textual Amendments

F271 Words inserted by [S.I. 1984/255, para. 3\(21\)](#)

F272 Words repealed by [S.I. 1986/1230, para. 3\(19\)](#)

Marginal Citations

M82 [1976 c.39\(49:3\)](#).

Applications under the Family Law (Scotland) Act 1985

[^{F273}132A] Where, in an action in which an alimentary crave is or may be made, a party seeks an order under section 7(2) of the ^{M83}Family Law (Scotland) Act 1985 (“the 1985 Act”) (variation or termination of agreement on aliment) he shall do so either in the initial writ or by separate minute in the process.

- (2) Where an order referred to in paragraph (1) is sought in any other circumstances, application for the order shall be by way of summary application.
- (3) Where a party seeks an order under section 16 (1)(a) of the 1985 Act (order setting aside or varying term of agreement relating to a periodical allowance), application for the order shall be by way of summary application.
- (4) Where a party in an action of divorce seeks an order under section 16(1)(b) of the 1985 Act (agreement or financial provision not fair and reasonable), he shall do so either in the initial writ or by separate minute in the process or, if appropriate, by way of counter-claim.]

Textual Amendments

F273 [Rule 132A](#) inserted by [S.I. 1986/1230, para. 3\(20\)](#)

Marginal Citations

M83 [1985 c.37\(49:3\)](#).

Applications to declare removal of a child unlawful

[^{F274}132B] Where, in any proceedings for custody of a child, an interested party wishes to make an application under section 23(2) of the Child Abduction and Custody Act ^{M84}1985 for declarator that the removal of the child from the United Kingdom was unlawful,

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he shall make such application in the initial writ or counter-claim, or by separate minute in the process, as the case may be.]

Textual Amendments

F274 Rule 132B inserted by S.I. 1986/1966, para. 2(10)

Marginal Citations

M84 1985 c.60(20).

[^{F275} FAMILY LAW ACT 1986]

Textual Amendments

F275 Rules 132C–132E inserted by S.I. 1988/614, para. 2

Averments of other proceedings relating to children

- 132C A party to any cause which includes an application for a custody order (as defined by section 1(1)(b) of the ^{M85}Family Law Act 1986), shall make averments in his pleadings 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 custody order is sought.

Marginal Citations

M85 1986 c.55(49:9).

Disclosure of information

- 132D Where the court pronounces an interlocutor ordering a person to disclose information to the court as to a child's whereabouts under section 33(1) of the Family Law Act 1986, it may do so by ordaining that person to appear before it or to lodge an affidavit.

Applications for interdict or interim interdict

- 132E An application by a person mentioned in section 35(4)(b) or (c) of the Family Law Act 1986 for interdict or interim interdict under section 35(3) of that Act shall be made by minute in the cause in which the application is to be made.

Specification of prior maintenance orders

- [^{F276}132F In any proceedings 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 specifying whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the Debtors (Scotland)

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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.]

Textual Amendments

F276 Rule 132F inserted (3.12.1990) by S.I. 1990/2238, para. 6

Referral to Family Conciliation Service

[^{F277}132F In any cause where the custody of, or access to, a child is in dispute the sheriff may, at any stage in the proceedings where he considers it appropriate to do so, refer the parties to a specified Family Conciliation Service.]

Textual Amendments

F277 Rule 132F inserted (9.4.1990) by S.I. 1990/661, para. 2(4)

APPOINTMENT OF CURATORAD LITEM

Special application for appointment of acurator ad litem

- 133 (1) In an action of [^{F278}divorce or an action of] separation . . . ^{F279} where it appears to the sheriff that the defender is suffering from mental disorder within the meaning of the ^{M86}Mental Health (Scotland) Act, [^{F280}1984], the sheriff shall:—
- (a) appoint a curatorad litem to the defender; and
 - (b) in an action of [^{F278}divorce or an action of] separation . . . ^{F279} under section 1(2)(d) of the ^{M87}Divorce (Scotland) Act, 1976, make an order informing the Mental Welfare Commission for Scotland of the ground of the action and requesting them to provide a report indicating whether in their opinion the defender is capable of deciding whether or not to give consent to the granting of decree.
- (2) The pursuer shall within 7 days of the making of an order under head (a) of paragraph (1) appointing a curatorad litem to the defender, send to the curator a certified copy initial writ and defences, if any.
- (3) The curatorad litem may, within 14 days of the Commission providing the report under head (b) of paragraph (1), or in any other case in which no such report is requested, within 21 days of his appointment under head (a) of that paragraph lodge:—
- (i) a notice of appearance;
 - (ii) defences to the action;
 - (iii) a minute adopting defences already lodged; or
 - (iv) a minute stating that he does not intend to lodge defences;
- and may appear in the action at any time to protect the interests of the defender.

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Textual Amendments

F278 Words inserted by S.I. 1984/255, para. 3(21)

F279 Words repealed by S.I. 1986/1230, para. 3(21)(a)

F280 “1984” substituted by S.I. 1986/1230, para. 3(21)(b)

Marginal Citations

M86 1984 c.36(85).

M87 1976 c.39(49:3).

EUROPEAN COURT

European Court

134 (1) Interpretation:

In this Rule—

- (a) any expression defined in Schedule 1 to the ^{M88}European Communities Act, 1972, has the meaning there given to it;
- (b) “The European Court” means the Court of Justice of the European Communities;
- (c) “reference” means a reference to the European Court for a preliminary ruling under Article 177 of the European Economic Community Treaty, Article 150 of the European Atomic Energy Community Treaty or Article 41 of the European Coal and Steel Community Treaty [^{F281}or a ruling on the interpretation of the Conventions, as defined in section 1(1) of the Civil Jurisdiction and Judgements Act ^{M89}1982, under article 3 of Schedule 2 to that Act.]
- (d) “appeal” shall include an application for leave to appeal.
- (2) A reference may be made by the sheriff *ex proprio motu* or on the motion of any party to the proceedings in the sheriff court.
- (3) A reference shall be made in the form of a request for a preliminary ruling of the European Court as nearly as may be in terms of Form U as set out in the Appendix to this Schedule.
- (4a) When the sheriff decides that a reference be made, he shall continue the cause *simpliciter* for the purpose and within 4 weeks thereafter draft a reference.
 - (b) On the reference being drafted, the sheriff clerk shall forthwith send a copy to each of the parties.
 - (c) Within 4 weeks from the date when copies of the draft have been sent to parties, each party may lodge in the hands of the sheriff clerk and send to each of the other parties in the proceedings a note of any adjustments he desires to have made in the draft reference.
 - (d) Within 14 days after the latest date on which any such note may be lodged the sheriff, after considering any such adjustments, shall make and sign the reference.
 - (e) The sheriff clerk shall forthwith intimate the making of the reference to the parties in the proceedings.
- (5) On a reference being made the proceedings 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 or questions referred to it, provided that the sheriff shall have power to recall such sist for the purpose of making any interim order which a due regard to the interests of the parties may require.

Status: Point in time view as at 04/05/1992. 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)

- (6) A copy of the reference certified by the sheriff clerk shall be transmitted by the sheriff clerk to the Registrar of the European Court, but unless the sheriff otherwise directs, such copy shall not be sent to the Registrar so long as an appeal or further appeal against the making of the reference is pending, and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal.

Textual Amendments

F281 Words inserted by S.I. 1986/1946, **para. 2(7)**

Marginal Citations

M88 1972 c.68(29:5).

M89 1982 c.27(45:3).

[^{F282}SIMPLIFIED DIVORCE PROCEDURE]

Textual Amendments

F282 Rules 135–143 inserted by S.I. 1984/255, **para. 3(22)**

Simplified procedure

- 135 (1) The provisions of this rule and of the following rules of this section shall have effect in relation to applications for divorce other than by initial writ which are hereinafter referred to as “simplified divorce applications”, and—
- (a) the following rules of this section shall apply to simplified divorce applications;
 - (b) “the Act of 1976” means the ^{M90}Divorce (Scotland) Act 1976.
- (2) This rule applies to an application for divorce by a party to a marriage if, but only if—
- (a) that party applies for divorce in reliance on the facts set out in section 1(2)(d) (two years non-cohabitation and the defender’s consent to decree), or section 1(2)(e) (five years non-cohabitation) of the Act of 1976;
 - (b) in an application for divorce 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 sixteen years;
 - (e) neither party applies for an order for financial provision on divorce; and
 - (f) neither party suffers from mental disorder within the meaning of the ^{M91}Mental Health (Scotland) Act [^{F283}1984].
- (3) If an application made under this rule ceases to be an application to which this rule applies at any time before it is finally disposed of, that application shall cease to have effect and shall be dismissed.

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Textual Amendments

F283 “1984” substituted by S.I. 1986/1230, para. 3(22)

Marginal Citations

M90 1976 c.39(49:3).

M91 1984 c.36(85).

Form of application

- 136 (1) A simplified divorce application relying on the facts set out in section 1(2)(d) of the Act of 1976 shall be made in accordance with Form SDA1 as set out in the Appendix to this Schedule.
- (2) A simplified divorce application relying on the facts set out in section 1(2)(e) of the Act of 1976 shall be made in accordance with Form SDA2 as set out in the Appendix to this Schedule.
- (3) An application made under paragraph (1) or (2) shall be signed by the applicant, and the form of consent in accordance with Form SDA3 as set out in the Appendix to this Schedule in an application under paragraph (1) shall be signed by the party giving consent, failing which the application shall not have effect.

Lodging applications

- 137 The applicant shall deliver the application or cause it to be delivered (by post or by hand) duly completed and signed to the sheriff clerk together with—
- (a) an extract or certified copy of his marriage certificate; and
 - (b) the fee specified in respect of a simplified divorce application.

Citation

- 138 (1) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application. The form of citation in an application under rule 136(2) shall be in accordance with Form SDA4 as set out in the Appendix to this Schedule.
- (2) The sheriff clerk may arrange for citation or intimation required in paragraph (1) to be made by registered or recorded delivery post or, on payment to the sheriff clerk of the specified additional fee, by sheriff officer [^{F284}or, if appropriate, by any other method provided for by rule 139].
- (3) Any citation of or intimation to a person by sheriff officer in terms of this rule shall be effected either by personal service or by being left in the hands of an inmate of, or employee at, the dwelling place or place of business of that person.
- (4) On the face of the envelope used for postal service under this rule there shall be written or printed a notice as nearly as may be in the following form—
- “This letter contains a citation to or intimation from the Sheriff Court (*specify court*). If delivery of the letter cannot be made within 7 days of the date of posting it is to be returned immediately thereafter to the sheriff clerk (*specify court and address*).”

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- [^{F285}(5) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882, where service is by post the period of notice shall run from the beginning of the day next following the date of posting.]
- (6) The following periods of notice shall apply to any citation or intimation under this rule—
- [^{F286}(a) 21 days when the defender is resident or has a place of business within Europe]
 - [^{F287}(b)] 42 days when the addressee is resident or has a place of business outside Europe.
- (7) The sheriff may, on cause shown, shorten or extend the period of notice on such conditions as to the form or manner of service as the sheriff may direct, but in any case where the period of notice is reduced at least two days notice shall be given.
- (8) Where a period of notice expires on a Saturday, Sunday, public or court holiday the period of notice shall be deemed to expire on the first following day on which the sheriff clerk's office is open for civil court business.
- [^{F288}(9) Where, in an application, the facts in section 1(2)(e) of the Act of 1976 are relied on and the address of the respondent is unknown—
- (a) citation of the respondent shall be effected by displaying a copy of the application and notice as nearly as may be in accordance with Form SDA6 as set out in the Appendix to this Schedule on the walls of court and the period of notice shall be [^{F289}21] days; and
 - (b) intimation shall be made to—
 - (i) every child of the marriage between the parties and
 - (ii) one of the next of kin of the respondent who has reached the age of 12 years in the case of a girl and 14 years in the case of a boy.
- (10) Intimation to a person referred to in sub-paragraph 9(b)(i) and (ii) shall be effected by intimating a copy of the application and form of intimation as nearly as may be in accordance with Form SDA7 as set out in the Appendix to this Schedule.
- (11) Intimation to a person referred to in sub-paragraph 9(b)(i) and (ii) shall not be required under paragraph 10 if the address of that person is unknown to the applicant.]

Textual Amendments

- F284** Words inserted by [S.I. 1986/1946, para. 2\(8\)](#)
- F285** [Rule 138\(5\)](#) substituted (4.5.1992) by [S.I. 1992/249, para. 2\(10\)](#)
- F286** [Rule 138\(6\)\(a\)](#) substituted for rule 138(6)(a)(b) by [S.I. 1988/1978, para. 16](#)
- F287** Sub-paragraph relettered sub-paragraph (b) by [S.I. 1988/1978, para. 16](#)
- F288** [Rule 138\(9\)–\(11\)](#) substituted for rule 138(9)(10) by [S.I. 1986/1230, para. 3\(23\)](#)
- F289** “21” substituted by [S.I. 1988/1978, para. 16\(2\)](#)

Citation of or service on persons outwith Scotland

- [^{F290}130] Subject to the following provisions of this rule, any simplified divorce application may be served outwith Scotland on any person—
- (a) at a known residence or place of business in England and Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the

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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 effected; or
 - (ii) by posting in Scotland a copy of the application in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence or place of business;
 - (b) in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965—
 - (i) 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;
 - (ii) by or through a central authority in the country where service is to be effected at the request of the Foreign Office;
 - (iii) by or through a British Consular authority at the request of the Foreign Office;
 - (iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the application in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence; or
 - (v) where the law of the country in which the person resides permits, service by *anhuissier*, other judicial officer or competent official of the country where service is to be made;
 - (c) in a country with which the United Kingdom has a convention on the service of writs in that country other than the convention in sub-paragraph (b), by one of the methods approved in the relevant convention.
- (2) An application which requires to be posted in Scotland for the purposes of this rule shall be posted by the sheriff clerk and the form for citation in rule 138 shall apply to a postal citation under this rule as they apply to a citation under that rule.
- (3) On the face of the envelope used for postal service under this rule there shall be written or printed a notice in the same or similar terms as that required in the case of ordinary service under rule 138.
- (4) Where service is effected by a method specified in paragraph (1)(b)(ii) or (iii), the sheriff clerk shall—
- (a) send a copy of the application with citation attached with a request for service to be effected by delivery to the defender or his residence 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.
- (5) Where service is effected by the method specified in paragraph (1)(b)(v), the sheriff clerk shall—
- (a) send to the official in the country in which service is to be effected a copy of the application with citation attached with a request for service to be effected by delivery to the defender or his residence; and
 - (b) lodge in process a certificate of execution of service by the official who has effected service.

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- (6) Every writ or document and every citation and notice on the face of the envelope under paragraph (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 under paragraph (6) shall be certified as a correct translation by the person making it and the certificate shall contain the full name, address and qualifications of the translator and be lodged along with the execution of citation or certificate of execution.]

Textual Amendments

F290 Rule 139 substituted by S.I. 1986/1946, para. 2(9)

Opposition to applications

- 140 (1) Any person who has been cited or to whom intimation has been made in connection with a simplified divorce application may [^{F291}challenge the jurisdiction of the court or] oppose the granting of decree of divorce by letter to the court giving reasons for his opposition to the application.
- (2) If opposition to a simplified divorce application is made in terms of 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 of the sheriff in respect of any opposition to the application to all parties concerned with the application.
- [^{F292}(4) The lodging of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.]

Textual Amendments

F291 Words inserted by S.I. 1986/1946, para. 3(10)(a)

F292 Rule 140(4) inserted by S.I. 1986/1946, para. 2(10)(b)

Decree

- 141 (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 [^{F293}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 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 application an extract of the decree of divorce as nearly as may be in accordance with Form SDA5 as set out in the Appendix to this Schedule.

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Textual Amendments

F293 Words inserted by [S.I. 1986/1946](#), [para. 2\(11\)](#)

Appeal

- 142 A respondent may, within 14 days of the date of an interlocutor granting decree of divorce, appeal against that interlocutor by addressing a letter to the [^{F294}court] giving reasons for his appeal.

Textual Amendments

F294 Words substituted by [S.I. 1986/1230](#), [para. 3\(24\)](#)

Subsequent applications

- 143 (1) After the granting of decree of divorce, a party to a simplified divorce application may, in the event of a material change in the circumstances of one or other or both of the parties, make a subsequent application to the sheriff in respect of any matter.
- (2) A subsequent application shall be made by minute in the original process of the simplified divorce application and such minute shall specify that there has been a material change in the circumstances of one or other or both of the parties since the granting of decree of divorce and shall specify the nature of such change of circumstances.

[^{F295}DAMAGES]

Textual Amendments

F295 [Rules 144–149](#) inserted (*retrospectively* as to rules 147–149) by [S.I. 1984/921](#) paras. 3, 4(2)

DAMAGES (SCOTLAND) ACT 1976

Action for Damages under the ^{M92}Damages (Scotland) Act 1976

- 144 (1) This rule and rules 145 and 146 apply to any action in which, following the death of any person from personal injuries, damages are claimed either by the executor of the deceased in respect of the relevant injuries, or by any relative of the deceased in respect of the death of the deceased.
- (2) The term “relative” shall have the meaning assigned to it by section 10 of and Schedule 1 to the Damages (Scotland) Act 1976.

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Marginal Citations

M92 1976 c.13(122:3).

Intimation to persons having title to sue under Schedule 1 to the Damages (Scotland) Act 1976

- 145 (1) In an action to which rule 144 applies the pursuer shall specify in the initial writ—
- (a) that he is the only person with a title to sue the defender in respect of the injuries or death, or
 - (b) that there are other persons having a title to sue the defender in respect of the injuries or death and shall name and design such persons, or
 - (c) that there are other persons having a title to sue the defender but whose names or whereabouts are to the pursuer unknown and cannot reasonably be ascertained.
- (2) The sheriff shall grant warrant for intimation of the action to any person named and designed in the initial writ in terms of sub-paragraph (b) of paragraph (1) hereof and the pursuer shall intimate the action to every such person as nearly as may be in accordance with Form CC as set out in the Appendix to this Schedule.
- (3) The sheriff may, on the motion of a party to the action, *orex proprio motu* order such advertisement of the action or intimation of it to be made to such persons as he deems appropriate.

Applications to sist as additional pursuer

- 146 (1) A person to whom intimation has been made in accordance with rule 145 may apply to the sheriff to be sisted as an additional pursuer in the action and such person shall give notice of his application to all parties to the action.
- (2) Where a person to whom intimation has been made in accordance with rule 145 does not apply to be sisted as an additional pursuer in the existing action but subsequently raises a further action against the same defender in respect of the same injuries or death, that person shall not, except on cause shown, be awarded the expenses of the subsequent action.

INTERIM PAYMENT OF DAMAGES

Applications for interim payment of damages

- 147 (1) In any action of damages for personal injuries, the pursuer may at any time after the lodging of defences apply to the sheriff for an order that the defender or, where there are two or more defenders, any one or more of the defenders, make an *interim* payment of damages.
- (2) An application in terms of paragraph (1) shall be made by motion which shall be served on the defender or defenders on a period of notice of [^{F296}21] days.
- (3) If after hearing the parties on the motion the sheriff is satisfied either—

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- (a) that the defender or defenders have admitted liability in the pursuer’s action, or
- (b) that, 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 pursuer’s claim arises, and would obtain decree for damages against the defender or, where there are two or more defenders, against any one or more of them,

the sheriff may, if he thinks fit, order the defender or, where there are two or more defenders, any one or more of them, to make an *interim* payment to the pursuer of such amount, not exceeding such reasonable proportion of the damages which in the opinion of the sheriff is likely to be recovered by the pursuer, as he deems appropriate.

- (4) A payment ordered to be made in terms of paragraph (3) may be ordered to be made in a lump sum or otherwise as the sheriff may deem appropriate.
- (5) The sheriff shall not make an order under this rule unless he is satisfied that the defender concerned is either—
 - (a) a person who is insured in respect of the pursuer’s claim, or
 - (b) a public authority, or
 - (c) a person whose means and resources are such as to enable him to make an *interim* payment.
- (6) Notwithstanding the making or refusal of an order for *interim* payment, a second or subsequent application may be made upon cause shown by reason of a change of circumstances.
- (7) Subject to the terms of rule 128 or otherwise as the sheriff in his discretion may determine, any *interim* payment shall be made to the pursuer.
- (8) The provisions of this rule shall apply *mutatis mutandis* to a counter-claim for damages for personal injury made by a defender.
- (9) For the purposes of this rule the term “personal injuries” shall include any disease or any impairment of a person’s physical or mental condition.

Textual Amendments

F296 “21” substituted by [S.I. 1988/1978](#), [para. 17](#)

Final orders where interim payment made

- 148 Where a defender has made an *interim* payment in terms of rule 147 the sheriff may, when granting final decree, make such order with respect to the *interim* payment as he deems necessary to give effect to the defender’s final liability to the pursuer, and in particular may order—
- (a) that the pursuer repay to the defender any sum by which the *interim* payment exceeds the amount which the defender is liable to pay to the pursuer, or
 - (b) that any other defender or third party make payment of any part of the *interim* payment which the defender who made it is entitled to recover from that other defender or third party by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the pursuer’s claim.

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PROVISIONAL DAMAGES

Applications for further awards of damages

- 149 An application for a further award of damages in terms of section 12 of the ^{M93}Administration of Justice Act 1982 (award of provisional damages for personal injuries) shall be made by minute in the original process.

Marginal Citations

M93 1982 c.53(122:3).

VALID FROM 05/04/1993

[^{F297} CHILD SUPPORT ACT 1991]

Textual Amendments

F297 Rules 150-154 and heading inserted (5.4.1993) by S.I. 1993/919, para. 2(2)

^{F298}*Interpretation*

- 150 In this Part of the Rules—
- “the Act of 1991” means the Child Support Act 1991 ^{F299};
 - “child” has the meaning assigned in section 55 of the Act of 1991; and
 - “crave relating to aliment” means—
 - (a) for the purposes of rule 151(1), 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 rule 151(3), a crave for decree of aliment in relation to a child or for the recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child; and
 - “maintenance assessment” has the meaning assigned in section 55 of the Act of 1991.

Textual Amendments

F298 Sch. 1, rules 150-154 inserted (5.4.1993) by S.I. 1993/919, art. 2(2)

F299 1991 c.48.

Status: Point in time view as at 04/05/1992. This version of this Act contains provisions that are not valid for this point in time.

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^{F300}Initial writs etc.

- 151 (1) An initial writ, minute or counterclaim which contains 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 an article of condescendence stating, where appropriate—
 - (i) that a maintenance assessment under section 11 of the Act of 1991 (maintenance assessments); is in force;
 - (ii) the date of the maintenance assessment;
 - (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance assessment; and
 - (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of the Act of 1991; 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 assessment referred to in paragraph (1)(a) above.
- (2) An initial writ, minute or counterclaim which contains 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 an article of condescendence stating either—
- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of the Act of 1991, is outwith the United Kingdom; or
 - (b) that the child is not a child within the meaning of section 55 of the Act of 1991.
- (3) In an action for declarator of non-parentage or illegitimacy—
- (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 assessment under sections 4, 6 or 7 of the Act of 1991 (applications for maintenance assessment); 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 and rule 152 shall apply to the award of expenses in any such case.
- (4) An initial writ, minute or counterclaim which involves 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 an article of condescendence 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

F300 Sch. 1, rules 150-154 inserted (5.4.1993) by S.I. 1993/919, art. 2(2)

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^{F301} *Restriction of expenses*

- 152 Where the Secretary of State is named as a defender in an action for declarator of non-parentage or illegitimacy to which rule 151(3) applies, and the Secretary of State does not defend the action, no expenses shall be awarded against the Secretary of State.

Textual Amendments

F301 Sch. 1, rules 150-154 inserted (5.4.1993) by S.I. 1993/919, art. 2(2)

Effect of maintenance assessments

- ^{F302} 153 The sheriff clerk shall, on receiving notification that a maintenance assessment 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 either Form CSA 1 or CSA 2, as set out in the Appendix to this Schedule.

Textual Amendments

F302 Sch. 1, rules 150-154 inserted (5.4.1993) by S.I. 1993/919, art. 2(2)

^{F303} *Effect of maintenance assessments on extracts relating to aliment*

- 154 (1) Where an order relating to aliment is affected by a maintenance assessment, any extract of that order issued by the sheriff clerk shall be endorsed with the following certificate:—

“A maintenance assessment 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 2 days after the date on which the maintenance assessment was made*).”.

- (2) Where an order relating to aliment has ceased to have effect on the making of a maintenance assessment, and that maintenance assessment 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 of (*insert date of termination of child support officer’s jurisdiction*).”.

Textual Amendments

F303 Sch. 1, rules 150-154 inserted (5.4.1993) by S.I. 1993/919, art. 2(2)

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APPENDIX

FORMS

FORM A rule 3
INITIAL WRIT
SHERIFFDOM OF AT
A.B. (design him; if he sues in any special capacity set that forth).
Pursuer,
AGAINST
C.D. (design him; if sued in any special capacity set that forth).
Defender.
The Pursuer craves the Court (here set forth the specific decree, warrant or order asked).
Condescendence.
(State in numbered paragraphs the facts which form the ground of action).
Pleas-in-Law
(State in numbered sentences)
(To be signed) A.B., Pursuer;

or
X.Y. (add designation and business address)
Solicitor for Pursuer

FORM B rule 5(1)
WARRANT OF CITATION
(Place and date) Grants warrant to cite the defender by serving a copy of the writ and warrant upon a period of notice of days, and appoints him, if he intends to defend, to lodge a notice of intention to defend with the Sheriff Clerk at within the said period of notice after such service ^[10](and Grants Warrant to arrest on the dependence). (Meantime grants interim interdict, or warrant to arrest on the dependence, or sequestrates and grants warrant to inventory; or otherwise, as the case may be and to arrest to found jurisdiction.)

^[11]Form B1
(WARRANT OF CITATION) rule 5(2)
CONSISTORIAL ACTION

19
Grants Warrant to cite the defender by serving a copy of the Writ and Warrant upon a period of notice of days, and appoints him, if he intends to defend, or to dispute any claim made or make any claim to lodge the appropriate document with the sheriff clerk at (Meantime grants interim interdict, or warrant to arrest on the dependence as the case may be.)

FORM B2 ^[12]rule 5(3)
WARRANT OF CITATION SUMMARY APPLICATION
[Place and date] Grants warrant to cite the defender (or respondent) by serving a copy of the writ and warrant upon a period of notice of days, and appoints him to answer within the Sheriff Court House at (in Room No. or in Chambers, or as the case may be), on the day of at o'clock noon,
^{113A} ... [Where necessary add (meantime sequestrates and grants warrant to inventory and secure); or (grants warrant to arrest in the dependence); or (otherwise as the case may be)].

^[14]Form B3 Rule 5(4)
WARRANT OF CITATION—SUMMARY APPLICATION WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR
(Place and date) Grants warrant to cite the defender by serving a copy of the writ and warrant, together with Form B6 as set out in the Appendix to the First Schedule to the Sheriff Courts (Scotland) Act 1907, upon a period of notice of days, and appoints him to answer within the Sheriff Court House at (in Room No. or in Chambers, or as the case may be), on the day of at o'clock noon;
Appoints the defender if he admits the claim and intends to apply for a time to pay direction (and where appropriate for recall or restriction of an arrestment) either to appear at that diet and make such application or to lodge the appropriate part of Form B6 duly completed with the sheriff clerk at (place) at least seven days before the diet; [where appropriate add meantime sequestrates and grants warrant to inventory and secure or grants warrant to arrest on the dependence or otherwise as the case may be].

Status: Point in time view as at 04/05/1992. 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)

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

Rule 5(5)

FORM B4
 WARRANT OF CITATION WHERE TIME TO PAY DIRECTION MAY BE APPLIED
 FOR

(Place and date) Grants warrant to cite the defender by serving a copy of the writ and warrant, together with Form B5 as set out in the Appendix to the First Schedule to the Sheriff Courts (Scotland) Act 1907, upon a period of notice of _____ days and appoints him (a) if he intends to defend to lodge a notice of intention to defend or (b) if he does not intend to defend but admits the claim and intends to apply for a time to pay direction (and where appropriate for recall or restriction of an arrestment) to lodge the appropriate part of Form B5 duly completed, with the sheriff clerk at _____ within the period of notice after such service [and grants warrant to arrest on the dependence]. [Where appropriate add meantime grants interim interdict or warrant to arrest on the dependence or sequestrates and grants warrant to inventory or otherwise, as the case may be [and to arrest to found jurisdiction.]]

Rule 5(6)

FORM B5
 NOTICE TO BE SERVED ON DEFENDER IN ORDINARY ACTION WHERE TIME TO
 PAY DIRECTION MAY BE APPLIED FOR
 ACTION RAISED BY

 PURSUER _____ DEFENDER

AT _____ SHERIFF COURT
 Including Address
 COURT DATE OF EXPIRY OF
 REF NUMBER PERIOD OF NOTICE
 _____ / _____

THIS SECTION MUST BE COMPLETED BY PURSUER BEFORE SERVICE

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

Under the Debtors (Scotland) Act 1987

The Act gives you a right to apply to the court for a "time to pay direction" which is an order saying that you can 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 means that you must pay all the amount at one time within a specified period set by the court.

In addition 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 WHEN CLAIM ADMITTED AND YOU DO NOT WANT TO DEFEND THE ACTION

1. Attached to this Notice at pages 3 and 4 is an application for a "time to pay direction" and recall or restriction of an arrestment, if appropriate. If you want to make an application you should lodge the completed application with the court **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, Citizens Advice Bureau or a solicitor.

NOTE

Where this form is being served on a defender along with Form HH (notice to additional 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 references 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".

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

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—You should give full details of your financial position in the appropriate boxes.

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 then enter the appropriate details about what has been arrested and the place and date of the arrestment at 5, and attach 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 date. 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, then a copy of the court order for payment (called an extract decree) will be served on you by the pursuer's solicitor advising when payment should commence or be made.

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 COURT..... (Ref. No.) 19...
 APPLICATION FOR A TIME TO PAY DIRECTION
 Under the Debtors (Scotland) Act 1987

PART A* By

 **DEFENDER**
 IN AN ACTION RAISED BY

 **PURSUER**

*(This section must be completed by pursuer before service)

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

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
PART C
 4. The Defender's financial position is:—
 (Tick one box only)

Weekly	Fortnightly	Monthly	Weekly	Fortnightly	Monthly
My outgoings are:			My income is:		
Rent/Mortgage £			Wages/Pensions £		
Heating £			Social Security £		
Food £			Other £		
HP £					
Other £					
Total £			Total £		
Dependants: Children—how many			Dependent relatives—how many		

Here list all capital (if any), eg value of house; amount in bank/building society account; 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 Schedule of Arrestment or copy):—
 6. This application is made under section 1(1) and 2(3) of the Debtors (Scotland) Act 1987.
 Therefore the defender asks the court
 *Delete what does not apply
 *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):—
 (signed)
 Defender
 Date:—

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 FORM B6 OC Rule 5(6)
 NOTICE TO BE SERVED ON DEFENDER IN SUMMARY APPLICATION WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR
 IN SUMMARY APPLICATION BY

.....

 **PURSUER** **DEFENDER**

AT **SHERIFF COURT**
 Including Address
 COURT DATE OF HEARING
 REF NUMBER
 /

THIS SECTION MUST BE COMPLETED BY PURSUER BEFORE SERVICE

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OR

(2) To pay the sum ordered in one payment within.....
WEEKS/MONTHS

Solicitor for Pursuer]

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
[¹⁰Form C1] rule 9
CONSISTORIAL ACTION
Court Ref No
(AB) Pursuer against (CD) Defender
(Place and date) You are hereby served with this writ and warrant, and required to answer thereto, conform to the said warrant.
IF YOU WISH TO DEFEND THIS ACTION or IF YOU WISH TO MAKE ANY CLAIM you should consult a solicitor with a view to lodging the appropriate document with the sheriff clerk at within [¹⁰21] days after this date and at the same time present this copy initial writ.
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.
(To be signed) (E.F.) Sheriff Officer
or
(GH) (add designation and business address)
Solicitor for Pursuer]

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
[¹⁰Form C2] Rule 9(2A)
CITATION WHERE TIME TO PAY DIRECTION MAY BE APPLIED FOR
[A.B.], Pursuer against [C.D.], Defender Court Ref No
(Place and date) [C.D.], defender. You are hereby served with this copy writ and warrant, together with Form B5 and required to answer thereto, conform to the warrant. Form B5 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).
IF YOU WISH TO DEFEND THIS ACTION you must lodge a notice of intention to defend with the sheriff clerk at within the period of notice being days after this date and at the same time present this copy initial writ.
IF YOU ADMIT THE CLAIM AND WISH TO AVOID A COURT ORDER 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.
IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION, you must complete the enclosed Form B5 and return it to the sheriff clerk within the period of notice.
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 Pursuer]
Date:--]

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
Form D rule 9(2)
CERTIFICATE OF CITATION
(Place and date) I, hereby certify that upon the day of I duly cited C.D., the defender, to answer to the foregoing writ. This I did by (set forth mode of service, if by officer and not by post, add in presence of L.M. (design him), witness, hereto with me subscribing [¹⁰in actions [¹⁰in which a time to pay direction may be applied for set forth any form sent in accordance with rule 5 and in actions] of divorce and separation also set forth any forms sent in accordance with rule 13]).
(To be signed) P.Q., Sheriff Officer,
L.M., Witness,
or
X.Y. (add designation and business address),
Solicitor for Pursuer
FORM E rule 11
ADVERTISEMENT
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
If the said C.D. wishes to defend the action [¹⁰or to make any claim therein he/she should immediately contact the sheriff clerk's (address) from whom he/she may obtain the service copy initial writ.]
Tel No.
X.Y. (add designation and business address)
Solicitor for Pursuer
or
P.Q., Sheriff Officer

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 [“FORM E1 Rule 11(1)(b)
 DISPLAY ON THE WALLS OF COURT
 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
 If C.D. wishes to defend the action or to make any claim therein he/she
 should immediately contact the Sheriff Clerk (address) from whom
 he/she may obtain the service copy Initial Writ.
 Tel No:—
 (Signed) Sheriff Clerk
 Date:— (insert date)]

FORM F rule 33
 NOTICE OF INTENTION TO DEFEND
 (Place and date)—C.D. (design him) Defender, intends to defend the
 action against him (and others) at the instance of A.B. (design him).
 C.D. Defender
 or
 X.Y. (add address)
 Defender's Solicitor

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 FORM G rule 50(4)
 THIRD PARTY NOTICE
 Third Party Notice in the Cause between
 A.B. Pursuer
 and
 C.D. Defender
 E.F. Third Party
 to E.F.
 This Notice is served upon you by the above named C.D. by virtue of
 an order granted by Sheriff in the action in which
 the above-named A.B. is the pursuer and C.D. the defender. In the
 action the pursuer claims against defender E in respect of
 (or otherwise as the case may be) as more fully appears in the copy initial
 writ and defences (or copy record in the action) enclosed herewith.
 The defender denies any liability but maintains that if there is any
 liability he shares that liability with you, as more fully appears from his
 defences lodged in the above action and enclosed herewith.
 or
 (otherwise as the case may be)
 And take notice that 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 in the action not later than being
 the date appointed by the Court for the regulation of further procedure
 and must appear or be represented in court on that date, otherwise the
 Court may pronounce such decree against you as it thinks fit.
 Date this day of
 (Signed) 19
 (Solicitor for the
 Defender).

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 FORM H rule 64(1)
 NOTICE TO ADDITIONAL DEFENDER
 To (designation and address) Court Ref No
 Take notice that in the action in which A.B. is the Pursuer and C.D.
 is the Defender, in copies of the (initial writ and defences) (closed
 record) which are herewith enclosed, your name has, by order of the
 Court dated , been added/substituted
 as a Defender to the said action; and the action, originally directed
 against the said C.D. is directed against you.
 IF YOU WISH TO DEFEND THIS ACTION you must lodge defences
 thereto with the Sheriff Clerk at within
 days from the date of service hereof.
 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 proceed and obtain decree against you in your absence.
 (Date)—
 (Signed) P.Q., Sheriff Officer;
 or
 X.Y. (add designation and business
 address)
 Solicitor for Pursuer (or Defender)

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.) Rule 64(1)(c)

NOTICE TO ADDITIONAL DEFENDER WHERE A TIME TO PAY DIRECTION MAY BE APPLIED FOR

To (designation and address) Court Ref No

Take notice that in the action in which [AB] is the pursuer and [CD] is the Defender, your name has, by order of the court dated _____, been added/substituted as a defender to the action; and the action, originally directed against [CD] is directed against you. Copies of the initial writ and defences [or closed record] are [or is] enclosed. You are also served with form B5. Form B5 is served on you because it is considered that you may be entitled to apply for time to pay direction (and for the recall or restriction of an arrestment).

IF YOU WISH TO DEFEND THIS ACTION you must lodge defences thereto with the sheriff clerk at _____ within _____ days from the date of service hereof.

IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION you must complete the enclosed form B5 and return it to the sheriff clerk at _____ within _____ days from the date of service hereof.

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 proceed and obtain decree against you in your absence.

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

Date:—]

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.) Rule 130(1)(a)

FORM OF INTIMATION TO ALLEGED ADULTERER IN ACTION OF DIVORCE OR SEPARATION

To (name and address as in the Warrant)

Take note that in an action number ('A' number), 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 may lodge a minute with the Sheriff Clerk (insert full address of Sheriff Clerk) for leave to appear as a party. Your minute must be lodged within [^21] days from (insert date), the date of posting of this intimation.

Date:— (insert date) (Signed) A. B.
 [Solicitor for Pursuer]

NOTE

The minute to be lodged with the Sheriff Clerk must be in proper form. You should crave to be sisted as a party to the action and seek leave to lodge defences or answers. The minute must be accompanied by the appropriate fee of (£ _____).

It may be in your best interests to consult a solicitor who, if necessary, will advise you on the availability of legal aid.

FORM H2 Rule 130(2)(b)

FORM OF INTIMATION TO PERSON WITH WHOM AN IMPROPER ASSOCIATION IS ALLEGED TO HAVE OCCURRED

To (name and address as in the Warrant)

Take note that in an action number ('A' number), 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 may lodge a minute with the Sheriff Clerk (insert full address of Sheriff Clerk) for leave to appear as a party. Your minute must be lodged within [^21] days from (insert date), the date of posting of this intimation.

Date:— (insert date) (Signed) A. B.
 [Solicitor for Pursuer]

NOTE

The minute to be lodged with the Sheriff Clerk must be in proper form. You should crave to be sisted as a party to the action and seek leave to lodge defences or answers. The minute must be accompanied by the appropriate fee of (£ _____).

It may be in your best interests to consult a solicitor who, if necessary, will advise you on the availability of legal aid.

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 FORM H3 Rule 130(4)
 FORM OF INTIMATION TO A LOCAL AUTHORITY OR THIRD PARTY WHO
 MAY BE LIABLE TO MAINTAIN A CHILD

To (*name and address as in the Warrant*)
 Take note that in an action number ('A' number), the Court may make an order in respect of the custody of (*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 may lodge a minute with the Sheriff Clerk (*insert full address of Sheriff Clerk*), for leave to do so. Your minute must be lodged within [^21] days from (*insert date*), the date of posting of this intimation.

Date:— (*insert date*) (Signed) A.B.
 [Solicitor for Pursuer]

NOTE
 The minute to be lodged with the Sheriff Clerk must be in proper form. You should crave to be sisted as a party to the action and seek leave to lodge defences or answers. The minute must be accompanied by the appropriate fee of (£).
 It may be in your best interests to consult a solicitor who, if necessary, will advise you on the availability of legal aid.

FORM H4 Rule 130(5)
FORM OF INTIMATION TO ADDITIONAL SPOUSE OF EITHER PARTY IN PROCEEDINGS RELATING TO A POLYGAMOUS MARRIAGE

To (*name and address as in the Warrant*)
 Take note that an action for divorce [or separation] number ('A' number), involves (*name and designation*) your spouse. A copy of the Initial Writ is attached. If you wish to appear as a party, you may lodge a minute with the Sheriff Clerk (*insert full address of Sheriff Clerk*), for leave to do so. Your minute must be lodged within [^21] days from (*insert date*), the date of posting of this intimation.

Date:— (*insert date*) (Signed) A.B.
 [Solicitor for Pursuer]

NOTE
 The minute to be lodged with the Sheriff Clerk must be in proper form. You should crave to be sisted as a party to the action and seek leave to lodge defences or answers. The minute must be accompanied by the appropriate fee of (£).
 It may be in your best interests to consult a solicitor who, if necessary, will advise you on the availability of legal aid.

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 FORM H5 Rule 130(6)
 FORM OF INTIMATION TO PERSON HAVING De Facto CUSTODY OF CHILDREN

To (*name and address as in the Warrant*)
 Take note that in an action number ('A' number), the court may make an order in respect of the custody of (*name and address*) a child/children at present in your custody. A copy of the Initial Writ is attached. If you wish to appear as a party, you may lodge a minute with the Sheriff Clerk (*insert full address of Sheriff Clerk*), for leave to do so. Your minute must be lodged within [^21] days from (*insert date*), the date of posting of this intimation.

Date:— (*insert date*) (Signed) A.B.
 [Solicitor for Pursuer]

NOTE
 The minute to be lodged with the Sheriff Clerk must be in proper form. You should crave to be sisted as a party to the action and seek leave to lodge defences or answers. The minute must be accompanied by the appropriate fee of (£).
 It may be in your best interests to consult a solicitor who, if necessary, will advise you on the availability of legal aid.

FORM H6 Rule 130(7)(a)
FORM OF INTIMATION TO LOCAL AUTHORITY OR THIRD PARTY TO WHOM CARE OF A CHILD IS TO BE GIVEN

To (*name and address as in the Warrant*)
 Take note that in an action number ('A' number), the court proposes to commit to your care the child (*name and address*). A copy of the Initial Writ is attached. If you wish to appear as a party, you may lodge a minute with the Sheriff Clerk (*insert full address of Sheriff Clerk*), for leave to do so. Your minute must be lodged within [^21] days from (*insert date*), the date of posting of this intimation.

Date:— (*insert date*) (Signed) A.B.
 [Solicitor for Pursuer]

NOTE
 The minute to be lodged with the Sheriff Clerk must be in proper form. You should crave to be sisted as a party to the action and seek leave to lodge defences or answers. The minute must be accompanied by the appropriate fee of (£).
 It may be in your best interests to consult a solicitor who, if necessary, will advise you on the availability of legal aid.

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COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

FORM H6A Rule 130(7)(b)

FORM OF INTIMATION TO LOCAL AUTHORITY OF SUPERVISION ORDER

Initial Writ

in

A.B. (Address) Pursuer(s)

against

C.D. (Address) Defender(s)

To (name and address of local authority)

TAKE NOTICE

That on (date) in the Sheriff Court at (place) the Sheriff made a supervision order under "section 12 of the Matrimonial Proceedings (Children) Act 1958"/section 11(1)(b) of the Guardianship Act 1973, placing the child (name and address) under your supervision. A certified copy of the sheriff's interlocutor is attached hereto.

Date:— (insert date) (Signed) A.B.
Sheriff Clerk

*Delete as appropriate

COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

FORM H7 Rule 130(9)

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 (name and address as in the Warrant)

Take note that in an action number ('A' number) 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 may lodge a minute with the Sheriff Clerk (insert full address of Sheriff Clerk), for leave to do so. Your minute must be lodged within [^21] days from (insert date), the date of posting of this intimation.

Date:— (insert date) (Signed) A.B.
[Solicitor for Pursuer]

NOTE

The minute to be lodged with the Sheriff Clerk must be in proper form. You should crave to be sisted as a party to the action and seek leave to lodge defences or answers. The minute must be accompanied by the appropriate fee of (£).

It may be in your best interests to consult a solicitor who, if necessary, will advise you on the availability of legal aid.]

COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

[^] FORM H8 Rule 99(2)

SEQUESTRATION FOR RENT—NOTICE (INFORMING DEFENDER OF RIGHT TO APPLY FOR CERTAIN ORDERS UNDER THE DEBTORS (SCOTLAND) ACT 1987

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 14 days from the date 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 local advice centre or to the sheriff clerk at (address).]

Status: Point in time view as at 04/05/1992. 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)

COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

FORM I rule 75(1)

CITATION

K.L. (design him), you are required to attend at Sheriff Court on 19 at as a witness for the in the action at the instance of A.B. (design him), against C.D. (design him) (and to bring with you (specify documents)). If you fail to attend without reasonable excuse having demanded and been paid your travelling expenses you may be ordered to pay a penalty not exceeding £250 and warrant may be granted for your arrest.

(Date)

(Signed) P.Q., Sheriff Officer;

X.Y., (add designation and business address)
Solicitor for Pursuer (or defender)

Note:

Within certain specified limits claim for necessary outlays and loss of earnings will be met. Claims should be made to the person who has cited you to attend court and 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 to the person who has cited you.

FORM J rule 75(1)

CERTIFICATE OF CITATION

I certify that on 19 I duly cited K.L. (design him) to attend at Sheriff Court on 19 at as a witness for the in the action at the instance of A.B. (design him) against E.F. (design him) (and I required him to bring with him (specify documents)). This I did (set forth mode of citation).

(Date)

(Signed) P.Q., Sheriff Officer;

or
X.Y., (add designation and business address)
Solicitor for Pursuer (or Defender)

COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

FORM K rule 81(1)

NOTICE IN OPTIONAL PROCEDURE FOR COMMISSION AND DILIGENCE

Order by the Sheriff Court at

In the cause (reference No.)

in which

A.B. (design) is Pursuer

and

C.D. (design) is Defender

To (name and designation of party or parties or haver, from whom the documents are sought to be recovered)

Take notice that you are hereby required to produce to the sheriff clerk at within 7 days of the service upon you of this order—

- (1) this order itself which must be produced intact;
- (2) a certificate signed and completed in terms of the form appended hereto; and
- (3) all documents in your possession falling within the specification enclosed herewith, together with a list of inventory of such documents signed by you as relative to this order and your certificate.

Production may be made either by lodging the above at the said office of the sheriff clerk, or by registered or recorded delivery letter or registered postal packet enclosing the same, and addressed to the said sheriff clerk at said office.

(Signature and business address of the solicitor of the party in whose favour commission and diligence has been granted)

(Date)

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 enclosure by themselves, marked "confidential".

CERTIFICATE

I hereby certify with reference to the order of the sheriff court at in the cause (reference No.) and the relative specification of documents, served upon me and marked respectively X.Y.—

- (1) that the documents which are produced and which are enumerated in the inventory signed by me and marked Z, are the whole documents in my possession falling under the specification

or

that I have no documents in my possession falling within the specification.

COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

(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, names (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 (date), at (place), in the hands of (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)

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

FORM L rule 104

NOTICE OF REMOVAL

To (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 of date) or (otherwise as case may be).

FORM M rule 104

LETTER OF REMOVAL

To (name and designation of addressee).
 (Place and date) I am to remove from (state subjects by usual name of short description sufficient for identification) at the term of

K.L. (add designation and address)

If not holograph to be attested thus—
 M.N. (add designation and address), witness.

FORM N rule 105

NOTICE OF REMOVAL UNDER S.37 OF [“S”1907] ACT

To K.L. (designation and address).
 You are required to remove from () that portion of ground (describe it); or the mill of (describe it); or the shootings of the lands and estate of (describe them); or (other subjects to which this notice is applicable), at the term of Whitsunday (insert year) (or Martinmas, as the case may be, inserting after the year the words, being the 15th day of May, or the 11th day of November, or the 28th day of May, or the 28th day of November, as the case may be).

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

FORM O rule 117

NOTICE OF APPEARANCE

A.B. Pursuer against C.D., E.F., and G.H. Defendants

Court Ref No.

(Place and date)—C.D. (design him) defender, intends to appear in the above action and lodge “defences to the competency of the action” objections to the condescendence of 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 Defender

*delete as appropriate

FORM P rule 128(4)

RECEIPT

In the Sheriff Court of at
 Receipt for a Payment into Court
 In the cause, matter or proceeding (state names of parties or other appropriate description)

(Place and date)
 A.B. (design him) has this day paid into Court the sum of £ being a payment into Court in terms of [“rule 128”] of of money which in an action of damages, has become payable to a person under legal disability.

(Note) If the payment is made under [“rule 128(2)”] add “the custody of which money has been accepted at the request of (name of Court making request).”

(Signed) Sheriff Clerk

N.B. The person paying the money into Court is required to complete and transmit the subjoined Form Q to the Secretary of State, forthwith.
 TO BE PERFORATED

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

FORM Q Rule 128(4)

LETTER INTIMATING PAYMENT

(Address)
(Date)

To
The Secretary of State
Sir,
I/We paid into the Sheriff Court at _____ in the (State
on _____ 19 _____, the sum of _____
name of cause, matter or _____ proceeding),
Yours faithfully
(Signature)

FORM R Rule 128(4)

ADDITIONAL PARTICULARS FOR RECEIPT

The above-mentioned payment into Court was:—

(a) Lodged on Deposit Receipt No _____ with the
(state name of Bank) pending the Orders of the Court.

(b) Deposited in the National Savings Bank, Account No _____

(c) (Otherwise as the case may be, stating similar particulars).

Name and address of Solicitor (or Insurance Company) representing
the person who made the payment into Court:—
(Date)
(Signed)

Sheriff Clerk

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

FORM S rule 131

Form of Notice to defender where it is stated he consents to the granting of decree of separation...^[2]

TAKE NOTICE that the copy initial writ served on you together with this Notice states that you consent to the grant of decree of separation—

1. If you do so consent the consequences to you are that—

(a) provided the pursuer establishes the fact that there has been no cohabitation between the parties to the marriage at any time during a continuous period of two years after the date of the 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: a husband will continue to have a legal obligation to support his wife and children;

(c) apart from these consequences there may be others applicable to you depending upon your particular circumstances.

2. If you do consent to the grant of decree you may apply to the Court in this action—

(a) for payment by the pursuer to you of aliment; and

(b) for an order providing for access to or the custody, maintenance and education of any child of the marriage, or any child accepted as such, who is under 16 years of age.

^[2](3) In order to make such an application you require to give notice in the appropriate form to the Court. If you wish to make such an application you should consult a solicitor.]

4. If after considering the foregoing, you wish to consent to decree, you should complete and sign the attached Form of Notice of Consent and send it to the Sheriff Clerk at the Sheriff Court referred to in the initial writ within ^[1]21 days of the date of this Notice.

5. If after consenting you wish to withdraw your consent you must immediately inform the Sheriff Clerk at the Sheriff Court referred to in the initial writ in writing that you withdraw your consent to decree being granted against you in the action at the instance of (insert name and address of your husband or wife as the case may be).

(Date) (Signed)
(Signature of Pursuer of his Agent)

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COURTS, SCOTLAND: 3
 Sheriff Courts (Scotland) Act 1907 (c.51) (contd.) rule 131
 [Form S1]

Form of Notice to defender where it is stated he consents to the granting of decree of divorce

Take Notice that the copy initial writ served on you together with the Notice states that you consent to the grant of decree of divorce.

1. If you do so consent the consequences to you are that—
 - (a) provided the pursuer establishes the fact that there has been no cohabitation between the parties to the marriage at any time during a continuous period of two years after the date of the marriage and immediately preceding the bringing of this action and that you consent, a decree will be granted;
 - (b) on the grant of a decree of divorce you may lose your rights of succession to the pursuer's estate;
 - (c) decree of divorce will end the marriage thereby affecting any right to such pension as may depend upon marriage continuing or upon your being left a widow: the State widow's pension will not be payable to you when the pursuer dies;
 - (d) apart from these consequences there may be others applicable to you depending upon your particular circumstances.
2. If you do consent to the grant of decree you are still entitled to apply to the Sheriff in this action—
 - (a) to make financial provision for you under the Divorce (Scotland) Act 1976 by making an order—
 - (i) for the payment by the pursuer to you of a periodical allowance;
 - (ii) for the payment by the pursuer to you of a capital sum;
 - (iii) varying the terms of any marriage settlement;
 - (b) to make an order providing for the custody, maintenance and education of any child of the marriage, or any child accepted as such, who is under 16 years of age.
3. In order to make such an application to the Sheriff you require to give notice in the appropriate form to the Court. If you wish to make such an application you should consult a solicitor.
4. If after considering the foregoing you wish to consent to decree you should complete and sign the attached Form of Notice of Consent, and send it to the sheriff clerk at the Sheriff Court referred to in the initial writ, within [10/21] days of the receipt of this Notice.
5. If after consenting you wish to withdraw your consent you must immediately inform the sheriff clerk at the Sheriff Court referred to in the initial writ in writing that you withdraw your consent to decree being granted against you in the action at the instance of (insert name and address of your husband or wife as the case may be).

COURTS, SCOTLAND: 3
 Sheriff Courts (Scotland) Act 1907 (c.51) (contd.) rule 131
 Form S2

Form of Notice to defender in an action of separation ...⁽¹⁶⁾ where it is stated there has been five years non-cohabitation

1. Take Notice that 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 5 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 Court is satisfied that there are grounds justifying decree of separation a decree will be granted, unless in the opinion of the Court the grant of decree would result in grave financial hardship to you.
2. On the grant of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist. A husband will continue to have a legal obligation to support his wife and children.
3. You are entitled, whether or not you dispute that there has been no such cohabitation during such a period, to apply to the Sheriff in this action—
 - (a) if you are the wife, for payment by the pursuer to you of aliment; and
 - (b) for an order providing for the custody, maintenance and education of any child of the marriage, or any child accepted as such, who is under 16 years of age.
4. In order to make such an application you require to give notice in the appropriate form to the Court. If you wish to make such an application you should consult a solicitor.

COURTS, SCOTLAND: 3
 Sheriff Courts (Scotland) Act 1907 (c.51) (contd.) rule 131
 Form S3

Form of Notice to defender in an action of divorce where it is stated there has been five years non-cohabitation

1. Take Notice that 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 5 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 Court is satisfied that the marriage has broken down irretrievably a decree will be granted, unless in the opinion of the Court the grant of 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 upon the marriage continuing or upon 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 such a period, to apply to the sheriff in this action—
 - (a) to make financial provision for you under the Divorce (Scotland) Act 1976 by making an order—
 - (i) for the payment by the pursuer to you of a periodical allowance;
 - (ii) for the payment by the pursuer to you of a capital sum;
 - (iii) varying the terms of any marriage settlement;
 - (b) to make an order providing for the custody, maintenance and education of any child of the marriage or of any child accepted as such, who is under 16 years of age.
4. In order to make such an application you require to give notice in the appropriate form to the Court. If you wish to make such an application you should consult a solicitor.

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 FORM T rule 131
 Form of Notice of Consent in actions [10] of divorce and of separation . . . [15] under section 1(2)(d) of the Divorce (Scotland) Act, 1976.
 I (full name and address of the defender to be inserted by the pursuer or the 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 him or his solicitor before sending Notice).
 I understand that it states that I consent to the grant of decree [10] of divorce or of separation . . . [15] in this action.
 I have considered the consequences to me mentioned in the Notice sent together with this Notice.
 I consent to the grant of decree [10] of divorce or of separation . . . [15] in this action.
 (Dated) (Signed) . . . [15]
 Defender . . . [15]

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 [10] FORM T1 rule 3(8)
Form of consent of parent [10], tutor, curator or guardian in proceedings for custody of children under section 47 of the Children Act 1975
 IN
 PURSUER(S)
 DEFENDER(S)
 I, (name and address)
 confirm that I am the mother/father/guardian [10] tutor-curator of the child (insert full name of the child as it is given on the birth certificate, and the child's present address)
 I understand that if I consent to the granting of custody to the pursuer(s), the care, possession and control of the child may be granted to the pursuer(s) by the court.
 I hereby consent to the making of a custody order in relation to the child (name of child)
 in favour of (name and address of pursuer(s))
 Dated at (place) the day of 19
 Signature of person consenting
 Signature of Witness
 Full Name
 Designation
 Address
 Signature of Witness
 Full Name
 Designation
 Address
 *Delete whichever is inappropriate.

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 FORM T2 [10] rule 130(8)]
Notice to local authority under section 49(1) of the Children Act 1975 of presentation of an initial writ for custody of a child under section 47 of that Act.
 Initial Writ
 in
 A.B. (address) Pursuer(s)
 for
 Custody of the child E.F.
 To (name and address)
 TAKE NOTICE
 1. That the pursuer has presented an initial writ to the Sheriff Court at (address) for the custody of the child E.F. A copy of the writ is attached to this notice.
 2. That you are required under section 49(2) of the Children Act 1975 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.
 Dated the day of 19
 (Signed)
 (Address)
 [Solicitor for the pursuer]
 FORM U rule 134(3)
REQUEST FOR PRELIMINARY RULING OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
 (Here set out a statement of the case for the European Court, giving brief particulars of the case and issues between the parties, and relevant facts found by the Court, any relevant rules and provisions of Scots Law, and the relevant Treaty provisions, acts, instruments or rules of Community Law giving rise to the reference.)
 The preliminary ruling of the Court of Justice of the European Communities is accordingly sought on the following questions—1. 2. etc. (Insert the questions on which the ruling is sought).
 Dated the day of 19)

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COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

rule 11A

[1]Form V

Form of Certificate by Medical Officer of Hospital or similar Institution

I (name and designation) certify that, having had transmitted to me a copy initial writ in an action of divorce or of separation . . .¹⁹ at the instance of (name and designation) Pursuer, against (name and designation) Defender, (a) I have on the . . . day of . . . personally delivered a copy thereof to the said defender who is under my care at (address) and I have explained the contents or purport thereof to him (or her).

or

(b) I have not delivered a copy thereof to the said defender who is under my care at (address) and I have not explained the contents or purport thereof to him (or her) and that for the following reasons (state reasons).

(Address and date)

(Signature and designation)

Rule 11A(3)

[1]Form V1

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

To (name and address as in the Warrant)

Take note that an action of divorce [or separation] number ('A' number) has been raised against (name, and designation) your (father, mother, brother or other relative, or ward, as the case may be). A copy of the Initial Writ is attached. If you wish to appear as a party, you may lodge a minute with the Sheriff Clerk (insert full address of Sheriff Clerk), for leave to do so. Your minute must be lodged within [14] days from (insert date), the date of posting of this intimation.

Date:— (insert date)

(Signed) A.B.
[Solicitor for Pursuer]

NOTE

The minute to be lodged with the Sheriff Clerk must be in proper form. You should crave to be sisted as a party to the action and seek leave to lodge defences or answers. The minute must be accompanied by the appropriate fee of (£).

It may be in your best interests to consult a solicitor who, if necessary, will advise you on the availability of legal aid.

COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

Rule 11A(3)

Form V2

FORM OF INTIMATION TO CHILDREN AND NEXT OF KIN IN AN ACTION OF DIVORCE OR SEPARATION WHERE THE DEFENDER'S ADDRESS IS UNKNOWN

To (name and address as in the Warrant)

Take note that an action of divorce [or separation] number ('A' number), has been raised against (name) your [father, mother, brother or other relative as the case may be]. If you know of his/her present address, you are requested to forward the same to the Sheriff Clerk (insert full address of Sheriff Clerk) forthwith. You may also if you wish to appear as a party lodge a minute with the Sheriff Clerk for leave to do so. Your minute must be lodged within [14] days from (insert date), the date of posting of this intimation.

Date:— (insert date)

(Signed) A.B.
[Solicitor for Pursuer]

NOTE

The minute to be lodged with the Sheriff Clerk must be in proper form. You should crave to be sisted as a party to the action and seek leave to lodge defences or answers. The minute must be accompanied by the appropriate fee of (£).

It may be in your best interests to consult a solicitor who, if necessary, will advise you on the availability of legal aid.]

rule 11A

Form W

Form of Transmission to Medical Officer of Hospital or similar Institution

To (insert name and address)

In accordance with the Sheriff Courts (Scotland) Act 1907 a copy of the initial writ at the instance of (name and address) against (name and address) is sent herewith and you are requested to deliver it personally to the said . . . and to explain the contents or purport thereof 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 and addressed envelope the certificate appended hereto, striking out what is not applicable.

(Address and date)

(Solicitor for Pursuer)

COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

rule 72(5)

Form X

AB 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)

(designation)

SCHEDULE

(Number and specify documents considered)

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 FORM Z rule 90A

Extract
 Decree of
 Divorce
 AT SHERIFF COURT
 , the day of
 in an action of Divorce
 in the Sheriff Court of
 at at the instance of
 Pursuer
 Defender

who were married at (place) on (date)
 The sheriff pronounced Decree:
 (1) divorcing the Defender from the Pursuer
 (2) awarding custody to the Pursuer/Defender of the following
 child/children:
 (3) ordaining payment:
 (a) by the of £ per as aliment for
 each of said child/children until sixteen years of age;
 (b) by the Defender to the Pursuer of a periodical allowance of
 £ per payable until her death or remarriage;
 (c) by the Defender to the Pursuer of a sum of £
 (d) by the of expenses;
 (4) finding the Defender liable to the Pursuer in expenses as the same
 may be subsequently taxed and decreed for;
 (5) granting leave to any party showing interest to apply to the Court
 for any order required anent custody and aliment until
 19 :
 And the said Sheriff Grants Warrant for all lawful execution hereon:
 Extracted at this
 day of 19 by me
 Sheriff Clerk of Sheriff Clerk]

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 rule 136(1)
 [1992 SDA 1]
**Under the Divorce (Scotland) Act 1976, Section 1(2)(a) Simplified
 Procedure**

Sheriff Clerk
 Sheriff Court House

 (Tel)

**APPLICATION FOR DIVORCE (WITH CONSENT OF OTHER
 PARTY TO THE MARRIAGE) HUSBAND AND WIFE HAVING
 LIVED APART FOR AT LEAST 2 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 that method. If 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 applica-
 tion. Please follow them carefully. In the event of difficulty, you may
 contact any Sheriff Clerk's Office or Citizens Advice Bureau or the
 Court of Session Divorce Section, Edinburgh.

Directions for making application
WRITE IN INK, USING BLOCK CAPITALS
 1. Complete and sign Part 1 of the form (pages 3-7), paying particular
 attention to the notes opposite each section.
 2. When you have filled in Part 1 of the form, attach the (blue)
 Instruction Sheet SP1 to it and send both documents to your husband/
 wife for completion of the consent at part 2 (page 9).
**NOTE: If your husband/wife 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.**
 3. When the application has been returned to you with the Consent
 (Part 2) duly completed and signed, you should then take the form to
 a Justice of the Peace, Notary Public, Commissioner for Oaths or other
 duly authorised person so that your affidavit in Part 3 (page 10) can be
 completed and sworn.
 4. When directions 1-3 above have been carried out, your application
 is now ready to be sent to the Court 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"

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 or a completed 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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COURTS, SCOTLAND: 3
 Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

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 HUSBAND/WIFE*

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 husband/wife considers himself/herself to be domiciled in Scotland
 (iv) My husband/wife has lived in Scotland for a period of at least 12 months immediately before the date of signing this application

COURTS, SCOTLAND: 3
 Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

PART B

(v) I have lived at the address shown in Section 1 for at least 40 days immediately before the date I signed this application
 (vi) My husband/wife has lived at the address shown in Section 2 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 husband/wife. (If more than 2 years, just give the month and year) Day month Year
 (ii) Have you lived with your husband/wife since that date (Tick () box which applies) 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 husband/wife? (Tick () box which applies) YES NO
 Do you consider that the marriage has broken down irretrievably? (Tick () box which applies) YES NO

7.
CONSENT
 Does your husband/wife consent to a divorce being granted? (Tick () box which applies) YES NO

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

8.
MENTAL DISABILITY
 As far as you are aware is your husband/wife incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency)? (Tick () box which applies)

	YES	NO
If yes, give details		

9.
CHILDREN
 Are there any children of the marriage under the age of 16? (Tick () box which applies)

	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? (Tick () box which applies)

	YES	NO
If yes, give details		

11.
REQUEST FOR DIVORCE AND DISCLAIMER OF FINANCIAL PROVISION
 I confirm that the facts stated in Sections 1–10 above apply to my marriage.
 I do NOT ask the Court to make any financial awards in connection with this application.
 I request the Court to grant decree of divorce from my husband/wife.

.....
 (Date) (Signature)

IMPORTANT—Part 1 MUST be completed, signed and dated before sending the application form to your husband/wife.

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

PART 2

CONSENT BY APPLICANT'S HUSBAND/WIFE TO DIVORCE
NOTE: Before completing this Part of the form, please read the notes opposite

I,,
 (Full names, in BLOCK letters, of Applicant's husband/wife)
 residing at,
 (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 2 years immediately preceding the date of the application (Section 11 of Part 1);
 c. I do not ask the Court to make any order for payment to me by the Applicant of a periodical allowance (ie a regular payment of money weekly or monthly, etc for maintenance);
 d. I do not ask the Court to make any order for payment to me by the Applicant of a capital sum (ie a lump sum payment);
 e. I understand that divorce may result in the loss to me of property rights;
 and
 f. **I CONSENT TO DECREE OF DIVORCE BEING GRANTED IN RESPECT OF THIS APPLICATION**

.....
 (Date) (Signature)

NOTE: You may withdraw your consent, even after giving it, at any time before divorce is granted by the Court. Should you wish to do so, you must immediately advise:
 Address of Court
 (Tel)

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

PART 3

APPLICANT'S AFFIDAVIT

To be completed only after Parts 1 and 2 have been signed and dated

1. (insert Applicant's full name)
 residing at (insert Applicant's present home address)

Town Country

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

To be completed by Justice of the Peace, Notary Public or Commissioner for Oaths	Sworn at (Place) this day of 19 ... before me (full name) (full address)
Signature	"Justice of the Peace/"Notary Public"/ Commissioner for Oaths *Delete as appropriate

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
 Form SDA2 rule 136(2)
**Under the Divorce (Scotland) Act 1976, Section 1(2)(a) Simplified
 Procedure**

Sheriff Clerk
 Sheriff Court House

(Tel)

APPLICATION FOR DIVORCE
**HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 5
 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 that 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 applica-
 tion. Please follow them carefully. In the event of difficulty, you may
 contact the Sheriff Clerk's Office or Citizens Advice Bureau or the
 Court of Session Divorce Section, Edinburgh.

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 so that your affidavit in Part 2 (page 8) can be
completed and sworn. |
| Returning
completed
Application Form
to Court | 3. When directions 1 and 2 above have all been carried out, 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": the certificate 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 husband/wife having divorced
you; and
(ii) Either a cheque or postal order in respect of the Court fee,
crossed and made payable to "the Sheriff Clerk"
or
a completed form SP15 claiming exemption from the
Court fee.
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. |

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname	Other name(s)
Present	in full
Address	Daytime
.....	Telephone
.....	Number
.....	if any

2. NAME OF HUSBAND/WIFE

Surname	Other name(s)
.....	in full

3. ADDRESS OF HUSBAND/WIFE (if address of your husband/wife is
 not known, please enter "not known" in this section and proceed to
 section 4)

Present	Daytime
Address	Telephone
.....	Number
.....	if any

**4. Only complete this section if you do not know the present address of
 your husband/wife**

NEXT-OF-KIN

Name	Address
Relationship
to your
husband/wife

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

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.

5.

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 husband/wife considers himself/herself to be domiciled in Scotland
- (iv) My husband/wife has lived in Scotland for a period of at least 12 months immediately before the date of signing this application

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

PART B

- (v) I have lived at the address shown in Section 1 for at least 40 days immediately before the date I signed this application
- (vi) My husband/wife has lived at the address shown in Section 2 for at least 40 days immediately before I signed this application

6.

DETAILS OF PRESENT MARRIAGE

Place of Marriage (Registration District)

Date of Marriage (Day) (Month) (Year)

7.

PERIOD OF SEPARATION

- (i) Please state the date on which you ceased to live with your husband/wife. (If more than 5½ years, just give the month and year) Day month year
- (ii) Have you lived with your husband/wife since that date? (Tick () box which applies) YES NO
- (iii) If yes, for how long in total did you live together before finally separating again? months

8.

RECONCILIATION

Is there any reasonable prospect of reconciliation with your husband/wife? (Tick () box which applies) YES NO

Do you consider that the marriage has broken down irretrievably? (Tick () box which applies) YES NO

9.

MENTAL DISABILITY

Is your husband/wife incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency)? (Tick () box which applies) YES NO

(if yes, give details)

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

10.

CHILDREN

Are there any children of the marriage under the age of 16? (Tick () box which applies) YES NO

11.

OTHER COURT ACTIONS

Are you aware of any Court actions currently proceeding in any country (including Scotland) which may affect your marriage? (Tick () box which applies) YES NO

If yes, give details

12.

DECLARATION AND REQUEST FOR DIVORCE

I confirm that the facts stated in sections 1–11 above apply to my marriage.

I do not ask the Court to make any financial awards in connection with this application.

I believe that no grave financial hardship will be caused to my husband/wife as a result of the granting of this application.

I request the Court to grant decree of divorce from my husband/wife.

.....
(Date) (Signature of Applicant)

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

PART 2

APPLICANT'S AFFIDAVIT
 (To be completed only after Part 1 has been signed and dated)

1. (insert Applicant's full name)

residing at (insert Applicant's present home address)

Town..... Country.....

SWEAR that to the best of my knowledge and belief the facts stated in Part 1 of this Application are true.

Signature of Applicant

To be completed by
Justice
of the Peace, Notary
Public
or Commissioner for
Oaths

Sworn at (Place)
 this day of 19...
 before me (full name)
 (full address)

 Signature
 Justice of the Peace/Notary Public/
 *Commissioner for Oaths

*Delete as appropriate

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

FORM SDA3 rule 136(3)

Under the Divorce (Scotland) Act 1976, Section 1(2)(d)
Simplified Procedure

M.

CONSENT TO APPLICATION FOR DIVORCE
HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 2 YEARS

In Part 1 of the enclosed form your husband/wife is applying for divorce on the ground that the marriage has broken down irretrievably because you and (s)he have lived apart for at least two years AND you consent to the divorce being granted.

Such consent must be given formally in writing at Part 2 of the application form. BEFORE completing that part, you are requested to read it over carefully so that you understand the effects of consenting to divorce. Thereafter—

If you wish to consent

(a) Check the details given by the applicant at Part 1 of the form to ensure that they are correct to the best of your knowledge;

(b) Complete Part 2 (Form of Consent) by entering your name and address at the appropriate place and adding your signature and the date; and

(c) Return the whole application form to your husband/wife at the address given in Part 1.

Once your husband/wife has completed the remainder of the form and has submitted it to the Court, a copy of the whole application (including your consent) will later be served upon you formally by the Court. In the event of the divorce being granted, you will automatically be sent a copy of the extract decree. (Should you change your address before receiving the copy extract decree, please notify the Court immediately).

If you do NOT wish to consent

Please return the application form, with Part 2 uncompleted, to your husband/wife and advise him/her of your decision.

The Court will NOT grant a divorce under this application if Part 2 of the form is not completed by you.

Sheriff Clerk
 Sheriff Court

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
Form SDA4 rule 138(1)

CITATION IN SECTION 1(2)(e) CASES
Under the Divorce (Scotland) Act 1976, Section 1(2)(e)
Simplified Procedure

M
..... 19
.....

**APPLICATION FOR DIVORCE
HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 5
YEARS**

Your husband/wife has applied to the Court for divorce on the ground that the marriage has broken down irretrievably because you and (s)he have lived apart for a period of at least 5 years.

A copy of the application is hereby served upon you.

1. Please note:
 - (a) that the Court may not make financial awards under this procedure and that your husband/wife is making no claim against you for payment of a periodical allowance (ie regular payment of money weekly, monthly etc for his/her maintenance) or a capital sum (ie lump sum).
 - (b) that your husband/wife 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 (eg the right to succeed to the Applicant's estate on his/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 Court before
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 Court immediately.)

Sheriff Clerk/
Sheriff Officer
Sheriff Clerk
Sheriff Court House

(tel)

EXPLANATORY NOTE: If you wish to exercise your right to claim a financial award you should immediately advise the Court that you oppose the application for that reason, and thereafter consult a solicitor.

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)
Form SDA5 rule 141(1)

SHERIFF COURT

At the
day of Nineteen Hundred and
in an action in the Sheriff Court of

at at the instance of

Applicant

Respondent

who were married at (place) on (date)

the Sheriff pronounced decree divorcing the Respondent from the Applicant

Extracted at the day of
Nineteen Hundred and by me Sheriff Clerk of

Sheriff Clerk]

[FORM SDA6 Rule 138(9)
FORM OF INTIMATION FOR DISPLAY ON WALLS OF COURT

Court Ref. No.:

An application for divorce has been made in Sheriff Court by A.B. calling as defender C.D.

If C.D. wishes to oppose the granting of decree of divorce he/she should immediately contact the Sheriff Clerk from whom he/she may obtain a copy of the application.

Tel No:—
(Signed) Sheriff Clerk
Date:—(insert date)

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

Rule 138(10)

FORM SDA 7

FORM OF INTIMATION TO CHILDREN AND NEXT OF KIN IN SIMPLIFIED
 DIVORCE APPLICATION

To (name and address)

TAKE NOTICE that an application for divorce (number of application) has been made against (name of respondent) your [father, mother, brother or other relative as the case may be]. A copy of the application is attached. If you know of his/her present address, you are requested to forward it to the Sheriff Clerk (insert full address of Sheriff Clerk) forthwith. 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 1st 21st days from (insert date), the date of posting of this intimation.

Date:—(insert date) (Signed) A.B.
 Sheriff Clerk

NOTE
 It may be in your best interests to consult a solicitor, who if necessary, will advise you on the availability of legal aid.]

- ^aRule 2 substituted by S.I. 1988/1978, para. 3
- ^aRule 3 renumbered rule 3(1) by S.I. 1984/255, para. 3(2)
- ^aRule 3(2)-(4) added by S.I. 1986/1946, para. 2(2)(b)
- ^aRule 3(4) substituted by S.I. 1988/1978, para. 4(1)
- ^aParagraph added by S.I. 1984/255, para. 3(2)
- ^aParagraph renumbered by S.I. 1986/1946, para. 2(2)(a)
- ^aWords repealed by S.I. 1986/1230, para. 3(3)(a)
- ^aWords substituted by S.I. 1988/1978, para. 4(2)
- ^aParagraph substituted by S.I. 1986/1230, para. 3(2)(b)
- ^aParagraphs inserted by S.I. 1986/513, para. 2(2)
- ^aWords inserted by S.I. 1986/1946, para. 2(2)(a)
- ^aWords substituted by S.I. 1986/1946, para. 2(2)(b)
- ^aWords inserted by S.I. 1984/255, para. 3(3)(a)
- ^aWords inserted by S.I. 1986/1978, para. 5(1)
- ^aWords repealed by S.I. 1986/1230, para. 3(3)
- ^aRule 5(2) inserted by S.I. 1984/255, para. 3(3)(c)
- ^aParagraph renumbered by S.I. 1984/255, para. 3(3)(b)
- ^aWords substituted by S.I. 1988/1978, para. 5(2)
- ^aRule 5(4)-(6) inserted by S.I. 1988/1978, para. 5(3)
- ^aRule 7(1)(a) substituted for rule 7(1)(a)(b) by S.I. 1988/1978, para. 6
- ^aSub-paragraph reflected as sub-paragraph (b) by S.I. 1988/1978, para. 6
- ^aWords inserted by S.I. 1986/1230, para. 3(4)(a)
- ^aWords inserted by S.I. 1984/255, para. 3(4)(a)
- ^aWords inserted by S.I. 1986/1978, para. 7(1)
- ^aWords repealed by S.I. 1986/1230, para. 3(4)(b)
- ^aRule 9(2) inserted by S.I. 1984/255, para. 3(4)(c)
- ^aRule 9(2A) inserted by S.I. 1988/1978, para. 7(2)
- ^aParagraph renumbered by S.I. 1984/255, para. 3(4)(b)
- ^aWord inserted by S.I. 1986/1230, para. 3(4)(c)
- ^aRule 11(1)(2) substituted by S.I. 1986/1230, para. 3(5)(a)

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

- ^aWord substituted by S.I. 1986/1230, para. 3(5)(b)
- ^aRule 11(5) inserted by S.I. 1986/1230, para. 3(5)(c)
- ^aRule 11A inserted by S.I. 1984/255, para. 3(6)
- ^aWord substituted by S.I. 1986/1230, para. 3(6)(a)
- ^aWords repealed by S.I. 1986/1230, para. 3(6)(b)
- ^a“1984” substituted for “1907” by S.I. 1986/1230, para. 3(6)(c)
- ^aRule 11A(3) substituted by S.I. 1986/1230, para. 3(6)(d)
- ^aRule 11A(9) inserted by S.I. 1986/1230, para. 3(6)(e)
- ^aRule 12 substituted by S.I. 1986/1946, para. 2(3)
- ^aRule 13 substituted by S.I. 1988/1978, para. 8
- ^aRule 15A inserted (9.4.1990) by S.I. 1990/061, para. 2(2)
- ^aRule 20A inserted by S.I. 1986/1946, para. 2(3)
- ^a“Cat” inserted by S.I. 1986/1946, para. 2(4)(a)
- ^aWords inserted by S.I. 1986/1946, para. 2(4)(b)
- ^aWords inserted by S.I. 1988/1978, para. 9
- ^aWord inserted by S.I. 1986/1946, para. 2(4)(c)
- ^aRule 21(1)(b) inserted by S.I. 1986/1946, para. 2(4)(d)
- ^aRule 21(2) substituted by S.I. 1986/1946, para. 2(4)
- ^aRule 21A inserted by S.I. 1986/1946, para. 2(5)
- ^aRule 21B, 21C inserted by S.I. 1988/1978, para. 10
- ^aWords repealed by S.I. 1986/1230, para. 3(8)
- ^aWords substituted by S.I. 1986/1946, para. 2(5)
- ^aRule 22(2) repealed by S.I. 1986/1230, para. 3(8)(c)
- ^aParagraph renumbered paragraph (2) by S.I. 1986/1230, para. 3(8)(c)
- ^aRule 23 substituted by S.I. 1984/255, para. 3(9)
- ^aWords substituted by S.I. 1986/1946, para. 2(6)(a)
- ^aWords substituted by S.I. 1986/1946, para. 2(6)
- ^aWords repealed by S.I. 1986/1230, para. 3(9)
- ^aWords repealed by S.I. 1986/1230, para. 3(10)
- ^aWords inserted by S.I. 1986/1946, para. 2(6)
- ^aRule 34 substituted by S.I. 1986/1230, para. 3(11)
- ^aWords repealed by S.I. 1984/255, para. 3(12)(a)
- ^a“(1)” inserted by S.I. 1986/1230, para. 3(12)(a)
- ^aWords inserted by S.I. 1984/255, para. 3(12)(b)
- ^aWords substituted by S.I. 1986/1230, para. 3(12)(b)
- ^aRule 56(2)(3) inserted by S.I. 1986/1230, para. 3(12)(c)
- ^aRule 57A inserted by S.I. 1988/1978, para. 11
- ^aRule 58(1) substituted by S.I. 1984/255, para. 3(13)(a)
- ^aWords repealed by S.I. 1986/1230, para. 3(13)
- ^aRule 59(3) inserted by S.I. 1984/255, para. 3(13)(b)
- ^aRule 59A inserted by S.I. 1984/255, para. 3(14) and substituted by S.I. 1986/1230, para. 3(14)
- ^aWords inserted by S.I. 1988/1978, para. 12
- ^aRule 72(1) substituted by S.I. 1984/255, para. 3(15)(a)
- ^aWords substituted by virtue of S.I. 1986/1230, para. 3(15)(a) and S.I. 1986/1946, para. 2(7)
- ^aWord substituted by S.I. 1986/1946, para. 2(7)(b)(a)
- ^a“1984” substituted by S.I. 1986/1230, para. 3(15)(b)
- ^aWords inserted by S.I. 1984/255, para. 3(15)(b)
- ^aRule 72(1) repealed by S.I. 1984/255, para. 3(15)(c)
- ^aRule 72A inserted by S.I. 1986/1946, para. 2
- ^aRule 84A inserted by S.I. 1986/1946, para. 2(8)
- ^aWord inserted by S.I. 1984/255, para. 3(16)
- ^aRule 86A inserted by S.I. 1984/255, para. 3(17)
- ^aRule 62(2)(3) substituted for rule 62(2) by S.I. 1988/1978, para. 13
- ^a“(1)” inserted by S.I. 1988/1978, para. 14(a)
- ^aRule 96(2) inserted by S.I. 1988/1978, para. 14(b)
- ^aWord substituted by S.I. 1983/1546, para. 2(a)
- ^aWords substituted by S.I. 1983/1546, para. 2(b)
- ^aRule 107A inserted (9.4.1990) by S.I. 1990/061, para. 2(3)

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COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

- ¹⁴ Word substituted by S.I. 1983/546, para. 3(1)
- ¹⁵ Rule 129 substituted by S.I. 1986/1230, para. 3(16)
- ¹⁶ Rule 130 inserted by S.I. 1986/1230, para. 3(17)
- ¹⁷ Words substituted by S.I. 1986/1946, para. 2(9)
- ¹⁸ "21" substituted by S.I. 1988/1978, para. 15
- ¹⁹ Words inserted by S.I. 1986/255, para. 3(20)(a)
- ²⁰ Words repealed by S.I. 1986/1230, para. 3(18)
- ²¹ "(1)" inserted by S.I. 1984/255, para. 3(20)(b)
- ²² Rule 131(2)-(4) inserted by S.I. 1984/255, para. 3(20)(c)
- ²³ Words inserted by S.I. 1984/255, para. 3(21)
- ²⁴ Words repealed by S.I. 1986/1230, para. 3(19)
- ²⁵ Rule 132A inserted by S.I. 1986/1230, para. 3(20)
- ²⁶ Rule 132B inserted by S.I. 1986/1966, para. 2(10)
- ²⁷ Rules 132C-132E inserted by S.I. 1986/604, para. 2
- ²⁸ Rule 132F inserted (3.12.1990) by S.I. 1990/2238, para. 6
- ²⁹ Rule 132F inserted (9.4.1990) by S.I. 1990/661, para. 2(4)
- ³⁰ Words repealed by S.I. 1986/1230, para. 3(21)(a)
- ³¹ "1984" substituted by S.I. 1986/1230, para. 3(21)(b)
- ³² Words inserted by S.I. 1986/1946, para. 2(7)
- ³³ Rules 135-143 inserted by S.I. 1984/255, para. 3(22)
- ³⁴ "1984" substituted by S.I. 1986/1230, para. 3(22)
- ³⁵ Words inserted by S.I. 1986/1946, para. 2(8)
- ³⁶ Rule 138(6)(a) substituted for rule 138(6)(a)(b) by S.I. 1988/1978, para. 16
- ³⁷ Sub-paragraph relettered sub-paragraph (b) by S.I. 1988/1978, para. 16
- ³⁸ Rule 138(9)-(11) substituted for rule 138(9)(10) by S.I. 1986/1230, para. 3(23)
- ³⁹ "21" substituted by S.I. 1988/1978, para. 16(2)
- ⁴⁰ Rule 139 substituted by S.I. 1988/1946, para. 2(9)
- ⁴¹ Words inserted by S.I. 1986/1946, para. 3(10)(a)
- ⁴² Rule 140(a) inserted by S.I. 1986/1946, para. 2(10)(b)
- ⁴³ Words inserted by S.I. 1986/1946, para. 2(11)
- ⁴⁴ Words substituted by S.I. 1986/1230, para. 3(24)
- ⁴⁵ Rules 144-146 inserted (error: as to rules 147-149) by S.I. 1984/921 paras. 3, 4(2)
- ⁴⁶ "21" substituted by S.I. 1988/1978, para. 17
- ⁴⁷ Words substituted by 1984/255, para. 3(23)(a)
- ⁴⁸ Form B1 inserted by S.I. 1984/255, para. 3(23)(b), Sch.
- ⁴⁹ Words substituted by S.I. 1984/255, para. 3(23)(c)
- ⁵⁰ Forms B3-B6 inserted by S.I. 1988/1978, para. 18(4), Sch. 1
- ⁵¹ Form CC inserted by S.I. 1984/921, para. 5, Sch.
- ⁵² "21" substituted by S.I. 1988/1978, para. 18(2)
- ⁵³ Form C1 substituted by S.I. 1984/255, para. 3(23)(d), Sch.
- ⁵⁴ Form C2 inserted by S.I. 1988/1978, para. 18(4), Sch.
- ⁵⁵ Words inserted by S.I. 1986/1230, para. 4(1)(a)
- ⁵⁶ Words inserted by S.I. 1988/1978, para. 18(3)
- ⁵⁷ Words substituted by S.I. 1986/1230, para. 4(1)(b)
- ⁵⁸ Form E1 inserted by S.I. 1986/1230, para. 4(2)(a), Sch.
- ⁵⁹ Form H1 inserted by S.I. 1988/1978, para. 18(4), Sch. 1
- ⁶⁰ Forms H1-417 inserted by S.I. 1986/1230, para. 4(2)(b), Sch.
- ⁶¹ Form H8 inserted by S.I. 1988/1978, para. 18(4), Sch. 1
- ⁶² "1987" substituted by S.I. 1983/546, para. 2(6)
- ⁶³ Words substituted by S.I. 1986/1230, para. 4(1)(c)
- ⁶⁴ Words inserted by S.I. 1984/255, para. 3(23)(e)(i) and repealed by S.I. 1986/1230, para. 4(1)(d)
- ⁶⁵ Form S para. (3) substituted by S.I. 1984/255, para. 3(23)(e)(ii)
- ⁶⁶ Forms S1-S3 inserted by S.I. 1984/255, para. 3(23)(f), Sch.
- ⁶⁷ Words repealed by S.I. 1986/1230, para. 4(1)(e)
- ⁶⁸ Words inserted by S.I. 1984/255, para. 3(23)(g)
- ⁶⁹ Words inserted by S.I. 1984/255, para. 3(23)(g) and repealed by S.I. 1986/1230, para. 4(1)(a)
- ⁷⁰ Word repealed by S.I. 1986/1230, para. 4(1)(f)(b)
- ⁷¹ Forms T1 and T2 inserted by S.I. 1986/513, para. 2(4), Sch.

COURTS, SCOTLAND: 3

Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)

- ¹ Word inserted by S.I. 1986/1966, para. 2(11)
- ² Words inserted by S.I. 1986/1230, para. 4(1)(a)
- ³ Forms V, W, X and Z inserted by S.I. 1984/255, para. 3(23)(b), Sch.
- ⁴ Word repealed by S.I. 1986/1230, para. 4(1)(b)
- ⁵ Forms V1 and V2 inserted by S.I. 1986/1230, para. 4(2)(c), Sch.
- ⁶ Form SDA inserted by S.I. 1984/255, para. 3(23)(d), Sch.
- ⁷ Form SDA-SDA7 inserted by S.I. 1986/1230, para. 4(2)(d), Sch.
- Sch. 1 certain rules and forms applied by S.I. 1976/476, para. 3, S.I. 1988/1978, para. 2(1), Sch. rule 2, Appendix 2 and S.I. 1990/661, para. 3
- rule 128(1)-(3) Sch. 1 applied by Bankruptcy Act 1985 (c.66, SIF 66), s. 47(4) (as amended by S.I. 1986/517, para. 5)
- (5) extended by S.I. 1988/110, rules 82, 125(10)
- Sheriff Courts (Scotland) Act 1913 (2 and 3 Geo. 5 (c.28))
- S. 6 repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55, SIF 36.3, 72.3), ss. 11, 26(2), Sch. 2
- Sheriff Courts and Legal Officers (Scotland) Act 1927 (c.35)
- S. 1(3) after "foregoing subsection" there is inserted "that subject to subsections (4) and (5) below" by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 36.1), s. 47(a)
- (4)(5) after s. 1(3) there is added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 36.1), s. 47(b) the following:
 - (4) The right vested—
 - (a) in the Secretary of State under subsection (1) above shall include the right to transfer the sheriff clerk of one sheriff court district to another office, whether of sheriff clerk or (however styled) of sheriff clerk deputy, in another sheriff court district;
 - (b) in the Lord Advocate under subsection (2) above shall include the right to transfer the procurator fiscal of one district to an office, whether of procurator fiscal or (however styled) of procurator fiscal deputy, in another district;
 - where in the opinion of the Secretary of State or, as the case may be, of the Lord Advocate the transfer is for the purpose of securing efficient organisation and administration.
 - (5) It is hereby declared that, for the purposes of subsection (3) above, a transfer under subsection (4) above is not a removal from office.
- S. 7 repealed by Statute Law (Repeals) Act 1989 (c.43), s. 1(1), Sch. 1 Pt. 1 Op. 3
- Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (c.42)
- S. 4(2)(b)(c) the repeal of s. 4(2)(b)(c) by Consumer Credit Act 1974 (c.39, SIF 60), s. 1(2)(d), Sch. 3 is no longer prospective, S.I. 1980/151 art. 5, Sch. 2 Pt. 1

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)

Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (c.42) (contd.)

"(2) There shall be a form of summary cause process, to be known as a "small claim", which shall be used for the purposes of such descriptions of summary cause proceedings as are prescribed by the Lord

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COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1971 (c.58) (contd.)
 (3) No enactment or rule of law relating to admissibility or corroboration of evidence before a court of law shall be binding in a small claim.
 (4) An order under subsection (2) above shall be by statutory instrument but shall not be made unless a draft of it has been approved by a resolution of each House of Parliament.
 S. 36(4) repealed by Debtors (Scotland) Act 1987 (c.18, SIF 45-2), s. 108, Sch. 7 paras. 5, 9(1), Sch. 8
 Ss. 36A, 36B after section 36 there is inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 36-1), s. 18(2) the following:
 “Further provisions as to small claims.
 36A. Where the pursuer in a small claim is not—
 (a) a partnership or a body corporate; or
 (b) acting in a representative capacity,
 he may require the sheriff clerk to effect service of the summons on his behalf.
 36B.—(1) No award of expenses shall be made in a small claim in which the value of the claim does not exceed such sum as the Lord Advocate shall prescribe by order.
 (2) Any expenses which the sheriff may award in any other small claim shall not exceed such sum as the Lord Advocate shall prescribe by order.
 (3) Subsections (1) and (2) above do not apply to a party to a small claim—
 (a) who being a defender—
 (i) has not stated a defence; or
 (ii) having stated a defence, has not proceeded with it; or
 (iii) having stated and proceeded with a defence, has not acted in good faith as to its merits; or
 (b) on whose part there has been unreasonable conduct in relation to the proceedings or the claim;
 nor do they apply in relation to an appeal to the sheriff principal.
 (4) An order under this section shall be by statutory instrument but shall not be made unless a draft of it has been approved by a resolution of each House of Parliament.”
 S. 37(1) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55, SIF 36-3), s. 16(4)(ii), in s. 37(1) after “sheriff” where secondly occurring there is inserted “—(a)” and at the end there is added: “; (b) may, subject to section 7 of the Sheriff Courts (Scotland) Act 1907, on the motion of any of the parties to the cause, if he is of the opinion that the importance or difficulty of the cause make it appropriate to do so, remit the cause to the Court of Session.”
 (2A) s. 37(2A) inserted after subsection (2) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55, SIF 36-3), s. 16(b) and, as amended as indicated below, the new subsection is as follows:
 “(2A) In the case of any action in the sheriff court [“being an action for divorce or an action in relation to the custody [tutary, curatory]

COURTS, SCOTLAND: 3
Sheriff Courts (Scotland) Act 1971 (c.58) (contd.)
 or adoption of a child the sheriff may, of his own accord, at any stage remit the action to the Court of Session.”
 Words inserted by Debtors (Scotland) Act 1987 (c.18, SIF 45-2), s. 108, Sch. 7 paras. 5, 9(1), Sch. 8
 Words inserted by Law Reform (Parent and Child) (Scotland) Act 1986 (c.9, SIF 49-6), s. 9, 5(1), Sch. 1 para. 11
 (2B)(2C) after s. (2A) there is inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55, SIF 36-3), s. 16(3)(a) the following:
 “(2B) In the case of any small claim the sheriff at any stage—
 (a) may, if he is of the opinion that a difficult question of law or a question of fact of exceptional complexity is involved, of his own accord or on the motion of any party to the small claim;
 (b) shall, on the joint motion of the parties to the small claim, direct that the small claim be treated as a summary cause (not being a small claim) or ordinary cause, and in that case the small claim shall be treated for all purposes (including appeal) as a summary cause (not being a small claim) or ordinary cause as the case may be.
 (2C) In the case of any cause which is not a small claim by reason only of any monetary limit applicable to a small claim or to summary causes, the sheriff at any stage shall, on the joint motion of the parties to the cause, direct that the cause be treated as a small claim and in that case the cause shall be treated for all purposes (including appeal) as a small claim and shall proceed accordingly.”
 (3) subsection (3) substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55, SIF 36-3), s. 16(c) and, as amended as indicated below, the new subsection is as follows:
 “(3). A decision—
 (a) to remit, or not to remit, under subsection (2A) [(2B) or (2C)] above; or
 (b) to make, or not to make, a direction by virtue of paragraph (b) of, or the provision to, subsection (2) above,
 shall not be subject to review; but from a decision to remit, or not to remit, under subsection (1)(b) above an appeal shall lie to the Court of Session.”
 Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 36-1), s. 18(3)(a)
 S. 38 for from “any summary cause” to “(b)” there is substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 36-1), s. 18(4) the following:
 “—(a) any summary cause an appeal shall lie to the sheriff principal on any point of law from the final judgment of the sheriff; and
 (b) any summary cause other than a small claim an appeal shall lie”
 s. 38 excluded by Debtors (Scotland) Act 1987 (c.18, SIF 45-2), ss. 103(1), 108(2), Sch. 7 paras. 5, 9(1)

COURTS, SCOTLAND: 3, 4
Sheriff Courts (Scotland) Act 1971 (c.58) (contd.)
 S. 41(2) “section 39” section 40” repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55, SIF 36-3, 72-2), ss. 11(2), 28(2), Sch. 3
 List of Omissions
 The following provisions referred to in the list of omissions for this Act have been repealed:
 s. 39 ... repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55, SIF 72-2), s. 28(2), Sch. 3
 s. 40 ... repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55, SIF 36-3, 72-2), ss. 11(2), 28(2), Sch. 3
 Sch. 1 para. 4 ... repeals by Rent (Scotland) Act 1984 (c.58, SIF 75-4), s. 17(7), Sch. 10
 Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14)
 S. 2(3) for “£25” there is substituted “level 3 on the standard scale” by Criminal Justice Act 1982 (c.48, SIF 39-1), s. 56, Sch. 7 para. 11
 S. 4(5) for “£200” there is substituted “level 1 on the standard scale” by virtue of (E.W.) Criminal Justice Act 1982 (c.48, SIF 39-1), ss. 36, 46, (S.) Criminal Procedure (Scotland) Act 1975 (c.21, SIF 39-1), ss. 269F, 269G and (N.I.) S.I. 1984/703 (N.I.3), arts. 5, 6
 S. 9 for from “the exploration” to “resources” there is substituted “any activity falling within subsection (2) of section 21 of the Oil and Gas (Enterprise) Act 1982” by Oil and Gas (Enterprise) Act 1982 (c.23, SIF 86), s. 37, Sch. 3 para. 34
 for “section 3(2) of the Continental Shelf Act 1964” there is substituted “subsection (1) of that section” by Oil and Gas (Enterprise) Act 1982 (c.23, SIF 86), s. 37, Sch. 3 para. 34
 S. 10(2)(3)(5) repealed by Statute Law (Repeals) Act 1989 (c.43), s. 1(1), Sch. 1 Pt. 1 Gp. 3
 Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)
 S. 11(1) from “and accordingly” onwards repealed by Statute Law (Repeals) Act 1989 (c.43), s. 1(1), Sch. 1 Pt. 1 Gp. 3
 (2) repealed by Statute Law (Repeals) Act 1989 (c.43), s. 1(1), Sch. 1 Pt. 1 Gp. 3
 List of Omissions
 The following provisions referred to in the list of omissions for this Act have been repealed:
 s. 12 ... repealed by Bankruptcy (Scotland) Act 1985 (c.66, SIF 66), s. 75(2), Sch. 8

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COURTS, SCOTLAND: 4	
Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55) (contd.)	
S. 25(a)(c)(d)	repealed by Prescription and Limitation (Scotland) Act 1984 (c.45, SIF 97), s. 8(2), Sch. 2
S. 25(c)	repealed by Solicitors (Scotland) Act 1988 (c.42, SIF 762), s. 4(2)(3), Sch. 2
S. 26	repealed by Legal Aid (Scotland) Act 1986 (c.47, SIF 772), ss. 43, 45, Sch. 4 para. 3(1), Sch. 5
4. DISTRICT COURTS	
District Courts (Scotland) Act 1975 (c.20)	
S. 1A	after s. 1 there is inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 361), s. 33 the following: 1A.—(1) Where it appears to the Secretary of State that— (a) there is insufficient business for the district court in a particular commission area; and (b) such insufficiency of business is likely to continue, he may by order provide that the district court for that area cease to exist on a specified date. (2) Where it appears to the Secretary of State that, in a commission area in which there is no district court, there is likely to be sufficient business to justify the establishment of such a court, he may by order provide for the establishment of such a court in that area on a specified date. (3) An order under subsection (1) or (2) above may contain all such provisions as appear to the Secretary of State to be necessary or expedient for rendering the order of full effect and any incidental, supplemental or consequential provisions which appear to him to be necessary or expedient for the purposes of the order, including, but without prejudice to the generality of the foregoing words, provisions amending, repealing or revoking any enactment (whether passed or made before or after the commencement of this enactment). (4) Before making an order under subsection (1) or (2) above, the Secretary of State shall consult the district or islands council for the area concerned, and such other persons as appear to him to have an interest in the proposed order. (5) Orders under subsection (1) or (2) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
S. 2(1)	excluded by Bail etc. (Scotland) Act 1980 (c.4, SIF 391), s. 10(3) after “and” there is inserted “subject to section 10 of the Bail etc. (Scotland) Act 1980 (ittings of sheriff and district courts)” by Bail etc. (Scotland) Act 1980 (c.4, SIF 391), s. 1(2)(2), Sch. 1 para. 2
S. 3(3)	the repeal of s. 3(3) by Criminal Law Act 1977 (c.45, SIF 391), s. 65(5), Sch. 13 is no longer prospective
S. 11(7)	at the end of s. 11(7) there is inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 361), s. 34(a) the following:

COURTS, SCOTLAND: 4, 5	
District Courts (Scotland) Act 1975 (c.20) (contd.)	
“and, notwithstanding that he remains a duly nominated member of the authority, may be removed from office in like manner as a justice appointed under that section.”	
S. 13A	after section 13 there is inserted by Statute Law (Repeals) Act 1989 (c.43), s. 1(2), Sch. 2 Pt. 1 para. 2 the following: 13A.—(1) Subject to subsections (2) and (3) below, a person shall be disqualified for being appointed or acting as a justice of the peace if he is a person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt elsewhere than in Scotland. (2) Where a person is disqualified under this section by reason of his estate having been sequestrated, the disqualification shall cease if and when— (a) the award of sequestration is recalled or reduced; or (b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985. (3) Where a person is disqualified under this section by reason of having been adjudged bankrupt, the disqualification shall cease if and when— (a) the adjudication of bankruptcy against him is annulled; or (b) he is discharged.”
S. 15(2)(aa)	in s. 15(2) at the end of paragraph (a) there is inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 361), s. 34(a) the following: “(aa) that by reason of the justice’s conduct it is expedient that he should cease to exercise judicial functions as a justice for the area;”
S. 19	repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 361), s. 39, Sch. 4
S. 27(1)	repeal of words by Criminal Law Act 1977 (c.45, SIF 391), s. 65(5), Sch. 13 (to which footnote 1 on p. 17 relates) is no longer prospective

List of Omissions

The following provisions referred to in the list of omissions for this Act have been repealed:

S. 21	repealed by Legal Aid (Scotland) Act 1986 (c.47, SIF 772), ss. 43, 45(3), Sch. 4 para. 3(1), Sch. 5
Sch. 1 para. 6	repealed by Wages Act 1986 (c.48, SIF 432), s. 32(2), Sch. 5 Pt. III

5. LYON COURT

Lyon King of Arms Act 1592 (c.29)

S. (3)	in s. (3) “messengers-und”, “and messengers” and the words from “With power” to the end repealed by Debtors (Scotland) Act 1987 (c.18, SIF 452), s. 108, Sch. 7 para. 5, 9(1), Sch. 8
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COURTS, SCOTLAND: 5

Lyon King of Arms Act 1592 (c.29) (contd.)

S. (5)	in s. (5) “and incarceration” and the words from “under the pane” to the end repealed by Debtors (Scotland) Act 1987 (c.18, SIF 452), s. 108, Sch. 7 paras. 5, 9(1), Sch. 8
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Lyon King of Arms Act 1609 (c.95)

The words from “the fourthent” to “Together also with” repealed by Debtors (Scotland) Act 1987 (c.18, SIF 452), s. 108, Sch. 7 paras. 5, 9(1), Sch. 8

Lyon King of Arms Act 1672 (c.47)

The words from “are judges” to “office and” repealed by Debtors (Scotland) Act 1987 (c.18, SIF 452), s. 108, Sch. 7 paras. 5, 9(1), Sch. 8

Lyon King of Arms Act 1867 (c.17)

S. 2	for “according to the present law and practice” there is substituted “in accordance with Part V of the Debtors (Scotland) Act 1987 and any Act of Sederunt made thereunder” by Debtors (Scotland) Act 1987 (c.18, SIF 452), s. 108, Sch. 6 para. 5, Sch. 7 para. 5, 9(1)
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S. 10	from “Provided also” to the end of the section repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 361), s. 59, Sch. 2 para. 3, Sch. 4
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S. 11	from “and after the death” onwards repealed by Statute Law (Repeals) Act 1986 (c.12), s. 1(1), Sch. 1 Pt. 1 Gp. 4
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Sch. B	by virtue of S.I. 1980(44), art. 2, Sch. the fees in relation to the matters specified in Sch. B to the Act and repeated in column 1 of the Schedule to the said S.I. (which is printed below) are varied by substituting those specified in column 3 of the Schedule below (the fees payable immediately before the coming into force of the said S.I. being shown in column 2)
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COURTS, SCOTLAND: 5 Lyon King of Arms Act 1867 (c.17) (contd.)		
SCHEDULE		
Column 1 (Matter to which fee relates)	Column 2 (Fee formerly payable)	Column 3 (Fee payable)
	£	£
On every patent of arms with supporters	502.00	547.00
On every patent of arms without supporters	312.00	340.00
On every matriculation of arms with supporters, without a new patent	166.00	186.00
On every matriculation of arms without supporters, without a new patent	125.00	140.00
On every matriculation of arms without a new patent of arms, but with a patent of supporters	315.00	347.00
On every genealogy recorded	105.00	115.00
Additional for each member of the pedigree	3.25	4.00
Certificate regarding change of surname	37.00	41.00
Search in register of arms	3.25	4.00
Search in register of genealogies	7.00	7.00
General search in heraldic MSS	37.00	37.00
General search in genealogical MSS	37.00	37.00
On every extract from a register	7.00	8.00
On entering a caveat	22.00	24.00
On admission of a messenger-at-arms to practise in the district of Edinburgh	114.00	125.00
On admission of messenger-at-arms to practise out of the district of Edinburgh	99.00	109.00
Annual dues of a messenger-at-arms practising in the district of Edinburgh	18.00	20.00
Annual dues of a messenger-at-arms practising out of the district of Edinburgh	18.00	20.00
On renewal of a messenger's bond of caution	37.00	37.00
On recording resignation or change of residence of a messenger	3.25	4.00

COURTS, SCOTLAND: 5 Lyon King of Arms Act 1867 (c.17) (contd.)		
Column 1 (Matter to which fee relates)	Column 2 (Fee formerly payable)	Column 3 (Fee payable)
	£	£
On search for a messenger's cautioner	3.25	4.00
On every certified statement of name and designation of such cautioner, and date of bond	7.00	7.00
On each petition or paper lodged in a process against a messenger	7.00	7.00
On each interlocutor in a process against a messenger	7.00	7.00
On extracting each warrant, decree, or precept of suspension, first sheet	7.00	8.00
On ditto, each subsequent sheet	3.25	4.00
On affixing seal of office to warrant, decree or precept	7.00	8.00
On examining executions of service and intimations of precepts of suspension, marking them on the record and giving out certificates	7.00	8.00
On lending process and taking receipt	3.25	4.00
On return of process and scoring receipt	3.25	4.00
On re-admission of a messenger-at-arms	22.00	24.00
On the appointment of a herald	10.00	10.00
On the appointment of a pursuivant	10.00	10.00

VALID FROM 05/04/1993

[^{F304}FORM CSA 1 RULE 153

CERTIFICATE RELATING TO THE MAKING OF A MAINTENANCE ASSESSMENT UNDER THE CHILD SUPPORT ACT 1991

Textual Amendments

F304 Forms CSA 1,2 in Sch. 1, Appendix inserted (5.4.1993) by [S.I. 1993/919](#), [rule 3](#), Sch.

Status: Point in time view as at 04/05/1992. 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)

(insert place)(insert date) Notification has been received from the child support officer of the making of a maintenance assessment under the Child Support Act 1991. I certify that the decree or order granted on (insert date) insofar as it relates to the making or securing of periodical payments for (insert name(s) of child/children) ceases to have effect from (insert date, which should be the date 2 days after date on which the maintenance assessment was made). signed(signature of sheriff clerk)]

VALID FROM 05/04/1993

[FORM CSA 2 RULE 153

CERTIFICATE RELATING TO THE CANCELLATION OR CEASING TO HAVE EFFECT
OF A MAINTENANCE ASSESSMENT UNDER THE CHILD SUPPORT ACT 1991

.....

Modifications etc. (not altering text)
C25 Forms CSA 1,2 in Sch. 1, Appendix inserted (5.4.1993) by S.I. 1993/919, rule 3,Sch.

(insert place)(insert date) I certify that notification has been received from the child support officer that the jurisdiction of the child support officer under the Child Support Act 1991 terminated on (insert date of termination of child support officer's jurisdiction). signed (signature of sheriff clerk)]

F305F305SECOND SCHEDULE

.....

Textual Amendments
F305 Sch. 2 repealed by Statute Law Revision Act 1927 (c. 42), Sch. Pt. I

Status:

Point in time view as at 04/05/1992. This version of this Act contains provisions that are not valid for this point in time.

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