



# 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 ..... <sup>F1</sup>

## 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- F1 [S. 2](#) repealed by [Statute Law Revision Act 1927 \(c. 42\), Sch.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) [<sup>F2</sup> “sheriff principal” ] includes [<sup>F2</sup>sheriff];
- (b) “Tenant” includes sub-tenant;
- (c) “Lease” includes sub-lease;
- (d) “Action” [<sup>F3</sup>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 <sup>M1</sup>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) ..... <sup>F4</sup>
- (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) ..... <sup>F5</sup>
- (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 [<sup>F2</sup>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) ..... <sup>F6</sup>

#### 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

### [<sup>F7</sup>4 Jurisdiction.

The jurisdiction of the [<sup>F8</sup>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 [<sup>F8</sup>sheriffs principal], provided the defender shall upon any legal ground of jurisdiction be amenable to the jurisdiction of the [<sup>F8</sup>sheriff principal] before whom such cause or proceeding may be raised, and provided also that it shall not be competent to the [<sup>F8</sup>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 [<sup>F8</sup>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 [<sup>F9</sup>sheriffs principal] of Scotland, and such jurisdiction shall extend to and include—

- (1) Actions of declarator (except declarators of marriage or nullity of marriage, . . . <sup>F10</sup>):
  - (1A) . . . . . <sup>F11</sup>
  - [<sup>F12</sup>(2) Actions for aliment or separation (other than any action mentioned in subsection (2A) below) . . . <sup>F13</sup>]
  - [<sup>F14</sup>(2A) Actions, arising out of an application under section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, for the recovery of maintenance:]
  - [<sup>F15</sup>(2B) Actions for divorce]
  - <sup>F16</sup>(2C) . . . . .
- (3) Actions of division of commony and of division or division and sale of common property, in which cases the <sup>M2</sup>Division of Commonies Act 1695 concerning the division of commonies shall be read and construed as if it conferred jurisdiction upon the sherrif court in the same manner as upon the Court of Session:
- (4) Actions relating to questions of heritable right or title (except actions of adjudication save in so far as now competent and actions of reduction) including all actions of declarator of irritancy and removing, whether at the instance of a superior against a vassal or of a landlord against a tenant:
- (5) Suspension of charges or threatened charges upon the decrees of court granted by the [<sup>F9</sup>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 . . . <sup>F17</sup>: . . . <sup>F18</sup>: . . . <sup>F19</sup>.

#### Textual Amendments

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

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

#### Modifications etc. (not altering text)

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

#### Marginal Citations

- M2** Scots Act 1695 c. 69

### [<sup>F20</sup>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.]

#### Textual Amendments

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

## **[<sup>F21</sup>6 Action competent in sheriff court.**

[<sup>F22</sup>Subject to section 8 of the <sup>M3</sup>Domicile and Matrimonial Proceedings Act 1973 [<sup>F23</sup>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 [<sup>F24</sup>sheriff principal]—

- (a) Where the defender (or when there are several defenders [<sup>F25</sup>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 . . . <sup>F26</sup> has ceased to reside there for less than forty days [<sup>F26</sup>and has no known residence in Scotland];
- (b) Where the defender carries on business, and has a place of business within the [<sup>F27</sup>jurisdiction], and is cited either personally or at such place of business;
- (c) Where the defender is a person not otherwise subject to the jurisdiction of the courts of Scotland, and a ship or vessel of which he is owner or part owner or master, or goods, debts, money, or other moveable property belonging to him, have been arrested within the jurisdiction;
- (d) Where the defender is the owner or part owner or tenant or joint tenant, whether individually or as a trustee, of heritable property within the jurisdiction, and the action relates to such property or to his interest therein;
- (e) Where the action is for interdict against an alleged wrong being committed or threatened to be committed within the jurisdiction;
- (f) Where the action relates to a contract the place of execution or performance of which is within the jurisdiction, and the defender is personally cited there;
- (g) Where in an action of furthcoming or multiplepoinding the fund or subject in medio is situated within the jurisdiction; or the arrestee or holder of the fund is subject to the jurisdiction of the court;
- (h) Where the party sued is the pursuer in any action pending within the jurisdiction against the party suing;
- [<sup>F28</sup>(i) where the action is founded on delict, and the delict forming the cause of action was committed within the jurisdiction”.]
- (j) Where the defender prorogates the jurisdiction of the court.]

### **Textual Amendments**

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

### **Modifications etc. (not altering text)**

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

### **Marginal Citations**

- M3** 1973 c. 45.

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## 7 <sup>X1</sup>Privative jurisdiction in causes under fifty pounds value.

.....<sup>F29</sup>.....<sup>F30</sup>, all causes not exceeding [<sup>F31</sup>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:

...<sup>F32</sup>Provided ...<sup>F32</sup> 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 .....<sup>F33</sup>

### Textual Amendments

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

## 9 .....<sup>F34</sup>

### 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 <sup>x2</sup> Appointment of sheriffs and salaried sheriffs-substitute.

The right of appointing to the salaried offices of [<sup>F35</sup>sheriff principal] and salaried [<sup>F35</sup>sheriff] shall be vested in His Majesty, and shall be exercised on the recommendation of the [<sup>F36</sup>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. .... <sup>F37</sup>

#### 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 [<sup>F38</sup>sheriff principal or sheriff] such salary as to the Treasury may seem meet, and every such salary shall be paid [<sup>F39</sup>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. .... <sup>F40</sup>

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

### Textual Amendments

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

## 18, 19. .... <sup>F42</sup>

### 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 ..... <sup>F43</sup>

### Textual Amendments

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

## 21 ..... <sup>F44</sup>

### Textual Amendments

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

## 22— ..... <sup>F45</sup> 24.

### Textual Amendments

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

## 25, 26. .... <sup>F46</sup>

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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 [<sup>F47</sup>sheriff principal] shall be competent against all final judgments of the [<sup>F47</sup>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 . . . <sup>F48</sup>;
- (E) [<sup>F49</sup>Refusing a reponing note; or
- (F) Against which the [<sup>F47</sup>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 [<sup>F47</sup>sheriff principal] appeals may be taken from the judgment of the [<sup>F47</sup>sheriff], which appeals shall be heard by the succeeding [<sup>F47</sup>sheriff principal] when he shall enter upon office.

[<sup>F49</sup>It shall be competent for the [<sup>F47</sup>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

### [<sup>F50</sup>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 [<sup>F51</sup>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 [<sup>F51</sup>sheriff principal or sheriff] either ex proprio motu or on the motion of any party, grants leave to appeal:

... <sup>F52</sup>

- (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 ..... <sup>F53</sup>

#### 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 ..... <sup>F54</sup>

#### 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 ..... <sup>F55</sup>



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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 <sup>M4</sup>Bankruptcy (Scotland) Act 1856, or against whom a decree of cessio has been pronounced under the <sup>M5</sup>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,<sup>F57</sup> . . . such letter of removal shall have the same force and effect as an extract decree of removing, and shall be a sufficient warrant for ejection to the like effect as is provided in regard to a lease or extract thereof, and shall be operative against the granter of such letter of removal or any party in his right within the same time and in the same manner after the like previous notice to remove: Provided always that where such letter is dated and signed within twelve months before the date of removal or before the first ish, if there be more than one ish, it shall not be necessary that any notice of any kind shall be given by either party to the other.

#### Textual Amendments

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

### 36 Notice to remove.

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

#### Modifications etc. (not altering text)

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

### 37 Notice of termination of tenancy.

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

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

#### Textual Amendments

**F58** Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), **s. 4**

#### Modifications etc. (not altering text)

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

### [<sup>F59</sup>37A Exception for certain tenancies

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

#### Textual Amendments

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

## SUMMARY REMOVINGS

### 38 Summary removing.

Where houses or other heritable subjects are let for a shorter period than a year, any person by law authorised may present to the [<sup>F60</sup>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.

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

#### Textual Amendments

**F60** Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), **s. 4**

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

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#### Modifications etc. (not altering text)

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

### [<sup>F62</sup>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 <sup>M6</sup>Rent (Scotland) Act 1984, and Rule 112 of Schedule 1 to this Act shall no longer apply to any such notice under section 37 above.]

#### Textual Amendments

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

#### Marginal Citations

- M6** 1984 c.58(39:4)

## [<sup>F63</sup>CONSISTORIAL CAUSES

#### Textual Amendments

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

### 38B Lord Advocate as party to action for divorce.

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

### <sup>F64</sup>38C] .....

#### Textual Amendments

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

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## PROCEDURE RULES

### 39 Procedure rules.

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

#### Modifications etc. (not altering text)

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

### 40 Court of Session to regulate fees, &c.

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

#### Textual Amendments

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

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

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

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

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

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

#### Marginal Citations

M7 1967 c.43 (77:2).

### 41 ..... <sup>F71</sup>

#### Textual Amendments

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

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42— ..... F72  
48.

#### Textual Amendments

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

49 ..... F73

#### Textual Amendments

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

## SUMMARY APPLICATIONS

### 50 Summary applications.

In summary applications (where a hearing is necessary) the [<sup>F74</sup>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 [<sup>F74</sup>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 <sup>M8</sup>Sheriff Courts (Scotland) Act 1876, such direction shall be read and construed as if it referred to this section of this Act: Provided also that nothing contained in this Act shall affect any right of appeal provided by any Act of Parliament under which a summary application is brought.

#### Textual Amendments

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

#### Modifications etc. (not altering text)

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

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

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

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

#### Marginal Citations

**M8** 1876 c. 70.

51 ..... F75

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#### Textual Amendments

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

52

..... **F76**

#### Textual Amendments

**F76** [S. 52](#) repealed by [Statute Law Revision Act 1927 \(c. 42\)](#), [Sch. Pt. I](#)

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## SCHEDULES

### <sup>F77</sup>FIRST SCHEDULE

#### ORDINARY CAUSE RULES 1993

##### Textual Amendments

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

### <sup>F77</sup>INITIATION AND PROGRESS OF CAUSES

#### CHAPTER 1

##### CITATION, INTERPRETATION, REPRESENTATION AND FORMS

###### *Citation*

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

###### *Interpretation*

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



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

**Marginal Citations**

**M9** 1988 c.32.

*Representation*

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

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

**Marginal Citations**

**M10** 1987 c.18.

*Forms*

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

## CHAPTER 2

### RELIEF FROM COMPLIANCE WITH RULES

*Relief from failure to comply with rules*

- 2.1. (1) The sheriff may relieve a party from the consequences of failure to comply with a provision in these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as he thinks fit.
- (2) Where the sheriff relieves a party from the consequences of a failure to comply with a provision in these Rules under paragraph (1), he may make such order as he thinks fit to enable the cause to proceed as if the failure to comply with the provision had not occurred.

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## CHAPTER 3

### COMMENCEMENT OF CAUSES

#### *Form of initial writ*

- 3.1<sup>F78</sup> (1) A cause shall be commenced—
- (a) in the case of an ordinary cause, by initial writ in Form G1; or
  - (b) in the case of a commercial action within the meaning of Chapter 40, by initial writ in Form G1A.]
- (2) The initial writ shall be written, typed or printed on A4 size paper of durable quality and shall not be backed or folded.
- (3) Where the pursuer has reason to believe that an <sup>F79</sup>[agreement] exists prorogating jurisdiction over the subject-matter of the cause to another court, the <sup>F80</sup>[initial] writ shall contain details of that agreement.
- (4) Where the pursuer has reason to believe that proceedings are pending before another court involving the same cause of action and between the same parties as those named in the instance of the initial writ, the <sup>F80</sup>[initial] writ shall contain details of those proceedings.
- (5) An article of condescendence shall be included in the <sup>F80</sup>[initial] writ averring—
- (a) the ground of jurisdiction; and
  - (b) the facts upon which the ground of jurisdiction is based.
- (6) Where the residence, registered office or place of business, as the case may be, of the defender is not known and cannot reasonably be ascertained, the pursuer shall set out in the instance that the whereabouts of the defender are not known and aver in the 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.

#### **Textual Amendments**

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

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

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

#### *Actions relating to heritable property*

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

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

#### Textual Amendments

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

#### Marginal Citations

**M11** 2001 asp 11.

### Warrants of citation

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

#### Textual Amendments

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

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

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

### Warrants for arrestment to found jurisdiction

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

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

#### Textual Amendments

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

### *Warrants and precepts for arrestment on dependence*

#### 3.5. (1) A copy of—

- (a) an initial writ with warrant to cite which includes a warrant to arrest on the dependence,
- (b) defences which include, or a minute of amendment which includes, a counterclaim with warrant granted to arrest on the dependence endorsed on that writ,

certified as a true copy by the pursuer or defender, as the case may be, or his solicitor, shall be sufficient warrant to arrest on the dependence if it is otherwise competent to do so.

#### (2) A precept of arrestment may be issued by the sheriff<sup>F86</sup> . . . on production to him of—

- (a) an initial writ containing a crave for payment of money on which a warrant of citation has been issued;
- (b) defences which include, or a minute of amendment which includes, a counterclaim containing a crave for payment of money; or
- (c) a document of liquid debt.

[<sup>F87</sup>(3) Averments to justify the granting of a warrant to arrest on the dependence, or a precept of arrestment, shall be included in the condescendence of an initial writ or the statement of claim in a counterclaim.]

#### Textual Amendments

**F86** Word in [Sch. 1 rule 3.5\(2\)](#) omitted (21.5.2004) by virtue of [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2004 \(S.S.I. 2004/197\)](#), [art. 2\(2\)\(a\)](#)

**F87** [Sch. 1 rule 3.5\(3\)](#) 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\(2\)\(b\)](#)

### *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.

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- (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 <sup>M12</sup>Administration of Justice (Scotland) Act 1972 (orders for inspection of documents and other property, etc.)) sought before the expiry of the period within which he could lodge a notice of intention to defend.

#### **Marginal Citations**

**M12** 1972 c.59.

#### *Form lodging and renewal of caveats*

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

## CHAPTER 5

### CITATION, SERVICE AND INTIMATION

#### *Signature of warrants*

- 5.1. (1) Subject to paragraph (2), a warrant for citation [<sup>F88</sup> or intimation] may be signed by the sheriff or sheriff clerk.

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- (2) The following warrants shall be signed by the sheriff:—
- (a) a warrant containing an order shortening or extending the period of notice or any other order other than a warrant which the sheriff clerk may sign;
  - <sup>F89</sup>(b) a warrant for arrestment to found jurisdiction;
  - (ba) a warrant for arrestment on the dependence;]
  - (c) a warrant for intimation ordered under rule 33.8 (intimation where improper association).
- (3) Where the sheriff clerk refuses to sign a warrant which he may sign, the party presenting the initial writ may apply to the sheriff for the warrant.

#### Textual Amendments

- F88** Words in [Sch. 1 rule 5.1\(1\)](#) substituted (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\(3\)\(a\)](#)
- F89** [Sch. 1 rule 5.1\(2\)\(b\)\(ba\)](#) substituted (21.5.2004) for [Sch. 1 rule 5.1\(2\)\(b\)](#) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2004 \(S.S.I. 2004/197\)](#), [art. 2\(3\)\(b\)](#)

#### 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, <sup>F90</sup> . . .
  - (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, [<sup>F91</sup>or]
  - <sup>F92</sup>(d) an action to which rule 3.2(3) applies,]
- [<sup>F93</sup>citation of] any person shall be in Form O4 which shall be attached to a copy of the [<sup>F94</sup>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.
- <sup>F95</sup>(2A) In an action to which rule 3.2(3) applies, citation shall be in Form O5A which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.]
- (3) The certificate of citation in any cause other than a family action within the meaning of rule 33.1(1) or an action of 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—

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- (a) the method of citation; and
  - (b) where the method of citation was other than personal or postal citation, the full name and designation of any person to whom the citation was delivered.
- (6) Where citation is executed under paragraph 3 of rule 5.4 (depositing or affixing by sheriff officer), the certificate shall include a statement—
- (a) of the method of service previously attempted;
  - (b) of the circumstances which prevented such service being executed; and
  - (c) that a copy was sent in accordance with the provisions of paragraph (4) of that rule.

#### Textual Amendments

- F90** Word in [rule 5.2\(1\)\(b\)](#) omitted (17.1.2002) by virtue of Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 ([S.S.I. 2002/7](#)), {para. 2(4)(a)}
- F91** Word in [rule 5.2\(1\)\(c\)](#) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 ([S.S.I. 2002/7](#)), {para. 2(4)(b)}
- F92** [Rule 5.2\(1\)\(d\)](#) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 ([S.S.I. 2002/7](#)), {para. 2(4)(c)}
- F93** Words in [rule 5.2\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(5\)\(a\)](#)
- F94** Word in [rule 5.2\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(5\)\(b\)](#)
- F95** [Rule 5.2\(2A\)](#) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 ([S.S.I. 2002/7](#)), {para. 2(4)(d)}

#### Postal service or intimation

- 5.3. (1) In any cause in which service or intimation of any document or citation of any person may be by recorded delivery, such service, intimation or citation shall be by the first class recorded delivery service.
- (2) Notwithstanding the terms of section 4(2) of the <sup>M13</sup>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](#).



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### *Service within Scotland by sheriff officer*

- 5.4. (1) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served by a sheriff officer on any person shall be served—
- (a) personally; or
  - (b) by being left in the hands of a resident at the person's dwelling place or an employee at his place of business.
- (2) Where service is executed under paragraph (1)(b), the certificate of citation or service shall contain the full name and designation of any person in whose hands the initial writ, decree, charge, warrant or other order or writ, as the case may be, was left.
- (3) Where a sheriff officer has been unsuccessful in executing service in accordance with paragraph (1), he may, after making diligent enquiries, serve the document in question—
- (a) by depositing it in that person's dwelling place or place of business; or
  - (b) by affixing it to the door of that person's dwelling place or place of business.
- (4) Subject to rule 6.1 (service of schedule of arrestment), where service is executed under paragraph (3), the sheriff officer shall, as soon as possible after such service, send a letter containing a copy of the document by ordinary first class post to the address at which he thinks it most likely that the person on whom service has been executed may be found.
- [<sup>F96</sup>(5) Where the firm which employs the sheriff officer has in its possession—
- (a) the document or a copy of it certified as correct by the pursuer's solicitor, the sheriff officer may serve the document upon the defender without having the document or certified copy in his possession, in which case he shall if required to do so by the person on whom service is executed and within a reasonable time of being so required, show the document or certified copy to the person; or
  - (b) a certified copy of the interlocutor pronounced allowing service of the document, the sheriff officer may serve the document without having in his possession the certified copy interlocutor if he has in his possession a facsimile copy of the certified copy interlocutor (which he shall show, if required, to the person on whom service is executed).]

#### **Textual Amendments**

**F96** Sch. 1 rule 5.4(5) inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), para. 2(3)

### *Service on persons furth of Scotland*

- 5.5. (1) Subject to the following provisions of this rule, an initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served on a person furth of Scotland shall be served—
- (a) at a known residence or place of business in England, Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—



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- (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 <sup>M14</sup>Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965 or the Convention in Schedule 1 or 3C to the <sup>M15</sup>Civil Jurisdiction and Judgments Act 1982—
  - (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 [<sup>F97</sup>Secretary of State for Foreign and Commonwealth Affairs];
  - (iii) by or through a British Consular Office in the country where service is to be executed at the request of the [<sup>F97</sup>Secretary of State for Foreign and Commonwealth Affairs];
  - (iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered letter addressed to the person at his residence; or
  - (v) where the law of the country in which service is to be executed permits, service by an huissier, other judicial officer or competent official of the country where service is to be executed; <sup>F98</sup> . . . [<sup>F99</sup> 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. [<sup>F100</sup> ; or
- (d) <sup>F101</sup> . . . . .]

[<sup>F102</sup>(1A) In a country to which the Council Regulation applies, service—

- (a) may be effected by the methods prescribed in paragraph (1)(b)(ii) and (iii) only in exceptional circumstances; and
  - (b) is effected only if the receiving agency has informed the person that acceptance of service may be refused on the ground that the document has not been translated in accordance with paragraph (6).]
- (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.

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- (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 <sup>F103</sup> . . .
- [<sup>F104</sup>(a) an official language of the country in which service is to be executed; or
- (b) in a country to which the Council Regulation applies, a language of the member state of transmission that is understood by the person on whom service is being executed.]
- (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.
- [<sup>F105</sup>(8) In this rule “the Council Regulation” means Council Regulation (EC) No. 1348/2000<sup>F106</sup> on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.]

#### Textual Amendments

- F97** Words in rule 5.5(1)(b)(ii)(iii) substituted (1.11.1996) by S.I. 1996/2445, para. 3(6)
- F98** Word in Sch. 1 rule 5.5 omitted (24.1.2003) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(4)(a)
- F99** Word in Sch. 1 rule 5.5(1)(b)(v) 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(4)(a)(i)
- F100** Sch. 1 rule 5.5(1)(d) and word inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(4)(b)
- F101** Sch. 1 rule 5.5(1)(d) omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(4)(a)(ii)
- F102** Sch. 1 rule 5.5(1A) 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(4)(b)

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- F103** Words in Sch. 1 rule 5.5(6) omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), **art. 2(4)(c)**
- F104** Sch. 1 rule 5.5(6)(a)(b) 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(4)(c)**
- F105** Sch. 1 rule 5.5(8) 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(4)(d)**
- F106** O.J. No. L 160, 30.06.00, p.37.

#### Marginal Citations

- M14** Cmnd. 3986 (1969).
- M15** 1982 c.27; Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c.12), **section 1(3)**.

#### *Service where address of person is not known*

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

#### *Persons carrying on business under trading or descriptive name*

- 5.7. (1) A person carrying on a business under a trading or descriptive name may sue or be sued in such trading or descriptive name alone; and an extract—
- (a) of a decree pronounced in the sheriff court, or

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- (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<sup>F107</sup> . . . ,  
 [F108 against such person under such trading or descriptive name shall be a valid] warrant for diligence against such person.
- (2) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree in a cause in which a person carrying on business under a trading or descriptive name sues or is sued in that name shall be served—
  - (a) at any place of business or office at which such business is carried on within the sheriffdom of the sheriff court in which the cause is brought; or
  - (b) where there is no place of business within that sheriffdom, at any place where such business is carried on (including the place of business or office of the clerk or secretary of any company, corporation or association or firm).

#### Textual Amendments

**F107** Words in [rule 5.7\(1\)\(b\)](#) omitted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(7\)\(a\)](#)

**F108** Words in [rule 5.7\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(7\)\(b\)](#)

#### *Endorsation unnecessary*

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

#### *Re-service*

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

#### *No objection to regularity of citation, service or intimation*

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

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## CHAPTER 6

### ARRESTMENT

#### *Service of schedule of arrestment*

- 6.1. If a schedule of arrestment has not been personally served on an arrestee, the arrestment shall have effect only if a copy of the schedule is also sent by registered post or the first class recorded delivery service to—
- (a) the last known place of residence of the arrestee, or
  - (b) if such place of residence is not known, or if the arrestee is a firm or corporation, to the arrestee's principal place of business if known, or, if not known, to any known place of business of the arrestee;
- and the sheriff officer shall, on the certificate of execution, certify that this has been done and specify the address to which the copy of the schedule was sent.

#### *Arrestment on dependence before service*

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

#### *Movement of arrested property*

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

## CHAPTER 7

### UNDEFENDED CAUSES

#### *Application of this Chapter*

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

#### *Minute for granting of decree without attendance*

- 7.2. (1) Subject to the following paragraphs, where the defender—
- (a) does not lodge a notice of intention to defend,
  - (b) does not lodge an application for a time to pay direction under the <sup>M16</sup>Debtors (Scotland) Act 1987,

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- (c) has lodged such an application for a time to pay direction and the pursuer does not object to the application or to any recall or restriction of an arrestment sought in the application,

the sheriff may, on the pursuer endorsing a minute for decree on the initial writ, at any time after the expiry of the period for lodging that notice or application, grant decree in absence or other order in terms of the minute so endorsed without requiring the attendance of the pursuer in court.

- (2) The sheriff shall not grant decree under paragraph (1)—
  - (a) unless it appears ex facie of the initial writ that a ground of jurisdiction exists under the <sup>M17</sup>Civil Jurisdiction and Judgments Act 1982 where that Act applies; and
  - (b) the cause is not a cause—
    - (i) in which decree may not be granted without evidence;
    - (ii) to which paragraph (4) applies; or
    - (iii) to which rule 33.31 (procedure in undefended family action for [<sup>F109</sup>a section 11 order]) applies.
- (3) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the initial writ in sufficient time to arrange for his defence or that all necessary steps have been taken to that end; and for the purposes of this paragraph—
  - (a) the question whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982;
  - (b) the question whether a person is domiciled in another Contracting State shall be determined in accordance with Article 52 of [<sup>F110</sup>the Convention in]Schedule 1 or 3C to that Act; and
  - (c) the term “Contracting State” has the meaning assigned in section 1 of that Act.
- (4) Where an initial writ has been served in a country to which the <sup>M18</sup>Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in [<sup>F111</sup>Civil or Commercial] Matters dated 15th November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of Article 15 of that Convention have been complied with.

#### Textual Amendments

**F109** Words in rule 7.2(2)(b)(iii) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 1

**F110** Words in rule 7.2(3)(b) inserted (1.11.1996) by S.I. 1996/2445, para. 3(8)(a)

**F111** Words in rule 7.2(4) substituted (1.11.1996) by S.I. 1996/2445, para. 3(8)(b)

#### Marginal Citations

**M16** 1987 c.18.

**M17** 1982 c.27.

**M18** Cmd. 3986 (1969).

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### *Applications for time to pay directions in undefended causes*

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

### *Decree for expenses*

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

### *Finality of decree in absence*

- 7.5. Subject to section 9(7) of the <sup>M19</sup>Land Tenure Reform (Scotland) Act 1974 (decree in action of removing for breach of condition of long lease to be final when extract recorded in Register of Sasines), a decree in absence which has not been recalled or brought under review by suspension or by reduction shall become final and shall have effect as a decree in foro contentioso—
- (a) on the expiry of six months from the date of the decree or from the date of a charge made under it, <sup>F112</sup>as the case may be, where the service of the initial writ or of the charge has been personal; and
- (b) in any event, on the expiry of 20 years from the date of the decree.

#### **Textual Amendments**

**F112** Words in rule 7.5(a) inserted (1.11.1996) by S.I. 1996/2445, para. 3(9)

#### **Marginal Citations**

**M19** 1974 c.38.

### *Amendment of initial writ*

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

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- (b) order the amended [<sup>F113</sup>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 [<sup>F114</sup>creditors of] the party against whom the diligence has been executed, who are interested in defeating such diligence; and
  - (b) shall preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.

#### Textual Amendments

**F113** Word in rule 7.6(1)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(10)(a)

**F114** Words in rule 7.6(3)(a) substituted (1.11.1996) by S.I. 1996/2445, para. 3(10)(b)

#### Disapplication of certain rules

- [<sup>F115</sup>7.7. The following rules in Chapter 15 (motions) shall not apply to an action in which no notice of intention to defend has been lodged or to any action in so far as it proceeds as undefended:—
- rule 15.2 (intimation of motions),
  - rule 15.3 (opposition to motions),
  - rule 15.5 (hearing of motions).]

#### Textual Amendments

**F115** Rule 7.7 inserted (1.11.1996) by S.I. 1996/2445, para. 3(11)

## CHAPTER 8

### REPONING

#### Reponing

- 8.1. (1) In any cause other than—
- (a) a cause mentioned in rule 33.1(1)(a) to (h) (certain family actions), or
  - (b) a cause to which Chapter 37 (causes under the Presumption of death (Scotland) Act 1977) applies,
- the defender [<sup>F116</sup>or any party with a statutory title or interest] 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 [<sup>F117</sup>or the proposed order or direction,] and explaining his failure to appear.
- (2) A copy of the note lodged under paragraph (1) shall be served on the pursuer [<sup>F118</sup>and any other party].



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- (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 <sup>F119</sup> –
- (a) 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.<sup>F120</sup> ; or
  - (b) the party seeking the order or direction had lodged the appropriate application on the date when the decree was recalled]
- (4) A reponing note, when duly lodged with the sheriff clerk and served upon the pursuer <sup>F121</sup>and any other party], shall have effect to sist diligence.
- <sup>F122</sup>(4A) Where an initial writ has been served on a defender furth of the United Kingdom under rule 5.5(1)(b) (service on persons furth of Scotland) and decree in absence has been pronounced against him as a result of his failure to enter appearance, the court may, on the defender applying to be reponed in accordance with paragraph (1) above, recall the decree and allow defences to be received if–
- (a) without fault on his part, he did not have knowledge of the initial writ in sufficient time to defend;
  - (b) he has disclosed *aprima facie* defence to the action on the merits; and
  - (c) the reponing note is lodged within a reasonable time after he had knowledge of the decree or in any event before the expiry of one year from the date of decree.]
- (5) Any interlocutor or order recalling, or incidental to the recall of, a decree in absence shall be final and not subject to appeal.

#### Textual Amendments

- F116** Words in Sch. 1 rule 8.1(1) 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(5)(a)(i)**
- F117** Words in Sch. 1 rule 8.1(1) 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(5)(a)(ii)**
- F118** Words in Sch. 1 rule 8.1(2) 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(5)(b)**
- F119** Word in Sch. 1 rule 8.1(3) 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(5)(c)(i)**
- F120** Sch. 1 rule 8.1(3)(b) and word 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(5)(c)(ii)**
- F121** Words in Sch. 1 rule 8.1(4) 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(5)(d)**
- F122** Sch. 1 rule 8.1(4A) inserted (2.10.2000) by S.S.I. 2000/239, **para. 3(1)(2)**

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## 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 [<sup>F123</sup>and, at the same time, send a copy to the pursuer].
- (2) The lodging of a notice of intention to defend shall not imply acceptance of the jurisdiction of the court.
- [<sup>F124</sup>(3) This Chapter shall not apply to a commercial action within the meaning of Chapter 40.]

#### **Textual Amendments**

**F123** Words in rule 9.1(1) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 2

**F124** Rule 9.1(3) inserted (1.3.2001) by S.S.I. 2001/8, para. 2(1)(3)

#### *Fixing date for Options Hearing*

- 9.2. (1) [<sup>F125</sup>Subject to paragraph (1A),] On the lodging of a notice of intention to defend, the sheriff clerk shall fix a date and time for an Options Hearing which date shall be on the first suitable court day occurring not sooner than 10 weeks after the expiry of the period of notice.
- [<sup>F126</sup>(1A) Where in a family action—
- (i) the only matters in dispute are an order in terms of section 11 of the <sup>M20</sup>Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.); or
  - (ii) the matters in dispute include an order in terms of section 11 of that Act,
- there shall be no requirement to fix an Options Hearing in terms of paragraph (1) above insofar as the matters in dispute relate to an order in terms of section 11(2) of the Children (Scotland) Act 1995.
- <sup>F126</sup>(1B) In paragraph (1A) above, “family action” has the meaning given to it in rule 33.1(1).]
- (2) On fixing the date for the Options Hearing, the sheriff clerk shall—
- (a) forthwith intimate to the parties in Form G5—
    - (i) the last date for lodging defences;
    - (ii) the last date for adjustment; and
    - (iii) the date of the Options hearing; and
  - (b) prepare and sign an interlocutor recording those dates.

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- (3) The fixing of the date for the Options Hearing shall not affect the right of [<sup>F127</sup>a party] to make any incidental application to the court.

#### Textual Amendments

**F125** Words in [Sch. 1 rule 9.2\(1\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(3\)\(a\)](#)

**F126** [Sch. 1 rule 9.2\(1A\)\(1B\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(3\)\(b\)](#)

**F127** Words in [rule 9.2\(3\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(12\)](#)

#### Marginal Citations

**M20** [1995 c.36](#).

### *Second or subsequent Options Hearing*

[<sup>F128</sup>9.2A] Where for any reason a second or subsequent Options Hearing requires to be fixed and an Options Hearing has already been fixed but has not yet taken place, the sheriff shall fix a second or subsequent Options Hearing and discharge that earlier hearing.

- (2) The sheriff clerk shall forthwith intimate to all parties—
- (a) that the original Options Hearing has been discharged;
  - (b) the last date for lodging defences, if appropriate;
  - (c) the last date for adjustment; and
  - (d) the date and time fixed for the second or subsequent Options Hearing.
- (3) Any reference in these Rules to an Options Hearing or a continuation of it shall include a reference to a second or subsequent Options Hearing ordered under this rule.]

#### Textual Amendments

**F128** [Rule 9.2A](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(13\)](#)

### *Return of initial writ*

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

### *Lodging of pleadings before Options Hearing*

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

### *Process folder*

- 9.5. (1) On receipt of the notice of intention to defend, the sheriff clerk shall prepare a process folder which shall include—
- (a) interlocutor sheets;

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- (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 [<sup>F129</sup>(subject to paragraph (3))] lodge defences within 14 days after the expiry of the period of notice.
- (2) Subject to rule 19.1(3) (form of defences where counterclaim included), defences shall be in the form of answers in numbered paragraphs corresponding to the articles of the condescendence and shall have appended a note of the pleas-in-law of the defender.
- [<sup>F130</sup>(3) In a family action (within the meaning of rule 33.1(1)), neither a crave nor averments need be made in the defences which relate to any order under section 11 of the Children (Scotland) Act 1995.]

#### **Textual Amendments**

**F129** Words in rule 9.6(1) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 3(a)

**F130** Rule 9.6(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch., para. 3(b)

### *Implied admissions*

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

### *Adjustment of pleadings*

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

### *Effect of sist on adjustment*

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

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- (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.
- [<sup>F131</sup>(3) Where the Options Hearing is continued under rule 9.12(5), and further adjustment or amendment is made to the pleadings, a copy of the pleadings as adjusted or amended, certified by the pursuer, shall be lodged in process not later than 2 days before the Options Hearing so continued.]

#### **Textual Amendments**

**F131** Rule 9.11(3) inserted (1.11.1996) by S.I. 1996/2445, para. 3(14)

#### *Options Hearing*

- 9.12 (1) At the Options Hearing the sheriff shall seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).
- (2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.
- (3) At the Options Hearing the sheriff shall, except where the cause is ordered to proceed under the procedure in Chapter 10 (additional procedure), close the record and—
- (a) appoint the cause to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit;
  - (b) after having heard parties and considered any note lodged under rule 22.1 (note of basis of preliminary plea), appoint the cause to a proof before answer and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit; or
  - (c) after having heard parties and considered any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of

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law which [<sup>F132</sup>if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree].

- (4) At the Options Hearing the sheriff may, having heard parties—
  - (a) of his own motion or on the motion of any party, and
  - (b) on being satisfied that the difficulty or complexity of the cause makes it unsuitable for the procedure under this Chapter,
 order that the cause proceed under the procedure in Chapter 10 (additional procedure).
- (5) The sheriff may, on cause shown, of his motion or on the motion of any party, allow a continuation of the Options Hearing on one occasion only for a period not exceeding 28 days or to the first suitable court day thereafter.
- (6) On closing the record—
  - (a) where there are no adjustments made since the lodging of the record under rule 9.11.(2), that record shall become the closed record; and
  - (b) where there are such adjustments, the sheriff may order that a closed record including such adjustments be lodged within 7 days after the date of the interlocutor closing the record.
- (7) For the purposes of rules 16.2 (decrees where party in default) and 33.37 (decree by default in family action), an Options Hearing shall be a diet in accordance with those rules.

#### Textual Amendments

**F132** Words in [Sch. 1 rule 9.12](#) substituted (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\(6\)](#)

#### *Inspection and recovery of documents*

9.13. <sup>F133</sup> .....

#### Textual Amendments

**F133** [Sch. 1 rule 9.13](#) omitted (21.5.2004) by virtue of [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2004 \(S.S.I. 2004/197\)](#), [art. 2\(7\)](#)

#### *Exchange of lists of witnesses*

9.14. <sup>F134</sup> .....

#### Textual Amendments

**F134** [Sch. 1 rule 9.14](#) omitted (21.5.2004) by virtue of [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2004 \(S.S.I. 2004/197\)](#), [art. 2\(7\)](#)

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### Applications for time to pay directions

9.15. <sup>F135</sup> .....

#### Textual Amendments

**F135** Sch. 1 rule 9.15 omitted (21.5.2004) by virtue of [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2004 \(S.S.I. 2004/197\)](#), **art. 2(7)**

## [<sup>F136</sup> CHAPTER 9A

### DOCUMENTS AND WITNESSES

#### Textual Amendments

**F136** 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 <sup>F137</sup>.

#### Textual Amendments

**F137** 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.



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### *Exchange of lists of witnesses*

- 9A.3. (1) Within 28 days after the date of the interlocutor allowing a proof or proof before answer, each party shall—
- (a) intimate to every other party a list of witnesses, including any skilled witnesses, on whose evidence he intends to rely at proof; and
  - (b) lodge a copy of that list in process.
- (2) A party who seeks to rely on the evidence of a person not on his list intimated under paragraph (1) shall, if any other party objects to such evidence being admitted, seek leave of the sheriff to admit that evidence whether it is to be given orally or not; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.
- (3) The list of witnesses intimated under paragraph (1) shall include the name, occupation (where known) and address of each intended witness.

### *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 <sup>F138</sup>, or for the recall or restriction of an arrestment under section 2(3) or 3(1) of that Act, in a cause which is defended, shall be made by motion lodged before the sheriff grants decree.]

#### **Textual Amendments**

**F138** 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.



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### *Variation of adjustment period*

- 10.3. (1) At any time before the expiry of the period for adjustment the sheriff may close the record if parties, of consent or jointly, lodge a motion seeking such an order.
- (2) The sheriff may, if satisfied that there is sufficient reason for doing so, extend the period for adjustment for such period as he thinks fit, if any party—
- (a) lodges a motion seeking such an order; and
  - (b) lodges a copy of the record adjusted to the date of lodging of the motion.
- (3) A motion lodged under paragraph (2) shall set out—
- (a) the reasons for seeking an extension of the period for adjustment; and
  - (b) the period for adjustment sought.

### *Order for open record*

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

### *Closing record*

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

### *Procedural Hearing*

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

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- (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 [<sup>F139</sup>if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree].
- (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.

#### Textual Amendments

**F139** Words in [Sch. 1 rule 10.6\(3\)\(c\)](#) substituted (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\(9\)](#)

## CHAPTER 11

### THE PROCESS

#### *Form and lodging of parts of process*

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

#### *Custody of process*

- 11.2. (1) The initial writ, and all other parts of process lodged in a cause, shall be placed by the sheriff clerk in the process folder.
- (2) The initial writ, interlocutor sheets, borrowing receipts and the process folder shall remain in the custody of the sheriff clerk.
- (3) The sheriff [<sup>F140</sup>clerk may,] on cause shown, authorise the initial writ to be borrowed by the pursuer, his solicitor or the solicitor's authorised clerk.

#### Textual Amendments

**F140** Words in [rule 11.2\(3\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(15\)](#)

#### *Borrowing and returning of process*

- 11.3. (1) Subject to paragraph (3), a process, or any part of a process which may be borrowed, may be borrowed only by a solicitor or by his authorised clerk.
- (2) All remedies competent to enforce the return of a borrowed process may proceed on the warrant of the court from the custody of which the process was obtained.
- (3) A party litigant—
  - (a) may borrow a process only—
    - (i) with leave of the sheriff; and
    - (ii) subject to such conditions as the sheriff may impose; or

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- (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 [<sup>F141</sup>, at the same time,] intimate such lodging or adjustment to every other party who has entered the process by delivering to every other party a copy of each part of process or adjustment, including, where practicable, copies of any documentary production.
- (2) Unless otherwise provided in these Rules, the party required to give intimation under paragraph (1) shall deliver to every other party who has entered the process a copy of the part of process or adjustment or other document, as the case may be, by—
- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
  - (b) where intimation is to a party represented by a solicitor—
    - (i) personal delivery,
    - (ii) facsimile transmission,
    - (iii) first class ordinary post,
    - (iv) delivery to a document exchange,to that solicitor.
- (3) Subject to paragraph (4), where intimation is given under—
- (a) paragraph (2)(b)(i) or (ii), it shall be deemed to have been given—
    - (i) on the day of transmission or delivery where it is given before 5.00 pm on any day; or
    - (ii) on the day after transmission or delivery where it is given after 5.00 pm on any day; or
  - (b) paragraph (2)(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.

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- (4) Where intimation is given [<sup>F142</sup>or, but for this paragraph, would be deemed to be given] on a Saturday, Sunday or public or court holiday, it shall be deemed to have been given on the next day on which the sheriff clerk's office is open for civil court business.

#### Textual Amendments

**F141** Words in [rule 11.6\(1\)](#) inserted (1.11.1996) by [S.I. 1996/2445, para. 3\(16\)\(a\)](#)

**F142** Words in [rule 11.6\(4\)](#) inserted (1.11.1996) by [S.I. 1996/2445, para. 3\(16\)\(b\)](#)

#### *Retention and disposal of parts of process by sheriff clerk*

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

- (a) retain—
  - (i) the initial writ;
  - (ii) any closed record;
  - (iii) the interlocutor sheets;
  - (iv) any joint minute;
  - (v) any offer and acceptance of tender;
  - (vi) any report from a person of skill;
  - (vii) any affidavit; and
  - (viii) any extended shorthand notes of the proof; and
- (b) dispose of all other parts of process (except productions) in such a manner as seems appropriate.

- (2) Where an appeal has been marked on the final determination of the cause, the sheriff clerk shall exercise his duties mentioned in paragraph (1) after the final disposal of the appeal and any subsequent procedure.

#### *Uplifting of productions from process*

- 11.8. (1) Each party who has lodged productions in a cause shall—

- (a) within 14 days after the final determination of the cause, where no subsequent appeal has been marked, or
  - (b) within 14 days after the disposal of any appeal marked on the final determination of the cause,
- uplift the productions from process.

- (2) Where any production has not been uplifted as required by paragraph (1), the sheriff clerk shall intimate to—

- (a) the solicitor who lodged the production, or
- (b) where no solicitor is acting, the party himself or such other party as seems appropriate,

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

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## 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 sherifffdom.
- (2) At any time before extract, the sheriff may correct any clerical or incidental error in an interlocutor or note attached to it.
- [<sup>F143</sup>(3) In any cause, other than a family action within the meaning of rule 33.1(1) which has proceeded as undefended, where at any stage evidence has been led, the sheriff shall—
- (a) in the interlocutor, make findings in fact and law; and
  - (b) append to that interlocutor a note setting out the reasons for his decision.
- (4) In any other interlocutor, the sheriff may, and shall when requested by a party, append a note setting out the reasons for his decision.]
- (5) Where the sheriff reserves his decision and gives his decision at a date later than the date of the hearing outwith the presence of the parties—
- (a) the date of the interlocutor of the sheriff shall be the date on which it is received by the sheriff clerk; and
  - (b) the sheriff clerk shall—
    - (i) enter that date in the interlocutor; and
    - (ii) forthwith send a copy of the interlocutor and any note attached to it free of charge to each party.

#### **Textual Amendments**

**F143** Rule 12.2(3)(4) substituted (1.11.1996) by S.I. 1996/2445, para. 3(17)

## CHAPTER 13

### PARTY MINUTER PROCEDURE

#### *Person claiming title and interest to enter process as defender*

- 13.1. (1) A person who has not been called as a defender or third party may apply by minute for leave to enter a process as a party minuter and to lodge defences.
- (2) A minute under paragraph (1) shall specify—

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- (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 [<sup>F144</sup>defences], the sheriff clerk shall fix a date and time under rule 9.2 for a hearing under rule 9.12 (Options Hearing) as if the party minuter had lodged a notice of intention to defend and the period of notice had expired on the date for lodging answers.
- (2) At the Options Hearing, or at any time thereafter, the sheriff may grant such decree or other order as he thinks fit.
- (3) A decree or other order against the party minuter shall have effect and be extractable in the same way as a decree or other order against a defender.

**Textual Amendments**

**F144** Word in rule 13.2(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(18)

VALID FROM 01/07/2008

**[<sup>F145</sup>CHAPTER 13A**

**INTERVENTIONS BY THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS**

**Textual Amendments**

**F145** Sch. 1 Chapters 13A 13B inserted (1.7.2008) by Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2008 (S.S.I. 2008/223), para. 4(2)

*Interpretation*

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

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### *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 <sup>F146</sup> 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**

**F146** 2006 c. 3.

### *Applications to intervene*

13A.3.(1) An application for leave to intervene shall be by way of minute of intervention in Form O7A and the CEHR shall–

- (a) send a copy of it to all the parties; and
  - (b) lodge it in process, certifying that subparagraph (a) has been complied with.
- (2) A minute of intervention shall set out briefly–
- (a) the CEHR's reasons for believing that the proceedings are relevant to a matter in connection with which the CEHR has a function;
  - (b) the issue in the proceedings which the CEHR wishes to address; and
  - (c) the propositions to be advanced by the CEHR and the CEHR's reasons for believing that they are relevant to the proceedings and that they will assist the sheriff.
- (3) The sheriff may–
- (a) refuse leave without a hearing;
  - (b) grant leave without a hearing unless a hearing is requested under paragraph (4);
  - (c) refuse or grant leave after such a hearing.
- (4) A hearing, at which the applicant and the parties may address the court on the matters referred to in paragraph (6)(c), may be held if, within 14 days of the minute of intervention being lodged, any of the parties lodges a request for a hearing.
- (5) Any diet in pursuance of paragraph (4) shall be fixed by the sheriff clerk who shall give written intimation of the diet to the CEHR and all the parties.
- (6) The sheriff may grant leave only if satisfied that–
- (a) the proceedings are relevant to a matter in connection with which the CEHR has a function;
  - (b) the propositions to be advanced by the CEHR are relevant to the proceedings and are likely to assist him; and

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(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.

(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.



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- (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—
- (a) a minute of amendment; <sup>F147</sup> . . .
  - (b) a minute of abandonment [<sup>F148</sup>; or]
  - <sup>F149</sup>(c) a joint minute.]

**Textual Amendments**

**F147** Word in rule 14.1(2)(a) omitted (1.11.1996) by S.I. 1996/2445, para. 3(19)(a)

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**F148** Rule 14.1(2)(b): “; or” substituted for the full-stop (1.11.1996) by S.I. 1996/2445, para. 3(19)(b)

**F149** Rule 14.1(2)(c) inserted (1.11.1996) by S.I. 1996/2445, para. 3(19)(c)

### *Form of minute*

14.2. A minute to which this Chapter applies shall contain—

- (a) a crave;
- (b) where appropriate, a condescence in the form of a statement of facts supporting the crave; and
- (c) where appropriate, pleas-in-law.

### *Lodging of minutes*

[<sup>F150</sup>14(3)] Before intimating any minute, the minuter shall lodge the minute in process.

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

### **Textual Amendments**

**F150** Rule 14.3 substituted (1.11.1996) by S.I. 1996/2445, para. 3(20)

### *Intimation of minutes*

[<sup>F151</sup>14(4)] The party lodging a minute shall, on receipt from the sheriff clerk of the minute, intimate to every other party including any person referred to in rule 14.13(1)—

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- (a) a notice in Form G7A, G7B or G7C, as the case may be, by any of the methods provided for in rule 14.5 (methods of intimation); and
  - (b) a copy of–
    - (i) the minute;
    - (ii) any interlocutor; and
    - (iii) any document referred to in the minute.
- (2) The sheriff may, on cause shown, dispense with intimation.]

#### Textual Amendments

**F151** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

#### Methods of intimation

<sup>F152</sup>14.5(1) Intimation of a minute may be given by–

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

#### Textual Amendments

**F152** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

#### Return of minute with evidence of intimation

<sup>F153</sup>14.6. Where intimation of any minute has been given, the minute and a certificate of intimation in Form G8 shall be returned to the sheriff clerk within 5 days after the date of intimation.

#### Textual Amendments

**F153** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

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### *Opposition where no order for answers made*

- <sup>F154</sup>14.7(1) Where a party seeks to oppose a minute lodged under rule 14.3 (lodging of minutes) in which no order for answers has been made under paragraph (2)(a) of that rule, that party shall, within 14 days after the date of intimation of the minute to him—
- (a) complete a notice of opposition in Form G9;
  - (b) lodge the notice with the sheriff clerk; and
  - (c) intimate a copy of that notice to every other party.
- (2) Rule 14.5 (methods of intimation) and rule 14.6 (return of minute with evidence of intimation) shall apply to intimation of opposition to a minute under paragraph (1) (c) of this rule as they apply to intimation of a minute.
- (3) The sheriff may, on cause shown, reduce or dispense with the period for lodging the notice mentioned in paragraph (1)(b).

#### **Textual Amendments**

**F154** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

### *Hearing of minutes where no opposition or no answers lodged*

- <sup>F155</sup>14.8(1) Where no notice of opposition is lodged or where no answers have been lodged to the minute within the time allowed, the minute shall be determined by the sheriff in chambers without the attendance of parties, unless the sheriff otherwise directs.
- (2) Where the sheriff requires to hear a party on a minute, the sheriff clerk shall—
- (a) fix a date, time and place for the party to be heard; and
  - (b) inform that party—
    - (i) of that date, time and place; and
    - (ii) of the reasons for the sheriff wishing to hear him.

#### **Textual Amendments**

**F155** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

### *Intimation of interlocutor*

- <sup>F156</sup>14.9. Where a minute has been determined in accordance with rule 14.8 (hearing of minutes where no opposition or no answers lodged), the sheriff clerk shall intimate the interlocutor determining that minute to the parties forthwith.

#### **Textual Amendments**

**F156** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

### *Notice of opposition or answers lodged*

- <sup>F157</sup>14.10(1) Where a notice of opposition has, or answers have, been lodged to the minute, the sheriff clerk shall—

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- (a) assign a date, time and place for a hearing on the first suitable court day after the date of the lodging of the notice of opposition or answers, as the case may be; and
  - (b) intimate that date, time and place to the parties.
- (2) The interlocutor fixing a hearing under paragraph (1) shall specify whether the sheriff will hear evidence at the hearing or receive evidence by affidavit.

#### Textual Amendments

**F157** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

#### Procedure for hearing

- <sup>F158</sup>14.(1) A certified copy of the interlocutor assigning a hearing under this Chapter and requiring evidence to be led shall be sufficient warrant to a sheriff officer to cite a witness on behalf of a party.
- (2) At the hearing, the sheriff shall hear parties on the minute and any answers lodged, and may determine the minute or may appoint such further procedure as he considers necessary.

#### Textual Amendments

**F158** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

#### Consent to minute

- <sup>F159</sup>14.12. Subject to paragraph (2) of rule 14.8 (hearing of minutes where no opposition or no answers lodged), where all parties to the action indicate to the sheriff, by endorsement of the minute or otherwise in writing, their intention to consent to the minute, the sheriff may forthwith determine the minute in chambers without the appearance of parties.

#### Textual Amendments

**F159** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

#### Procedure following grant of minute

- <sup>F160</sup>14.(1) Where the minute includes a crave seeking leave—
- (a) for a person—
    - (i) to be sisted as a party to the action, or
    - (ii) to appear in the proceedings, or
  - (b) for the cause to be transferred against the representatives of a party who has died or is under a legal incapacity,
- the sheriff, on granting the minute, may order a hearing under rule 9.12 (Options Hearing) to be fixed or may appoint such further procedure as he thinks fit.
- (2) Where an Options Hearing is ordered under paragraph (1), the sheriff clerk shall—

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- (a) fix a date and time for such hearing, which date, unless the sheriff otherwise directs, shall be on the first suitable court day occurring not sooner than 10 weeks after the date of the interlocutor of the sheriff ordering such hearing be fixed;
  - (b) forthwith intimate to the parties in Form G5–
    - (i) where appropriate, the last date for lodging defences;
    - (ii) where appropriate, the last date for adjustment; and
    - (iii) the date of the Options Hearing; and
  - (c) prepare and sign an interlocutor recording those dates.
- (3) For the purpose of fixing the date for the Options Hearing referred to in paragraph (1), the date of granting the minute shall be deemed to be the date of expiry of the period of notice.

#### Textual Amendments

**F160** Rules 14.4-14.13 inserted (1.11.1996) by S.I. 1996/2445, para. 3(21)

## [<sup>F161</sup>CHAPTER 15

### MOTIONS]

#### Textual Amendments

**F161** Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

#### Modifications etc. (not altering text)

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

#### <sup>F162</sup> Lodging of motions

[<sup>F161</sup>15(1) A motion may be made–

- (a) orally with leave of the court during any hearing of a cause; or
  - (b) by lodging a written motion in Form G6.
- (2) Subject to paragraph (3), a written motion shall be lodged with the sheriff clerk within 5 days after the date of intimation of the motion required by rule 15.2 (intimation of motions) with–
- (a) a certificate of intimation in Form G8; and
  - (b) so far as practicable any document referred to in the written motion and not already lodged in process.
- (3) Where the period for lodging opposition to the motion is varied under rule 15.2(4) (variation of and dispensing with period of intimation) to a period of 5 days or less, the written motion and certificate to be lodged in terms of paragraph (2) shall be lodged no later than the day on which the period for lodging opposition expires.

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#### Textual Amendments

**F162** Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

#### <sup>F163</sup> Intimation of motions

- 15.2. (1) Subject to paragraphs (4) and (7), a party intending to lodge a motion in accordance with rule 15.1(1)(b) (lodging written motion) shall intimate the motion in Form G7, and a copy of any document referred to in the motion, to every other party.
- (2) Intimation of a motion may be given by–
- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
  - (b) where intimation is to a party represented by a solicitor, by–
    - (i) personal delivery,
    - (ii) facsimile transmission,
    - (iii) first class ordinary post, or
    - (iv) delivery to a document exchange,to that solicitor.
- (3) Where intimation is given–
- (a) under paragraph (2)(b)(i) or (ii), it shall be deemed to have been given–
    - (i) on the day of transmission or delivery where it is given before 5.00 p.m. on any day; or
    - (ii) on the day after transmission or delivery where it is given after 5.00 p.m. on any day; or
  - (b) under paragraph (2)(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.
- (4) The sheriff may, on the application of a party intending to lodge a written motion, vary the period of 7 days specified in rule 15.3(1)(c) for lodging opposition to the motion or dispense with intimation.
- (5) An application under paragraph (4) shall be made in the written motion, giving reasons for such variation or dispensation.
- (6) Where the sheriff varies the period within which notice of opposition is to be lodged under rule 15.3(1)(c), the form of intimation required under rule 15.2(1) (intimation of motion in Form G7) shall state the date by which such notice requires to be lodged.
- (7) A joint motion by all parties lodged in Form G6 need not be intimated.

#### Textual Amendments

**F163** Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

#### Opposition to motions

- <sup>F164</sup>15.3(1) Where a party seeks to oppose a motion made in accordance with rule 15.1(1)(b) (written motion), he shall–
- (a) complete a notice of opposition in Form G9;



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- (b) intimate a copy of that notice to every other party; and
  - (c) lodge the notice with the sheriff clerk within 7 days after the date of intimation of the motion or such other period as the sheriff may have determined under rule 15.2(6).
- (2) Paragraphs (2) and (3) of rule 15.2 (methods and time of intimation of motions) shall apply to the intimation of opposition to a motion under paragraph (1)(b) of this rule as they apply to intimation under that rule.

#### Textual Amendments

**F164** Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

#### *F165 Consent to motions*

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

#### Textual Amendments

**F165** Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

#### *F166 Hearing of motions*

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



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- (7) Where the sheriff, under paragraph (4) of rule 15.2, dispenses with intimation required by paragraph (1) of that rule, he shall make such order as he thinks fit for intimation of his determination of the motion to every party to the action in respect of whom intimation has been so dispensed with.
- (8) Subject to paragraph (4), where all parties consent to a written motion, the sheriff may determine the motion in chambers without the appearance of parties.
- (9) Subject to paragraph (4) where a joint motion of all parties in Form G6 is lodged with the sheriff clerk, the sheriff may determine the motion in chambers without the appearance of parties.

#### Textual Amendments

**F166** Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

#### *Motions to sist*

- [ (1) Where a motion to sist is made, either orally or in writing in accordance with rule <sup>F167</sup>15.6. 15.1(1)(a) or (b)–
- (a) the reason for the sist shall be stated by the party seeking the sist; and
  - (b) that reason shall be recorded in the interlocutor.
- (2) Where a cause has been sisted, the sheriff may, after giving parties an opportunity to be heard, recall the sist.]]

#### Textual Amendments

**F167** Sch. 1 rule 15.6 inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(5)

#### <sup>F168</sup> *Lodging of motions*

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

#### Textual Amendments

**F168** Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

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### <sup>F169</sup> *Intimation of motions*

- 15.2. (1) Subject to paragraph (7), the party lodging a motion in accordance with rule 15.1(1) (b) shall intimate the motion in Form G7, and a copy of any document referred to in the motion, to every other party.
- (2) Unless a period of intimation of a motion is otherwise specified in these Rules, intimation under paragraph (1) shall be made not less than 7 days before the date fixed for the hearing of the motion.
- (3) Subject to paragraph (4), intimation of a motion may be given by—
- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
  - (b) where intimation is to a party represented by a solicitor, by—
    - (i) personal delivery,
    - (ii) facsimile transmission,
    - (iii) first class ordinary post, or
    - (iv) delivery to a document exchange, to that solicitor.
- (4) Subject to paragraph (5), where intimation is given—
- (a) under paragraph (3)(b)(i) or (ii), it shall be deemed to have been given—
    - (i) on the day of transmission or delivery where it is given before 5.00 pm on any day; or
    - (ii) on the day after transmission or delivery where it is given after 5.00 pm on any day; or
  - (b) under paragraph 3(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.
- (5) Where intimation is given on a Saturday, Sunday or public or court holiday, it shall be deemed to have been given on the next day on which the sheriff clerk's office is open for civil court business.
- (6) Where intimation has been given, a certificate of intimation of the motion in Form G8 shall be returned to the sheriff clerk not later than 2 days, or such other period as the sheriff has determined, before the date fixed for the hearing of that motion.
- (7) The sheriff may, on cause shown, dispense with or reduce the period of intimation specified in paragraph (2) or the period specified in paragraph (6).

#### **Textual Amendments**

**F169** Chapter 15 substituted (1.11.1996) by S.I. 1996/2445, para. 3(22)

## **CHAPTER 16**

### **DECREE BY DEFAULT**

#### *Application of this Chapter*

- 16.1. This [<sup>F170</sup>Chapter] applies to any cause other than—
- (a) an action to which rule 33.37 (decree by default in family action) applies;

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- (b) an action of multiplepoinding; <sup>F171</sup> . . .
- (c) a cause under the Presumption of Death (Scotland) Act 1977 <sup>F172</sup>. [<sup>F173</sup>; or
- <sup>F173</sup>(d) a commercial action within the meaning of Chapter 40.]

#### Textual Amendments

**F170** Word in rule 16.1 substituted (1.3.2001) by S.S.I. 2001/8, para. 2(1)(4)(a)

**F171** Word in rule 16.1(b) omitted (1.3.2001) by virtue of S.S.I. 2001/8, para. 2(1)(4)(b)

**F172** 1977 c.27.

**F173** Rule 16.1(d) and the preceding word “or” inserted (1.3.2001) by S.S.I. 2001/8, para. 2(1)(4)(c)

#### *Decrees where party in default*

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

#### *Prorogation of time where party in default*

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

## CHAPTER 17

### SUMMARY DECREES

#### *Application of this Chapter*

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

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### *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.

<sup>F174</sup>(3) . . . . .

(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.

#### **Textual Amendments**

**F174** Sch. 1 rule 17.2(3) omitted (2.10.2000) by virtue of S.S.I. 2000/239, para. 3(1)(6)

### *Application of summary decree to counterclaims, etc.*

17.3. (1) Where a defender has lodged a counterclaim—

- (a) he may apply by motion for summary decree against the pursuer on that counterclaim on the ground that there is no defence to the counterclaim, or a part of it, disclosed in the answers to it; and
- (b) paragraphs (2) to (5) of rule 17.2 shall, with the necessary modifications, apply to a motion by a defender under this paragraph as they apply to a motion by a pursuer under paragraph (1) of that rule.

(2) Where a defender or third party has made a claim against another defender or third party who has lodged defences or answers, as the case may be—

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

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## 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, <sup>F175</sup> . . . and any record.
- (2) The pursuer shall forthwith intimate any such amendment in writing to every other party.

#### **Textual Amendments**

**F175** Words in [rule 18.1\(1\)](#) omitted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(23\)](#)

#### *Powers of sheriff to allow amendment*

- 18.2. (1) The sheriff may, at any time before final judgment, allow an amendment mentioned in paragraph (2).
- (2) Paragraph (1) applies to the following amendments:—
- (a) an amendment of the initial writ which may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that in consequence of such amendment—
    - (i) the sum sued for is increased or restricted after the closing of the record; or
    - (ii) a different remedy from that originally craved is sought;
  - (b) an amendment which may be necessary—
    - (i) to correct or supplement the designation of a party to the cause;
    - (ii) to enable a party who has sued or has been sued in his own right to sue or be sued in a representative capacity;
    - (iii) to enable a party who has sued or has been sued in a representative capacity to sue or be sued in his own right or in a different representative capacity;
    - (iv) to add the name of an additional pursuer or person whose concurrence is necessary;
    - (v) where the cause has been commenced or presented in the name of the wrong person, or it is doubtful whether it has been commenced or presented in the name of the right person, to allow any other person to be sisted in substitution for, or in addition to, the original person; or
    - (vi) to direct a crave against a third party brought into an action under Chapter 20 (third party procedure);
  - (c) an amendment of a condescendence, defences, answers, pleas-in-law or other pleadings which may be necessary for determining the real question in controversy between the parties; and
  - (d) where it appears that all parties having an interest have not been called or that the cause has been directed against the wrong person, an amendment

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inserting in the initial writ an additional or substitute party and directing existing or additional craves, averments and pleas-in-law against that party.

#### *Applications to amend*

- 18.3. (1) A party seeking to amend shall lodge a minute of amendment in process setting out his proposed amendment and, at the same time, lodge a motion—
- (a) to allow the minute of amendment to be received; and
  - (b) to allow—
    - (i) amendment in terms of the minute of amendment and, where appropriate, to grant an order under rule 18.5(1)(a) (service of amendment for additional or substitute party); or
    - (ii) where the minute of amendment may require to be answered, any other person to lodge answers within a specified period.
- (2) Where the sheriff has pronounced an interlocutor allowing a minute of amendment to be received and answered, he may allow a period for adjustment of the minute of amendment and answers and, on so doing, shall fix a date for parties to be heard on the minute of amendment and answers as adjusted.
- [<sup>F176</sup>(3) Any adjustment to any minute of amendment or answers shall be exchanged between parties and not lodged in process.
- <sup>F176</sup>(4) Parties shall be responsible for maintaining a record of adjustment made and the date of their intimation.
- <sup>F176</sup>(5) No adjustments shall be permitted after the period of adjustment allowed, except with leave of the sheriff.
- <sup>F176</sup>(6) Each party shall, no later than 2 days before the hearing fixed in terms of paragraph (2), lodge in process a copy of their minute of amendment or answers with all adjustments made thereto in italic or bold type, or underlined.]

#### **Textual Amendments**

**F176** Sch. 1 rule 18.3(3)-(6) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(7)

#### *Applications for diligence on amendment*

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

#### *Service of amended pleadings*

- 18.5. (1) Where an amendment under rule [<sup>F177</sup>18.2(b)(iv), (v) or (vi) (additional or substitute defenders added by amendment) or rule] 18.2(2)(d) (all parties not, or wrong person, called) has been made—

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- (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 <sup>M21</sup>Debtors (Scotland) Act 1987 may be applied for, a notice in Form O8 specifying the date by which a notice of intention to defend must be lodged in process, a notice in Form O3 and a notice of intention to defend in Form O7; or
    - (ii) in any other cause, a notice in Form O9 specifying the date by which a notice of intention to defend must be lodged in process and a notice of intention to defend in Form O7; and
  - (b) the party who made the amendment shall lodge in process—
    - (i) a copy of the initial writ or record as amended;
    - (ii) a copy of the notice sent in Form O8 or Form O9; and
    - (iii) a certificate of service.
- (2) When paragraph (1) has been complied with, the cause as so amended shall proceed in every respect as if that party had originally been made a party to the cause.
- (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

**F177** Words in [rule 18.5\(1\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(24\)](#)

#### Marginal Citations

**M21** [1987 c.18](#).

#### *Expenses and conditions of amendment*

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

#### *Effect of amendment on diligence*

- 18.7. Where an amendment has been allowed, the amendment—
- (a) shall not validate diligence used on the dependence of a cause so as to prejudice the rights of [<sup>F178</sup>creditors of] the party against whom the diligence has been executed, who are interested in defeating such diligence; and
  - (b) shall preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.

#### Textual Amendments

**F178** Words in [rule 18.7\(a\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(25\)](#)

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### *Preliminary pleas inserted on amendment*

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

## CHAPTER 19

### COUNTERCLAIMS

#### *Counterclaims*

- 19.1. (1) In any action other than a family action within the meaning of rule 33.1(1) or an action of multiplepinding, a defender may counterclaim against a pursuer—
- (a) where the counterclaim might have been made in a separate action in which it would not have been necessary to call as defender any person other than the pursuer; and
  - (b) in respect of any matter—
    - (i) forming part, or arising out of the grounds, of the action by the pursuer;
    - (ii) the decision of which is necessary for the determination of the question in controversy between the parties; or
    - (iii) which, if the pursuer had been a person not otherwise subject to the jurisdiction of the court, might have been the subject-matter of an action against that pursuer in which jurisdiction would have arisen by reconvention.
- (2) A counterclaim shall be made in the defences—
- (a) when the defences are lodged or during the period for adjustment;
  - (b) by amendment at any other stage, with the leave of the sheriff and subject to such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.
- (3) Defences which include a counterclaim shall commence with a crave setting out the counterclaim in such form as, if the counterclaim had been made in a separate action, would have been appropriate in the initial writ in that separate action and shall include—
- (a) answers to the condescence of the initial writ as required by rule 9.6(2) (form of defences);
  - (b) a statement of facts in numbered paragraphs setting out the facts on which the counterclaim is founded, incorporating by reference, if necessary, any matter contained in the defences; and
  - (c) appropriate pleas-in-law.

#### *Warrants for diligence on counterclaims*

- 19.2. (1) A defender who makes a counterclaim may apply for a warrant for arrestment on the dependence which would have been permitted had the warrant been sought in an initial writ in a separate action.



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- (2) An application for a warrant under paragraph (1) shall be made—
- (a) at the time of making the counterclaim, by inserting [<sup>F179</sup>after] the crave of the counterclaim the words “Warrant for arrestment on the dependence applied for.”; or
  - (b) after the counterclaim has been made [<sup>F180</sup>by application], for a precept of arrestment.
- (3) An application for a warrant under paragraph (2)(a) may be granted by the sheriff <sup>F181</sup> . . . 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.

#### Textual Amendments

**F179** Word in rule 19.2(2)(a) substituted (1.11.1996) by S.I. 1996/2445, para. 3(26)

**F180** Words in Sch. 1 rule 19.2(2)(b) 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(10)(a)

**F181** Word in Sch. 1 rule 19.2(3) omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(10)(b)

#### Form of record where counterclaim lodged

- [<sup>F182</sup>19.2A. Where, under rule 9.10 (open record), 9.11 (record for Options Hearing), 10.4 (open record), or 10.5 (closed record), a record requires to be lodged in an action in which a counterclaim is included in the defences, the pleadings of the parties shall be set out in the record in the following order:—
- (a) the crave of the initial writ;
  - (b) the condescendence and answers relating to the initial writ;
  - (c) the pleas-in-law of the parties relating to the crave of the initial writ;
  - (d) the crave of the counterclaim;
  - (e) the statement of facts and answers relating to the counterclaim; and
  - (f) the pleas-in-law of the parties relating to the counterclaim.]

#### Textual Amendments

**F182** Rule 19.2A inserted (1.11.1996) by S.I. 1996/2445, para. 3(27)

#### Effect of abandonment of cause

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

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- (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 [F183 20.6] shall, with the necessary modifications, apply to such a claim as they apply in relation to such a claim by a defender.

#### **Textual Amendments**

**F183** Word in rule 20.1(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(28)

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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.

*Warrants for diligence on third party notice*

- 20.3. (1) A defender who applies for an order for service of a third party notice may apply for a warrant for arrestment to found jurisdiction or for arrestment on the dependence which would have been permitted had the warrant been sought in an initial writ in a separate action.
- (2) Averments in support of the application for such a warrant shall be included in the defences or the separate statement of facts referred to in rule 20.2(1).
- (3) An application for a warrant under paragraph (1) shall be made by motion—
- (a) at the time of applying for the third party notice; or
  - (b) if not applied for at that time, at any stage of the cause thereafter.
- (4) A certified copy of the interlocutor granting warrant for diligence applied for under paragraph (2) shall be sufficient authority for execution of the diligence.

*Service on third party*

- 20.4. (1) A third party notice shall be served on the third party within 14 days after the date of the interlocutor allowing service of that notice.
- (2) Where service of a third party notice has not been made within the period specified in paragraph (1), the order for service of it shall cease to have effect; and no service of the notice may be made unless a further order for service of it has been applied for and granted.

[<sup>F184</sup>(3) There shall be served with a third party notice—

- (a) a copy of the pleadings (including any amendments or adjustments); and

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- (b) where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, a copy of that minute.]
- (4) A copy of the third party notice, with a certificate of service attached to it, shall be lodged in process by the defender.

#### Textual Amendments

**F184** Sch. 1 rule 20.4(3) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(5)

#### Answers to third party notice

- 20.5. (1) An order for service of a third party notice shall specify 28 days, or such other period as the sheriff on cause shown may specify, as the period within which the third party may lodge answers.
- (2) Answers for a third party shall be headed “Answers for [E.F.], Third Party in the action at the instance of [A.B.], Pursuer against [C.D.], Defender” and shall include—
- (a) answers to the averments of the defender against him in the form of numbered paragraphs corresponding to the numbered articles of the condescendence in the initial writ and incorporating, if the third party so wishes, answers to the averments of the pursuer; or
  - (b) where a separate statement of facts has been lodged by the defender under rules 20.2(1), answers to the statement of facts in the form of numbered paragraphs corresponding to the numbered paragraphs of the statement of facts; and
  - (c) appropriate pleas-in-law.

#### Consequences of failure to amend pleadings

[<sup>F185</sup>20.5A. Where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, no motion for a finding, order or decree against a third party may be enrolled by the defender unless, at or before the date on which he enrolls the motion, he enrolls a motion to amend the pleadings in accordance with that minute.]

#### Textual Amendments

**F185** Sch. 1 rule 20.5A inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(6)

#### Procedure following answers

- 20.6 (1) Where a third party lodges answer, the sheriff clerk shall fix a date and time under rule 9.2 for a hearing under rule 9.12 (Options Hearing) as if the third party had lodged a notice of intention to defend and the period of notice had expired on the date for lodging answers.

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- (2) At the Options Hearing, or at any time thereafter, the sheriff may grant such decree or other order as he thinks fit.
- (3) A decree or other order against the third party shall have effect and be extractable in the same way as a decree or other order against a defender.

## CHAPTER 21

### DOCUMENTS FOUNDED ON OR ADOPTED IN PLEADINGS

#### *Lodging documents founded on or adopted*

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

#### *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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- [<sup>F186</sup>(2) Where the Options Hearing is continued under rule 9.12(5) and a preliminary plea is added by adjustment, a party intending to insist on that plea shall, not later than 3 days before the date of the Options Hearing so continued—
- (a) lodge in process a note of the basis for the plea; and
  - (b) intimate a copy of it to every other party.]
- [<sup>F187</sup>(3)] If a party fails to comply with paragraph (1) [<sup>F188</sup>or (2)], he shall be deemed to be no longer insisting on the preliminary plea; and the plea shall be repelled by the sheriff at the Options Hearing or Procedural Hearing.
- [<sup>F187</sup>(4)] At any proof before answer or debate, parties may [<sup>F189</sup>on cause shown] raise matters in addition to those set out in the note mentioned in paragraph (1) [<sup>F188</sup>or (2)].
- [<sup>F190</sup>(5) Where a note of the basis of a preliminary plea has been lodged under paragraph (1), and the Options Hearing is continued under rule 9.12(5), unless the basis of the plea has changed following further adjustment, it shall not be necessary for a party who is insisting on the plea to lodge a further note before the Options Hearing so continued.]

#### Textual Amendments

**F186** Rule 22.1(2) inserted (1.11.1996) by S.I. 1996/2445, para. 3(29)(b)

**F187** Rule 22.1(2)(3) renumbered as rule 22.1(3)(4) (1.11.1996) by S.I. 1996/2445, para. 3(29)(a)

**F188** Words in rule 22.1(3)(4) (as renumbered) inserted (1.11.1996) by S.I. 1996/2445, para. 3(29)(c)

**F189** Words in Sch. 1 rule 22.1(4) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(8)

**F190** Rule 22.1(5) inserted (1.11.1996) by S.I. 1996/2445, para. 3(29)(d)

## 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 [<sup>F191</sup>the pursuer] has directed any crave, within 28 days after the date of taxation.
- (3) If the pursuer fails to pay the expenses referred to in paragraph (2) to the party to whom they are due within the period specified in that paragraph, that party shall be entitled to decree of absolvitor with expenses.

#### Textual Amendments

**F191** Words in Sch. 1 rule 23.1(2) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(7)

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### *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) [<sup>F192</sup>Subject to paragraph (3),] Where a solicitor withdraws from acting on behalf of a party, he shall intimate his withdrawal by letter to the sheriff clerk and to every other party.
- (2) The sheriff clerk shall [<sup>F193</sup>forthwith] lodge such letter in process.
- [<sup>F194</sup>(3) Where a solicitor withdraws from acting on behalf of a party in open court and in the presence of the other parties to the action or their representatives, paragraph (1) shall not apply.]

#### **Textual Amendments**

**F192** Words in [Sch. 1 rule 24.1\(1\)](#) inserted (2.10.2000) by [S.S.I. 2000/239, para. 3\(1\)\(9\)\(a\)](#)

**F193** Word in [Sch. 1 rule 24.1\(2\)](#) inserted (2.10.2000) by [S.S.I. 2000/239, para. 3\(1\)\(9\)\(b\)](#)

**F194** [Sch. 1 rule 24.1\(3\)](#) inserted (2.10.2000) by [S.S.I. 2000/239, para. 3\(1\)\(9\)\(c\)](#)

#### *Intimation to party whose solicitor has withdrawn*

- 24.2. (1) [<sup>F195</sup>Subject to paragraph (1A),] The sheriff shall, of his own motion, or on the motion of any other party, pronounce an interlocutor ordaining the party whose solicitor has withdrawn from acting to appear or be represented at a specified diet fixed by the sheriff to state whether or not he intends to proceed, under certification that if he fails to do so the sheriff may grant decree or make such other order or finding as he thinks fit.
- [<sup>F196</sup>(1A) Where any previously fixed diet is to occur within 14 days from the date when the sheriff first considers the solicitor's withdrawal, the sheriff may either–
- (a) pronounce an interlocutor in accordance with paragraph (1); or
  - (b) consider the matter at the previously fixed diet.]
- (2) The diet fixed in the interlocutor under paragraph (1) shall not be less than 14 days after the date of the interlocutor unless the sheriff otherwise orders.
- (3) The party who has lodged the motion under paragraph (1), or any other party appointed by the sheriff, shall forthwith serve on the party whose solicitor has withdrawn a copy of the interlocutor and a notice in Form G10; and a certificate of service shall be lodged in process.

#### **Textual Amendments**

**F195** Words in [Sch. 1 rule 24.2\(1\)](#) inserted (2.10.2000) by [S.S.I. 2000/239, para. 3\(1\)\(10\)\(a\)](#)

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**F196** Sch. 1 rule 24.2(1A) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(10)(b)

### *Consequences of failure to intimate intention to proceed*

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

## CHAPTER 25

### WITHDRAWAL OF SOLICITORS

#### *Minutes of sist*

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

#### *Minutes of transference*

- 25.2. <sup>F197</sup> . . . 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.

<sup>F198</sup>(2) . . . . .

#### **Textual Amendments**

**F197** Rule 25.2: “-(1)” at the beginning of paragraph (1) is omitted (1.11.1996) by S.I. 1996/2445, para. 3(30)(a)

**F198** Rule 25.2(2) omitted (1.11.1996) by S.I. 1996/2445, para. 3(30)(b)

## CHAPTER 26

### TRANSFER AND REMIT OF CAUSES

#### *Transfer to another sheriff court*

- 26.1. (1) The sheriff may, on cause shown, remit any cause to another sheriff court.
- (2) Subject to paragraph (4), where a cause in which there are two or more defenders has been brought in the sheriff court of the residence or place of business of one of them, the sheriff may transfer the cause to any other sheriff court which has jurisdiction over any of the defenders.
- (3) Subject to paragraph (4), where a plea of no jurisdiction is sustained, the sheriff may transfer the cause to the sheriff court before which it appears to him the cause ought to have been brought.



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- (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 <sup>M22</sup>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 sub-paragraph (b) to each party.

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#### **Marginal Citations**

**M22** 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 <sup>M23</sup>Representation of the People Act 1983 in an election petition.

#### **Marginal Citations**

**M23** 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 <sup>M24</sup>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**

**M24** 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 <sup>M25</sup>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)**

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

**Marginal Citations**

**M25** 1893 c.44.

*Cautioners and <sup>F199</sup>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 <sup>M26</sup>Insurance Companies Act 1982 to carry on insurance business of class 15(b) in Schedule 2 to that Act.

**Textual Amendments**

**F199** Word in rule 27.5 heading substituted (1.11.1996) by S.I. 1996/2445, para. 3(31)

**Modifications etc. (not altering text)**

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

**Marginal Citations**

**M26** 1982 c.50.

*Forms of bonds of caution and other securities*

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

**Modifications etc. (not altering text)**

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

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

### *Sufficiency of caution or security and objections*

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

#### **Modifications etc. (not altering text)**

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

### *Insolvency or death of cautioner or guarantor*

- 27.8. Where caution has been found by bond of caution or security has been given by guarantee and the cautioner or guarantor, as the case may be—
- (a) becomes apparently insolvent within the meaning assigned by section 7 of the <sup>M27</sup>Bankruptcy (Scotland) Act 1985(constitution of apparent insolvency),
  - (b) calls a meeting of his creditors to consider the state of his affairs,
  - (c) dies unrepresented, or
  - (d) is a company and—
    - (i) an administration or winding up order has been made, or a resolution for a voluntary winding up has been passed, with respect to it,
    - (ii) a receiver of all or any part of its undertaking has been appointed, or
    - (iii) a voluntary arrangement (within the meaning assigned by section 1(1) of the <sup>M28</sup>Insolvency Act 1986) has been approved under Part I of that Act,
- the party entitled to benefit from the caution or guarantee may apply by motion for a new security or further security to be given.

#### **Modifications etc. (not altering text)**

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

#### **Marginal Citations**

**M27** 1985 c.66.

**M28** 1986 c.65.

### *Failure to find caution or give security*

- 27.9. Where a party fails to find caution or give other security (in this rule referred to as “the party in default”), any other party may apply by motion—
- (a) where the party in default is a pursuer, for decree of absolver; 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 <sup>M29</sup>Administration of Justice (Scotland) Act 1972.

#### **Marginal Citations**

**M29** 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 <sup>M30</sup>section 1 of the Act of 1972,

shall be made by motion.

(2) At the time of lodging a motion under paragraph (1), a specification of—

- (a) the document or other property sought to be inspected, photographed, preserved, taken into custody, detained, produced, recovered, sampled or experimented on or with, as the case may be, or
- (b) the matter in respect of which information is sought as to the identity of a person who might be a witness or a defender,

shall be lodged in process.

[<sup>F200</sup>(3) A copy of the specification lodged under paragraph (2) and the motion made under paragraph (1) shall be intimated by the applicant to—

- (a) every other party;
- (b) in respect of an application under section 1(1) of the <sup>M31</sup>Act of 1972, any third party haver; and
- (c) where necessary, the Lord Advocate.]

(4) Where the sheriff grants a motion made under paragraph (1) in whole or in part, he may order the applicant to find such caution or give such other security as he thinks fit.

(5) The Lord Advocate may appear at the hearing of any motion under paragraph (1).

#### **Textual Amendments**

**F200** Rule 28.2(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(32)

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### Marginal Citations

- M30** 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.
- M31** 1972 c.59.

### *Optional procedure before executing commission and diligence*

- 28.3. (1) The party who has obtained a commission and diligence for the recovery of a document on an application made under rule 28.2(1)(a), may at any time before executing it against a haver, serve on the haver an order in Form G11 (in this rule referred to as “the order”); and if so, the provisions of this rule shall apply.
- (2) The order [<sup>F201</sup>and a copy of the specification referred to in rule 28.2(2) as approved by the court] shall be served on the haver or his known solicitor and shall be complied with by the haver in the manner and within the period specified in the order.
- (3) Not later than the day after the date on which the order, [<sup>F202</sup>the certificate appended to Form G11] and any document is received by the sheriff clerk from a haver, he shall intimate that fact to each party.
- (4) No party, other than the party who served the order, may uplift such a document until after the expiry of 7 days after the date of intimation under paragraph (3).
- (5) Where the party who served the order fails to uplift such a document within 7 days after the date of intimation under paragraph (3), the sheriff clerk shall intimate that failure to every other party.
- (6) Where no party has uplifted such a document within 14 days after the date of intimation under paragraph (5), the sheriff clerk shall return it to the haver who delivered it to him.
- (7) Where a party who has uplifted such a document does not wish to lodge it, he shall return it to the sheriff clerk who shall—
- (a) intimate the return of the document to every other party; and
  - (b) if no other party uplifts the document within 14 days after the date of intimation, return it to the haver.
- (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

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specification, notwithstanding the production of a certified extract [<sup>F203</sup> from that book].

#### Textual Amendments

**F201** Words in rule 28.3(2) inserted (1.11.1996) by S.I. 1996/2445, para. 3(33)(a)

**F202** Words in rule 28.3(3) substituted (1.11.1996) by S.I. 1996/2445, para. 3(33)(b)

**F203** Words in rule 28.3(11) inserted (1.11.1996) by S.I. 1996/2445, para. 3(33)(c)

#### *Execution of commission and diligence for recovery of documents*

- 28.4. (1) The party who seeks to execute a commission and diligence for recovery of a document obtained on an application made under rule 28.2(1)(a) shall—
- (a) provide the commissioner with a copy of the specification, a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment; and
  - (b) instruct the clerk and any shorthand writer considered necessary by the commissioner or any party; and
  - (c) be responsible for the fees of the commissioner and his clerk, and of any shorthand writer.
- (2) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission.
- (3) The interlocutor granting such a commission and diligence shall be sufficient authority for citing a haver to appear before the commissioner.
- (4) A citation in Form G13 shall be served on the haver with a copy of the specification and, where necessary for a proper understanding of the specification, a copy of the pleadings (including any adjustments and amendments) [<sup>F204</sup>]; and the party citing the haver shall lodge a certificate in Form G12].
- (5) The parties and the haver shall be entitled to be represented by a solicitor or person having a right of audience before the sheriff at the execution of the commission.
- (6) At the commission, the commissioner shall—
- (a) administer the oath de fideli administratione to any [<sup>F205</sup>clerk and any] shorthand writer appointed for the commission; and
  - (b) administer to the haver the oath in Form G14, or, where the haver elects to affirm, the affirmation in Form G15.
- (7) The report of the execution of the commission and diligence, any document recovered and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.
- (8) Not later than the day after the date on which such a report, document and inventory, if any, are received by the sheriff clerk, he shall intimate to the parties that he has received them.
- (9) No party, other than the party who served the order, may uplift such a document until after the expiry of 7 days after the date of intimation under paragraph (8).



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- (10) Where the party who served the order fails to uplift such a document within 7 days after the date of intimation under paragraph (8), the sheriff clerk shall intimate that failure to every other party.
- (11) Where no party has uplifted such a document within 14 days after the date of intimation under paragraph (10), the sheriff clerk shall return it to the haver.
- (12) Where a party who has uplifted such a document does not wish to lodge it, he shall return it to the sheriff clerk who shall—
  - (a) intimate the return of the document to every other party; and
  - (b) if no other party uplifts the document within 14 days of the date of intimation, return it to the haver.

#### Textual Amendments

**F204** Words in [rule 28.4\(4\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(34\)\(a\)](#)

**F205** Words in [rule 28.4\(6\)\(a\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(34\)\(b\)](#)

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

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

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

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



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*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 <sup>F206</sup> . . . shall grant a commission and diligence for the detention and custody of that document or other property.
- (2) The party who has obtained an order under paragraph (1) shall—
- (a) provide the commissioner with a copy of the specification, a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
  - (b) be responsible for the fees of the commissioner and his clerk; and
  - (c) serve a copy of the order on the haver.
- (3) The report of the execution of the commission and diligence, any document or other property taken by the commissioner and an inventory of such property, shall be sent by the commissioner to the sheriff clerk for the further order of the sheriff.

**Textual Amendments**

**F206** Words in [rule 28.7\(1\)](#) omitted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(35\)](#)

*Confidentiality*

- 28.8. (1) Where confidentiality is claimed for any evidence sought to be recovered under any of the following rules, such evidence shall [<sup>F207</sup>where practicable,] be enclosed in a sealed packet:—
- (28) (optional procedure before executing commission and diligence),
  - (28) (execution of commission and diligence for recovery of documents),
  - (28) (execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972),
  - (28) (execution of orders for preservation etc. of documents or other property under section 1(1) of the Act of 1972).
- (2) A motion to have such a sealed packet opened up [<sup>F208</sup>or such recovery allowed] may be lodged by—
- (a) the party who obtained the commission and diligence; or
  - (b) any other party after the date of intimation by the sheriff clerk under rule 28.3(5) or 28.4(10) (intimation of failure to uplift documents).
- (3) In addition to complying with rule 15.2 (intimation of motions), the party lodging such a motion shall intimate the terms of the motion to the haver by post by the first class recorded delivery service.
- (4) The person claiming confidentiality may oppose a motion made under paragraph (2).

**Textual Amendments**

**F207** Words in [rule 28.8\(1\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(36\)\(a\)](#)

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**F208** Words in rule 28.8(2) inserted (1.11.1996) by S.I. 1996/2445, para. 3(36)(b)

*Warrants for production of original documents from public records*

- 28.9. (1) Where a party seeks to obtain from the keeper of any public record production of the original of any register or deed in his custody for the purposes of a cause, he shall apply to the sheriff by motion.
- (2) Intimation of a motion under paragraph (1) shall be given to the keeper of the public record concerned at least 7 days before the motion is lodged.
- (3) In relation to a public record kept by the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland, where it appears to the sheriff that it is necessary for the ends of justice that a motion under this rule should be granted, he shall pronounce an interlocutor containing a certificate to that effect; and the party applying for production may apply by letter (enclosing a copy of the interlocutor duly certified by the sheriff clerk), addressed to the Deputy Principal Clerk of Session, for an order from the Court of Session authorising the Keeper of the Registers or the Keeper of the Records, as the case may be, to exhibit the original of any register or deed to the sheriff.
- (4) The Deputy Principal Clerk of Session shall submit the application sent to him under paragraph (3) to the Lord Ordinary in chambers who, if satisfied, shall grant a warrant for production or exhibition of the original register or deed sought.
- (5) A certified copy of the warrant granted under paragraph (4) shall be served on the keeper of the public record concerned.
- (6) The expense of the production or exhibition of such an original register or deed shall be met, in the first instance, by the party who applied by motion under paragraph (1).

*Commissions for examination of witnesses*

- 28.10. (1) This rule applies to a commission—
- (a) to take the evidence of a witness who—
- (i) is resident beyond the jurisdiction of the court;
- (ii) although resident within the jurisdiction of the court, resides at some place remote from that court; or
- (iii) by reason of age, infirmity or sickness, is unable to attend the diet of proof; <sup>F209</sup> . . .
- (b) in respect of the evidence of a witness which is in danger of being lost, to take the evidence to lie in retentis <sup>F210</sup>; or]
- [<sup>F211</sup>(c) on special cause shown, to take evidence of a witness on a ground other than one mentioned in sub-paragraph (a) or (b)]
- (2) An application by a party for a commission to examine a witness shall be made by motion; and that party shall specify in the motion the name and address of at least one proposed commissioner for approval and appointment by the sheriff.
- (3) The interlocutor granting such a commission shall be sufficient authority for citing the witness to appear before the commissioner.
- (4) At the commission, the commissioner shall—

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- (a) administer the oath de fideli administratione to any [<sup>F212</sup>clerk and any] shorthand writer appointed for the commission; and
  - (b) administer to the witness the oath in Form G14, or where the witness elects to affirm, the affirmation in Form G15.
- (5) Where a commission is granted for the examination of a witness, the commission shall proceed without interrogatories unless, on cause shown, the sheriff otherwise directs.

#### Textual Amendments

**F209** Word in rule 28.10(1)(a)(iii) omitted (1.11.1996) by S.I. 1996/2445, para. 3(37)(a)(i)

**F210** Rule 28.10(1)(b): “;or” substituted for the full-stop (1.11.1996) by S.I. 1996/2445, para. 3(37)(a)(ii)

**F211** Rule 28.10(1)(c) inserted (1.11.1996) by S.I. 1996/2445, para. 3(37)(a)(iii)

**F212** Words in rule 28.10(4)(a) inserted (1.11.1996) by S.I. 1996/2445, para. 3(37)(b)

#### Commissions on interrogatories

- 28.11. (1) Where interrogatories have not been dispensed with, the party who obtained the commission to examine a witness under rule 28.10 shall lodge draft interrogatories in process.
- (2) Any other party may lodge cross-interrogatories.
  - (3) The interrogatories and any cross-interrogatories, when adjusted, shall be extended and returned to the sheriff clerk for approval and the settlement of any dispute as to their contents by the sheriff.
  - (4) The party who has obtained the commission shall—
    - (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments), the approved interrogatories and any cross-interrogatories and a certified copy of the interlocutor of his appointment;
    - (b) instruct the clerk; and
    - (c) be responsible, in the first instance, for the fee of the commissioner and his clerk.
  - (5) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission to examine the witness.
  - (6) The executed interrogatories, any document produced by the witness and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.
  - (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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### *Commissions without interrogatories*

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

### *Evidence taken on commission*

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

### *Letters of request*

- 28.14. (1) [F213Subject to paragraph (7), this] rule applies to an application for a letter of request to a court or tribunal outside Scotland to obtain evidence of the kind specified in paragraph (2), being evidence obtainable within the jurisdiction of that court or tribunal, for the purposes of a cause depending before the sheriff.
- (2) An application to which paragraph (1) applies may be made in relation to a request—
- (a) for the examination of a witness [F214,]
  - (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 [F215,]

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- [<sup>F216</sup>(c) for the medical examination of any person,  
(d) for the taking and testing of samples of blood from any person, or  
(e) for any other order for obtaining evidence,  
for which an order could be obtained from the sheriff.]
- (3) Such an application shall be made by minute in Form G16 together with a proposed letter of request in Form G17.
- (4) It shall be a condition of granting a letter of request that any solicitor for the applicant [<sup>F217</sup>, or a party litigant, as the case may be, shall be personally liable, in the first instance,] for the whole expenses which may become due and payable in respect of the letter of request to the court or tribunal obtaining the evidence and to any witness who may be examined for the purpose; and he shall consign into court such sum in respect of such expenses as the sheriff thinks fit.
- (5) Unless the court or tribunal to which a letter of request is addressed is a court or tribunal in a country or territory—  
(a) where English is an official language, or  
(b) in relation to which the sheriff clerk certifies that no translation is required,  
then the applicant shall, before the issue of the letter of request, lodge in process a translation of that letter and any interrogatories and cross-interrogatories into the official language of that court or tribunal.
- (6) The letter of request when issued, any interrogatories and cross-interrogatories adjusted as required by rule 28.11 and the translations (if any), shall be forwarded by the sheriff clerk to the Foreign and Commonwealth Office or to such person and in such manner as the sheriff may direct.
- [<sup>F218</sup>(7) This rule does not apply to any request for the taking of evidence under Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.]

#### Textual Amendments

**F213** Words in Sch. 1 rule 28.14(1) substituted (1.1.2004) by Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), art. 4(2)(a)

**F214** Rule 28.14(2)(a): a comma is substituted for the semi-colon at the end (1.11.1996) by S.I. 1996/2445, para. 3(38)(a)(i)

**F215** Rule 28.14(2)(b): a comma is substituted for the full-stop at the end (1.11.1996) by S.I. 1996/2445, para. 3(38)(a)(ii)

**F216** Rule 28.14(2)(c)-(e) inserted (1.11.1996) by S.I. 1996/2445, para. 3(38)(a)(iii)

**F217** Words in rule 28.14(4) inserted (1.11.1996) by S.I. 1996/2445, para. 3(38)(b)

**F218** Sch. 1 rule 28.14(7) inserted (1.1.2004) by Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), art. 4(2)(b)

#### *Taking of evidence in the European Community*

[<sup>F219</sup>28(1A) This rule applies to any request—

- (a) for the competent court of another Member State to take evidence under Article 1.1(a) of the Council Regulation; or  
(b) that the court shall take evidence directly in another Member State under Article 1.1(b) of the Council Regulation.

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

#### Textual Amendments

**F219** Sch. 1 rule 28.14A inserted (1.1.2004) by Act of Sederunt (Taking of Evidence in the European Community) 2003 (S.S.I. 2003/601), rule 4(3)

#### *Citation of witnesses and havers*

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

VALID FROM 18/08/2006

## [<sup>F220</sup>CHAPTER 28A

### PRE-PROOF HEARING

#### Textual Amendments

**F220** 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).

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- (4) At a pre-proof hearing the sheriff may—
  - (a) discharge the proof or proof before answer and fix a new date for such proof or proof before answer;
  - (b) adjourn the pre-proof hearing; or
  - (c) make such other order as he thinks fit to secure the expeditious progress of the cause.
- (5) For the purposes of rules 16.2 (decrees where party in default), 33.37 (decree by default in family action) and 33A.37 (decree by default in civil partnership action), a pre-proof hearing shall be a diet in accordance with those rules.]

## CHAPTER 29

### PROOF

#### *Reference to oath*

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

#### *Remit to person of skill*

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

#### *Written statements*

- [<sup>F221</sup>29.3. Where a statement in a document is admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988 <sup>F222</sup>, any party who wishes to have that statement received in evidence shall—
  - (a) docket that document as follows:– (*Place and date*) This document contains a statement admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988. (*Signed*) (*Designation and address*);
  - (b) lodge that document in process; and
  - (c) provide all other parties with a copy of that document.]



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#### Textual Amendments

**F221** Sch. 1 rule 29.3 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(11)**

**F222** 1988 c. 32.

<sup>F223</sup>29.3. ....

#### Textual Amendments

**F223** Sch. 1 rule 29.3 omitted (2.10.2000) by virtue of S.S.I. 2000/239, **para. 3(1)(11)**

#### *Renouncing probation*

29.4. (1) Where, on or at any time after, the closing of the record, the parties seek to renounce probation, they shall lodge in process a joint minute to that effect with or without a statement of admitted facts and any productions.

(2) On the lodging of a joint minute under paragraph (1), the sheriff may order a debate.

#### *Orders for proof*

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

#### *Hearing parts of proof separately*

29.6. (1) [<sup>F224</sup>In any cause], the sheriff may—

- (a) of his own motion, or
- (b) on the motion of any party,

order that proof on liability or any specified issue be heard separately from proof on the question of the amount for which decree may be pronounced and determine the order in which the proofs shall be heard.

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

#### Textual Amendments

**F224** Words in rule 29.6(1) substituted (1.11.1996) by S.I. 1996/2445, **para. 3(39)**

#### *Citation of witnesses*

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

- (a) by registered post or the first class recorded delivery service by the solicitor for the party on whose behalf he is cited; or
- (b) by a sheriff officer—
  - (i) personally;
  - (ii) by a citation being left with a resident at the person's dwelling place or an employee at his place of business;



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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 decerned 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 decerned 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.

### *Lodging productions*

- 29.11. (1) Where a proof has been allowed, all productions [<sup>F225</sup>and affidavits] which are intended to be used at the proof shall be lodged in process not later than 14 days before the diet of proof.
- (2) A production which is not lodged in accordance with paragraph (1) shall not be used or put in evidence at a proof unless—
- (a) by consent of parties; or
  - (b) with leave of the sheriff on cause shown and on such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.

#### **Textual Amendments**

**F225** Words in [Sch. 1 rule 29.11\(1\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(12\)](#)

### *Copy productions*

- 29.12. (1) A copy of every [<sup>F226</sup>documentary] production, marked with the appropriate number of process of the principal production, shall be lodged for the use of the sheriff at a proof not later than 48 hours before the diet of proof.
- (2) Each copy production consisting of more than one sheet shall be securely fastened together by the party lodging it.

#### **Textual Amendments**

**F226** Word in [Sch. 1 rule 29.12\(1\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(13\)](#)

### *Returning borrowed parts of process and productions before proof*

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

### *Notices to admit and notices of non-admission*

- 29.14. (1) At any time after [<sup>F227</sup>the record has closed], a party may intimate to any other party a notice or notices calling on him to admit for the purposes of that cause only—
- (a) such facts relating to an issue averred in the pleadings as may be specified in the notice;
  - (b) that a particular document lodged in process and specified in the notice is—
    - (i) an original and properly authenticated document; or

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- (ii) a true copy of an original and properly authenticated document.
- (2) Where a party on whom a notice is intimated under paragraph (1)—
- (a) does not admit a fact specified in the notice, or
  - (b) does not admit, or seeks to challenge, the authenticity of a document specified in the notice,
- he shall, within 21 days after the date of intimation of the notice under paragraph (1), intimate a notice of non-admission to the party intimating the notice to him under paragraph (1) stating that he does not admit the fact or document specified.
- (3) A party who fails to intimate a notice of non-admission under paragraph (2) shall be deemed to have admitted the fact or document specified in the notice intimated to him under paragraph (1); and such fact or document may be used in evidence at a proof if otherwise admissible in evidence, unless the sheriff, on special cause shown, otherwise directs.
- (4) A party who fails to intimate a notice of non-admission under paragraph (2) within 14 days after the notice to admit intimated to him under paragraph (1) shall be liable to the party intimating the notice to admit for the expenses of proving the fact or document specified in that notice unless the sheriff, on special cause shown, otherwise directs.
- (5) The party serving a notice under paragraph (1) or (2) shall lodge a copy of it in process.
- (6) A deemed admission under paragraph (3) shall not be used against the party by whom it was deemed to be made other than in the cause for the purpose for which it was deemed to be made or in favour of any person other than the party by whom the notice was given under paragraph (1).
- [<sup>F228</sup>(7) The sheriff may, at any time, allow a party to amend or withdraw an admission made by him on such conditions, if any, as he thinks fit.
- <sup>F228</sup>(8) A party may, at any time, withdraw in whole or in part a notice of non admission by intimating a notice of withdrawal.]

#### Textual Amendments

**F227** Words in [Sch. 1 rule 29.14\(1\)](#) substituted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(14\)\(a\)](#)

**F228** [Sch. 1 rule 29.14\(7\)\(8\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(14\)\(b\)](#)

#### Instruction of shorthand writer

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

#### Administration of oath or affirmation to witnesses

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

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### *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(1) Evidence in a cause shall be recorded by —

- (a) a shorthand writer, to whom the oath de fideli administratione in connection with the sheriff court service generally has been administered, or
  - (b) tape recording or other mechanical means approved by the court,
- unless the parties, by agreement and with the approval of the sheriff, dispense with the recording of evidence.
- (2) Where a shorthand writer is employed to record evidence, he shall, in the first instance, be paid by the parties equally.
  - (3) Where evidence is recorded by tape recording or other mechanical means, any fee payable shall, in the first instance, be paid by the parties in equal proportions.
  - (4) The solicitors for the parties shall be personally liable for the fees payable under paragraph (2) or (3), and the sheriff may make an order directing payment to be made.
  - (5) The record of the evidence at a proof shall include—
    - (a) any objection taken to a question or to the line of evidence;
    - (b) any submission made in relation to such an objection; and
    - (c) the ruling of the court in relation to the objection and submission.
  - (6) A transcript of the record of the evidence shall be made only on the direction of the sheriff; and the cost shall, in the first instance, be borne—
    - (a) in an undefended cause, by the solicitor for the pursuer; and
    - (b) in a defended cause, by the <sup>F230</sup>solicitors] for the parties in equal proportions.
  - (7) The transcript of the record of the evidence provided for the use of the court shall be certified as a faithful record of the evidence by—
    - (a) the shorthand writer who recorded the evidence; or
    - (b) where the evidence was recorded by tape recording or other mechanical means, by the persons who transcribed the record.
  - (8) The sheriff may make such alterations to the transcript of the record of the evidence as appear to him to be necessary after hearing the parties; and, where such alterations are made, the sheriff shall authenticate the alterations.
  - (9) Where a transcript of the record of the evidence has been made for the use of the sheriff, copies of it may be obtained by any party from the person who transcribed the record on payment of his fee.
  - (10) Except with leave of the sheriff, the transcript of the record of the evidence may be borrowed from process only for the purpose of enabling a party to consider whether to appeal against the interlocutor of the sheriff on the proof.
  - (11) Where a transcript of the record of the evidence is required for the purpose of an appeal but has not been directed to be transcribed under paragraph (6), the appellant—

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- (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.

#### Textual Amendments

**F229** Rule 29.18: “-(1)” inserted after “29.18” (1.11.1996) by S.I. 1996/2445, para. 3(40)(a)

**F230** Word in rule 29.18(6)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(40)(b)

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

- 29.19. (1) Where a party or any other person objects to the admissibility of oral or documentary evidence on the ground of confidentiality or to the production of a document on any ground, he may, if dissatisfied with the ruling of the sheriff on the objection, express immediately his formal dissatisfaction with the ruling and, with leave of the sheriff, appeal to the sheriff principal.
- (2) The sheriff principal shall dispose of an appeal under paragraph (1) with the least possible delay.
  - (3) Except as provided in paragraph (1), no appeal may be made during a proof against any decision of the sheriff as to the admissibility of evidence or the production of documents.
  - (4) The appeal referred to in paragraph (1) shall not remove the cause from the sheriff who may proceed with the cause in relation to any issue which is not dependent on the ruling appealed against.

#### *Parties to be heard at close of proof*

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

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## 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 <sup>M32</sup>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 multiplepinding, 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**

**M32** 1893 c.44.

#### *Decrees for payment in foreign currency*

- 30.3. (1) Where decree has been granted for payment of a sum of money in a foreign currency or the sterling equivalent, a party requesting extract of the decree shall do so by minute endorsed on or annexed to the initial writ stating the rate of exchange prevailing on the date of the decree sought to be extracted or the date, or within 3 days before the date, on which the extract is ordered, and the sterling equivalent at that rate for the principal sum and interest decerned for.
- (2) A certificate in Form G18, from the Bank of England or a bank which is an institution authorised under the <sup>M33</sup>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**

**M33** 1987 c.22.

#### *When decrees extractable*

- 30.4. (1) Subject to the following paragraphs:—
- (a) [<sup>F231</sup>subject to sub-paragraph (c),] a decree in absence may be extracted after the expiry of 14 days from the date of decree;

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- (b) [<sup>F231</sup>subject to sub-paragraph (c),]any decree pronounced in a defended cause may be extracted at any time after whichever is the later of the following:—
    - (i) the expiry of the period within which an application for leave to appeal may be made and no such application has been made;
    - (ii) the date on which leave to appeal has been refused and there is no right of appeal from such refusal;
    - (iii) the expiry of the period within which an appeal may be marked and no appeal has been marked; or
    - (iv) the date on which an appeal has been finally disposed of; and
  - (c) where the sheriff has, in pronouncing decree, reserved any question of expenses, extract of that decree may be issued only after the expiry of 14 days from the date of the interlocutor disposing of the question of expenses unless the sheriff otherwise directs.
- (2) The sheriff may, on cause shown, grant a motion to allow extract to be applied for and issued earlier than a date referred to in paragraph (1).
- (3) In relation to a decree referred to in paragraph (1)(b) or (c), paragraph (2) shall not apply unless—
- (a) the motion under that paragraph is made in the presence of parties; or
  - (b) the sheriff is satisfied that proper intimation of the motion has been made in writing to every party not present at the hearing of the motion.
- (4) Nothing in this rule shall affect the power of the sheriff to supersede extract.

#### Textual Amendments

**F231** Words in rule 30.4(1)(a)(b) inserted (1.11.1996) by S.I. 1996/2445, para. 3(41)(a)(b)

#### *Extract of certain awards notwithstanding appeal*

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

#### *Form of extract decree*

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

#### *Form of warrant for execution*

- [<sup>F232</sup>30].7. An extract of a decree on which execution may proceed shall include a warrant for execution in the following terms:— “This extract is warrant for all lawful execution hereon.”.

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### Textual Amendments

**F232** Rule 3.7 renumbered as rule 30.7 (1.11.1996) by S.I. 1996/2445, para. 3(42)

### *Date of decree in extract*

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

### *Service of charge where address of defender not known*

- 30.9. (1) Where the address of a defender is not known to the pursuer, a charge shall be deemed to have been served on the defender if it is—
- (a) served on the sheriff clerk of the sheriff court district where the defender's last known address is located; and
  - (b) displayed by the sheriff clerk on the walls of court for the period of the charge.
- (2) On receipt of such a charge, the sheriff clerk shall display it on the walls of court and it shall remain displayed for the period of the charge.
- (3) The period specified in the charge shall run from the first date on which it was displayed on the walls of court.
- (4) On the expiry of the period of charge, the sheriff clerk shall endorse a certificate on the charge certifying that it has been displayed in accordance with this rule and shall thereafter return it to the sheriff officer by whom service was executed.

## CHAPTER 31

### APPEALS

#### *Time limit for appeal*

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

#### *Applications for leave to appeal*

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



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- (3) An application for leave to appeal from a decision in relation to a time to pay direction made under section 1 of the <sup>M34</sup>Debtors (Scotland) Act 1987 or the recall or restriction of an arrestment made under section 3(4) of that Act shall specify the question of law on which the appeal is made.

#### Marginal Citations

M34 1987 c.18.

#### Form of appeal to Court of Session

- [<sup>F233</sup>31(3)] An appeal to the Court of Session shall be marked by writing a note of appeal—
- (a) on the interlocutor sheet or other written record containing the interlocutor appealed against, or
  - (b) where the decision appealed against is not available or the proceedings appealed against are recorded in an official book, on a separate sheet lodged with the sheriff clerk,
- in the following terms:— “The pursuer [*or defender or as the case may be*] appeals to the Court of Session.”.
- (2) A note of appeal under paragraph (1) shall—
- (a) be signed by the appellant or his solicitor;
  - (b) bear the date on which it is signed; and
  - (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal.]

#### Textual Amendments

F233 Rule 31.3 substituted (1.11.1996) by S.I. 1996/2445, para. 3(43)(c)

#### Form of appeal to the sheriff principal

- [<sup>F234</sup>31(4)] An appeal to the sheriff principal shall be marked by lodging a note of appeal in Form A1.
- (2) A note of appeal under paragraph (1) shall—
- (a) be signed by the appellant or his solicitor;
  - (b) bear the date on which it is signed;
  - (c) where the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal; and
  - (d) where a note has not been provided by the sheriff, request that the sheriff write a note setting out the reasons for his decision.
- (3) The grounds of appeal in a note of appeal shall consist of brief specific numbered propositions stating the grounds on which it is proposed to submit that the appeal should be allowed or as the case may be.
- (4) On marking or lodging a note of appeal, the appellant shall send a copy of the note of appeal to every other party.

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

#### Textual Amendments

**F234** Rule 31.4 inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(43\)\(d\)](#)

#### *Transmission of process and notice to parties*

- [<sup>F235</sup>31(3)] Where an appeal is marked in terms of rule 31.3 (appeal to Court of Session) or 31.4 (appeal to sheriff principal), the sheriff clerk shall transmit the process of the cause—
- (a) in an appeal to the sheriff principal, to him; or
  - (b) in an appeal to the Court of Session, to the Deputy Principal Clerk of Session, within the period specified in rule 40.6 of the <sup>M35</sup>Rules of the Court of Session 1994.
- (2) On transmitting the process in terms of paragraph (1), the sheriff clerk shall—
- (a) send written notice of the appeal to every party; and
  - (b) certify on the interlocutor sheet that he has done so.
- (3) Failure of the sheriff clerk to comply with paragraph (2) shall not invalidate the appeal.]

#### Textual Amendments

**F235** Rule 31.5 inserted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(43\)\(d\)](#)

#### Marginal Citations

**M35** [S.I. 1994/1443](#).

#### *Record of pleadings etc.*

- [<sup>F236</sup>31.6. In an appeal to him, the sheriff principal may order the appellant to lodge a record of the pleadings containing all adjustments made in the cause with—
- (a) a copy of all relevant interlocutors;

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

#### Textual Amendments

**F236** Rule 31.6 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

#### *Determination of appeal*

- [<sup>F237</sup>31.7. In an appeal to him, the sheriff principal shall–
- (a) hear parties at an oral hearing; or
  - (b) on the motion of the parties, and if he thinks fit, dispose of the appeal without ordering an oral hearing.]

#### Textual Amendments

**F237** Rule 31.7 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

#### *Fixing of Options Hearing or making other order following appeal*

- [<sup>F238</sup>31.8. On determination of an appeal from a decision of the sheriff made before or at an Options Hearing or any continuation of it, the sheriff principal may order the sheriff clerk to fix a new date for a hearing under rule 9.12 (options hearing) or may make such other order as he thinks fit.]

#### Textual Amendments

**F238** Rule 31.8 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

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

- [<sup>F239</sup>31.9. Where an appeal is marked against an interlocutor making an order under section 11 of the <sup>M36</sup>Children (Scotland) Act 1995(court orders relating to parental responsibilities etc.) or in respect of aliment, the marking of that appeal shall not excuse obedience to or implement of that order unless by order of the sheriff, the sheriff principal or the Court of Session, as the case may be.]

#### Textual Amendments

**F239** Rule 31.9 inserted (1.11.1996) by S.I. 1996/2445, para. 3(43)(d)

#### Marginal Citations

**M36** 1995 c.36.

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### *Interim possession etc. pending appeal*

[<sup>F240</sup>31.10] Notwithstanding an appeal, the sheriff or sheriff principal from whose decision an appeal has been taken shall have power—

- (a) to regulate all matters relating to interim possession;
- (b) to make any order for the preservation of any property to which the action relates or for its sale if perishable;
- (c) to make provision for the preservation of evidence; or
- (d) to make any interim order which a due regard to the interests of the parties may require.

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

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

#### **Textual Amendments**

**F240** Rule 31.6 renumbered as rule 31.10 (1.11.1996) by S.I. 1996/2445, para. 3(43)(b)

### *Abandonment of appeal*

[<sup>F241</sup>31.11]. After an appeal to the sheriff principal has been marked, the appellant shall not be entitled to abandon his appeal unless—

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

#### **Textual Amendments**

**F241** Rule 31.7 renumbered as rule 31.11 (1.11.1996) by S.I. 1996/2445, para. 3(43)(b)

## **CHAPTER 32**

### **TAXATION OF EXPENSES**

#### *Taxation before decree for expenses*

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

#### *Order to lodge account of expenses*

[<sup>F242</sup>32.1A. A party found liable in expenses may from 4 months after the date of the interlocutor finding him so liable apply by motion for an order ordaining the party entitled to expenses to lodge an account of those expenses in process.]

#### **Textual Amendments**

**F242** Sch. 1 rule 32.1A 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(12)

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### *Decree for expenses in name of solicitor*

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

### *Procedure for taxation*

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

### *Objections to auditor's report*

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

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VALID FROM 29/01/2007

## [<sup>F243</sup>CHAPTER32A

### LIVE LINKS

#### Textual Amendments

**F243** Sch. 1 Chapter 32A inserted (29.1.2007) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007 (S.S.I. 2007/6), **para. 2(13)**

32A.1.(1) On cause shown, a party may apply by motion for authority for the whole or part of—

- (a) the evidence of a witness or the party to be given; or
- (b) a submission to be made,

through a live link.

(2) In paragraph (1)—

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

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

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

## SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES

### CHAPTER 33

#### FAMILY ACTIONS

##### *PART I*

#### *GENERAL PROVISIONS*

#### *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;

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- (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;
- [<sup>F244</sup>(h) an action or application for, or in respect of, an order under section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.), except—
  - (i) an application for the appointment of a judicial factor mentioned in section 11(2)(g) of the Act of 1995 to which Part I of the Act of Sederunt (Judicial Factors Rules) 1992 applies; and
  - (ii) an application for the appointment or removal of a person as a guardian mentioned in section 11(2)(h) of the Act of 1995 to which paragraph 4 of the Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 applies;]
- (i) an action of affiliation and aliment;
- (j) an action of, or application for or in respect of, aliment;
- (k) an action or application for financial provision after a divorce or annulment in an overseas country within the meaning of Part IV of the <sup>M37</sup>Martimonial and Family Proceedings Act 1984;
- (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 <sup>M38</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.

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

“the Act of 1975” means the <sup>M39</sup>Children Act 1975;

“the Act of 1976” means the <sup>M40</sup>Divorce (Scotland) Act 1976;

“the Act of 1981” means the <sup>M41</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981;

“the Act of 1985” means the <sup>M42</sup>Family Law (Scotland) Act 1985;

[<sup>F245</sup>“the Act of 1995” means the Children (Scotland) Act 1995;

“contact order” has the meaning assigned in section 11(2)(d) of the Act of 1995;]

<sup>F246</sup>

[<sup>F247</sup>“local authority” means a council constituted under section 2 of the <sup>M43</sup>Local Government etc. (Scotland) Act 1994;]

“mental disorder” means mental illness or mental handicap however caused or manifested;

“order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas divorce or annulment), an order mentioned in section 8(1) of the Act of 1985;

[<sup>F248</sup>“parental responsibilities” has the meaning assigned in section 1(3) of the Act of 1995;

“parental rights” has the meaning assigned in section 2(4) of the Act of 1995;

“residence order” has the meaning assigned in section 11(2)(c) of the Act of 1995;

“section 11 order” means an order under section 11 of the Act of 1995.]

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- (3) For the purposes of rules 33.2 (averments in actions of divorce or separation about other proceedings) and 33.3 (averments where [F249 section 11 order] sought) and, in relation to proceedings in another jurisdiction, Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 F250 (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

- F244** Rule 33.1(1)(h) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(a)
- F245** Rule 33.1(2): definitions of "the Act of 1995" and "contact order" inserted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(b)(i)
- F246** Rule 33.1(2): definition of "child" omitted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(b)(ii)
- F247** Rule 33.1(2): definition of "local authority" substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(b)(iii)
- F248** Rule 33.1(2): definitions of "parental responsibilities", "parental", "residence order" and "section 11 order" substituted for definition of "parental rights" (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 4(b)(iv)**
- F249** Words in rule 33.1(3) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch.**, para. 4(c)
- F250** 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.

#### Marginal Citations

- M37** 1984 c.42; Part IV was amended by the Family Law (Scotland) Act 1985 (c.37), **Schedule 1**, paragraphs 12 and 13.
- M38** 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.
- M39** 1975 c.72.
- M40** 1976 c.39.
- M41** 1981 c.59.
- M42** 1985 c.37.
- M43** 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c.25), **Schedule 22**, paragraph 232(1)

#### *Averments in actions of divorce or separation about other proceedings*

- 33.2. (1) This rule applies to an action of divorce or separation.
- (2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—
- (a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the marriage to which the initial writ relates or are capable of affecting its validity or subsistence; and
  - (b) where such proceedings are continuing—
    - (i) the court, tribunal or authority before which the proceedings have been commenced;
    - (ii) the date of commencement;
    - (iii) the names of the parties;



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- (iv) the date, or expected date of any proof (or its equivalent) in the proceedings; and
- (v) such other facts as may be relevant to the question of whether or not the action before the sheriff should be sisted under Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 [<sup>F251</sup>or Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses].

(3) Where—

- (a) such proceedings are continuing;
- (b) the action before the sheriff is defended; and
- (c) either—
  - (i) the initial writ does not contain the statement referred to in paragraph (2)(a), or
  - (ii) the particulars mentioned in paragraph (2)(b) as set out in the initial writ are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the action shall include that statement and, where appropriate, the further or correct particulars mentioned in paragraph (2)(b).

**Textual Amendments**

**F251** Words in Sch. 1 rule 33.2(2)(b)(v) inserted (2.4.2001) by S.S.I. 2001/144, para. 2(1)(2)

*[<sup>F252</sup>Averments where section 11 order sought]*

33.3. (1) A party to a family action, who makes an application in that [<sup>F253</sup>action for a section 11 order] in respect of a child shall include in his pleadings—

- (a) where that action is an action of divorce or separation, averments giving particulars of any other proceedings known to him, whether in Scotland or elsewhere and whether concluded or not, which relate to the child in respect of whom the [<sup>F254</sup>section 11 order] is sought;
- (b) in any other family action—
  - (i) the averments mentioned in paragraph (a); and
  - (ii) averments giving particulars of any proceedings known to him which are continuing, whether in Scotland or elsewhere, and which relate to the marriage of the parents of that child.

(2) Where such other proceedings are continuing or have taken place and the averments of the applicant for such a [<sup>F254</sup>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 [<sup>F255</sup>party] to the family action shall include such particulars or such further or correct particulars as are known to him.

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- (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

- F252** Words in [rule 33.3](#) heading substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch.](#), [para. 5\(a\)](#)  
**F253** Words in [rule 33.3\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch.](#), [para. 5\(b\)](#)  
**F254** Words in [rule 33.3\(1\)\(a\)\(2\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch.](#), [para. 5\(c\)](#)  
**F255** Word in [rule 33.3\(2\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(44\)](#)

#### *Averments where identity or address of person not known*

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

#### *Averments about maintenance orders*

- 33.5. In a family action in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall contain an averment stating whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the <sup>M44</sup>Debtors (Scotland) Act 1987) has been granted in favour of or against that party or of any other person in respect of whom the order is sought.

#### Marginal Citations

- M44** 1987 c.18; [section 106](#) was amended by the [Child Support Act 1991 \(c.48\)](#), [Schedule 5](#), [paragraph 8\(7\)](#).

#### *Averments where aliment or financial provision sought*

- 33.6. (1) In this rule—  
     “the Act of 1991” means the <sup>M45</sup>Child Support Act 1991;  
     “child” has the meaning assigned in section 55 of the Act of 1991;  
     “crave relating to aliment” means—  
         (a) for the purposes of paragraph (2), a crave for decree of aliment in relation to a child or for recall or variation of such a decree; and  
         (b) for the purposes of paragraph (3), a crave for decree of aliment in relation to a child or for recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child;  
     “<sup>F256</sup>“maintenance calculation”]” has the meaning assigned in section <sup>F257</sup>[54] of the Act of 1991.  
 (2) A family action containing a crave relating to aliment and to which section 8(6), (7), (8) or (10) of the Act of 1991 (top up maintenance orders) applies shall—

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- (a) include averments stating, where appropriate—
    - (i) that a maintenance [<sup>F258</sup>calculation] under section 11 of that Act (maintenance assessments) is in force;
    - (ii) the date of the maintenance [<sup>F258</sup>calculation];
    - (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance [<sup>F258</sup>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 [<sup>F258</sup>calculation] referred to in sub-paragraph (a).
- (3) A family action containing a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include averments stating—
- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom;
  - (b) that the child is not a child within the meaning of section 55 of that Act; or
  - (c) where the action is lodged for warranting before 7th April 1997, the grounds on which the sheriff retains jurisdiction.
- (4) In an action for declarator of non-parentage or illegitimacy—
- (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 [<sup>F258</sup>calculation] under section 4, 6 or 7 of the Act of 1991 (applications for maintenance [<sup>F258</sup>calculation]); and
  - (b) where an allegation of paternity has been made against the pursuer, the Secretary of State shall be named as a defender in the action.
- (5) A family action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—
- (a) include averments stating that such a decision has been made and giving details of that decision; and
  - (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

#### Textual Amendments

**F256** Words in Sch. 1 rule 33.6(1) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(8)(a)(i)

**F257** Word in Sch. 1 rule 33.6(1) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(8)(a)(ii)

**F258** Words in Sch. 1 rule 33.6(2)(4) substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(8)(b)

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### Marginal Citations

**M45** 1991 c.48.

### *Warrants and forms for intimation*

- 33.7. (1) [<sup>F259</sup>Subject to paragraphs (5) and (7), in the initial writ] in a family action, the pursuer shall include a crave for a warrant for intimation—
- (a) in an action where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, to—
    - (i) every child of the marriage between the parties who has reached the age of 16 years, and
    - (ii) one of the next-of-kin of the defender who has reached that age, unless the address of such a person is not known to the pursuer and cannot reasonably be ascertained, and a notice of intimation in Form F1 shall be attached to the copy of the initial writ intimated to any such person;
  - (b) in an action where the pursuer alleges that the defender has committed adultery with another person, to that person, unless—
    - (i) that person is not named in the initial writ and, if the adultery is relied on for the purposes of section 1(2)(a) of the Act of 1976 (irretrievable breakdown of marriage by reason of adultery), the initial writ contains an averment that his or her identity is not known to the pursuer and cannot reasonably be ascertained, or
    - (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) and (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 <sup>M46</sup>Matrimonial Proceedings (Polygamous Marriages) Act 1972 is sought, and
    - (ii) either party to the marriage in question has any spouse additional to the other party,
 to any such additional spouse, and a notice of intimation in Form F4 shall be attached to the initial writ intimated to any such person;
  - (e) in an action of divorce or separation where the sheriff may make [a section 11 order] in respect of a child—
    - (i) who is in the care of a local authority, to that authority and a notice of intimation in Form F5 shall be attached to the initial writ intimated to that authority;

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- (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 [<sup>F260</sup>in fact exercises care or control], to that third party, and a notice of intimation in Form F6 shall be attached to the initial writ intimated to that third party;
- (f) in an action where the pursuer craves [<sup>F261</sup>a section 11 order], to any parent or guardian of the child who is not a party to the action, and a notice of intimation in Form F7 shall be attached to the initial writ intimated to any such parent or guardian;
- (g) in an action where the pursuer craves [<sup>F262</sup>a residence order in respect] of a child and he is—
  - (i) not a parent of that child, and
  - (ii) resident in Scotland when the initial writ is lodged,to the local authority within which area the pursuer resides, and a notice of intimation in Form F8 shall be attached to the [<sup>F263</sup>initial] writ intimated to that authority;
- [<sup>F264</sup>(h) in an action which includes a crave for a section 11 order, to the child to whom such an order would relate if not a party to the action, and a notice of intimation in Form F9 shall be intimated to that child;]
- (i) in an action where the pursuer makes an application for an order under section 8(1)(aa) of the <sup>M47</sup>Act of 1985(transfer of property) and—
  - (i) the consent of a third party to such a transfer is necessary by virtue of an obligation, enactment or rule of law, or
  - (ii) the property is subject to a security,to the third party or creditor, as the case may be, and a notice of intimation in Form F10 shall be attached to the initial writ intimated to any such person;
- (j) in an action where the pursuer makes an application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions), to—
  - (i) any third party in whose favour the transfer of, or transaction involving, the property is to be or was made, and
  - (ii) any other person having an interest in the transfer of, or transaction involving, the property,and a notice of intimation in Form F11 shall be attached to the initial writ intimated to any such person; <sup>F265</sup> . . .
- (k) in an action where the pursuer makes an application for an order under the <sup>M48</sup>Act of 1981—
  - (i) where he is a non-entitled partner and the entitled partner has a spouse, to that spouse, or
  - (ii) where the application is under section 2(1)(e), 2(4)(a), 3(1), 3(2), 4, 7, 13 or 18 of that Act, and the entitled spouse or entitled partner is a tenant or occupies the matrimonial home by permission of a third party, to the landlord or the third party, as the case may be,and a notice of intimation in Form F12 shall be attached to the initial writ intimated to any such person [<sup>F266</sup>; and]

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- [<sup>F267</sup>(l) in an action where the pursuer makes an application for an order under section 8(1)(ba) of the <sup>M49</sup>Act of 1985 (orders under section 12A of the Act of 1985 for pension lump sum), to the trustees or managers of the pension scheme, and a notice of intimation in Form F12A shall be attached to the initial writ intimated to any such person.]
- (2) Expressions used in paragraph (1)(k) which are also used in the Act of 1981 have the same meaning as in that Act.
- (3) A notice of intimation under paragraph (1) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.
- (4) In a family action, where the pursuer—
- [<sup>F268</sup>(a) craves a residence order in respect of a child,  
 (b) is not a parent of the child, and  
 (c) is not resident in Scotland when the initial writ is lodged for warranting,]  
 he shall include a crave for an order for intimation in form F8 to such local authority as the sheriff thinks fit.
- (5) Where the address of a person mentioned in paragraph (1)(b), (d), (e), (f), (h), (i), (j) [<sup>F269</sup>, (k) or (l)] is not known and cannot reasonably be ascertained, the pursuer shall include a crave in the initial writ to dispense with intimation; and the sheriff may grant that crave or make such other order as he thinks fit.
- (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.
- [<sup>F270</sup>(7) Where a pursuer considers that to order intimation to a child under paragraph (1)(h) is inappropriate, he shall—
- (a) include a crave in the initial writ to dispense with intimation to that child, and  
 (b) include in the initial writ averments setting out the reasons why such intimation is inappropriate;
- and the sheriff may dispense with such intimation or make such other order as he thinks fit.]

### Extent Information

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

### Textual Amendments

**F259** Words in [rule 33.7\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, **Sch.**, para. 6(a)(i)

**F260** Words in [rule 33.7\(1\)\(e\)\(iii\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, **Sch. para. 6(a)(iii)**

**F261** Words in [rule 33.7\(1\)\(f\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, **Sch. para. 6(a)(iv)**

**F262** Words in [rule 33.7\(1\)\(g\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, **Sch. para. 6(a)(v)**

**F263** Word in [rule 33.7\(1\)\(g\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), **para. 3(45)(a)(i)**

**F264** [Rule 33.7\(1\)\(h\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, **Sch. para. 6(a)(vi)**

**F265** Word in [rule 33.7\(1\)\(j\)](#) omitted (1.11.1996) by [S.I. 1996/2445](#), **para. 3(45)(a)(ii)**

**F266** [Rule 33.7\(1\)\(k\)](#): “; and” substituted for the full-stop (1.11.1996) by [S.I. 1996/2445](#), **para. 3(45)(a)(iii)**

**F267** [Rule 33.7\(1\)\(l\)](#) inserted (1.11.1996) by [S.I. 1996/2445](#), **para. 3(45)(a)(iv)**

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**F268** Rule 33.7(4)(a)-(c) substituted (1.11.1996) for rule 33.7(4)(a)(b) by S.I. 1996/2167, para. 2, **Sch. para. 6(b)**

**F269** Words in rule 33.7(5) substituted (1.11.1996) by S.I. 1996/2445, **para. 3(45)(b)**

**F270** Rule 33.7(7) inserted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 6(c)**

#### Marginal Citations

**M46** 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.

**M47** 1985 c.37; section 8(1)(aa) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), **Schedule 8**, paragraph 34.

**M48** 1981 c.59.

**M49** 1985 c.37; section 8(1)(ba) was inserted by the Pensions Act 1995 (c.26), **section 167(1)**.

#### *Intimation where improper association*

- 33.8. (1) In a family action where the pursuer alleges an improper association between the defender and another named person, the pursuer shall, immediately after the expiry of the period of notice, lodge a motion for an order for intimation to that person or to dispense with such intimation
- (2) In determining a motion under paragraph (1), the sheriff may—
- (a) make such order for intimation as he thinks fit; or
  - (b) dispense with intimation; and
  - (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.
- (3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form F13 shall be intimated to the named person.
- (4) In paragraph (1), “improper association” means sodomy, incest or any homosexual relationship.

#### *Productions in action of divorce or where [F271 section 11 order] may be made*

- 33.9. Unless the sheriff otherwise directs—
- (a) in an action of divorce, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of marriages or an equivalent document; and
  - (b) [F272: in a family action which includes a crave for a section 11 order], a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of births or an equivalent document.

#### Textual Amendments

**F271** Words in rule 33.9 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 7(a)**

**F272** Words in rule 33.9(b) substituted (1.11.1996) by S.I. 1996/2167, para. 2, **Sch. para. 7(b)**



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### *Warrant of citation*

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

### *Form of citation and certificate*

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

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

### *Execution of service on, or intimation to, local authority*

33.12. (1) Where a local authority referred to in rule 33.7(1)(g) ([<sup>F273</sup>residence order] sought by non-parent resident in Scotland) or 33.7(4) ([<sup>F273</sup>residence order] sought by pursuer not resident in Scotland) is named as a defender in an initial writ at the time it is lodged, service of the initial writ on that local authority shall be executed within 7 days after the date of granting of the warrant of citation.

(2) Where in a family action—

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

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.

[<sup>F274</sup>(3)] In any family action, the sheriff may, if he thinks fit, order intimation to a local authority; and such intimation shall be in Form F8.]

[<sup>F275</sup>(4)] Where, by virtue of [<sup>F276</sup>paragraph (3) of this rule or rule 33.7(1)(g) or 33.7(4), intimation of an application for a residence order] is to be made to a local authority, intimation to that local authority shall be given within 7 days after the date on which a warrant of citation, or an order for intimation, as the case may be, has been granted.

#### **Textual Amendments**

**F273** Words in rule 33.12(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(a)

**F274** Rule 33.12(3) inserted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(c)

**F275** Rule 33.12(3) renumbered as rule 33.12(4) (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(b)

**F276** Words in rule 33.12(4) (as renumbered) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 8(d)

### *Service in cases of mental disorder of defender*

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

- (a) a citation in Form F15;



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- (b) any notice required by rule 33.14(1);
  - (c) a request in Form F17;
  - (d) a form of certificate in Form F18 requesting the medical officer to—
    - (i) deliver and explain the initial writ, citation and any notice or form of notice of consent required under rule 33.14(1) personally to the defender; or
    - (ii) certify that such delivery or explanation would be dangerous to the health or mental condition of the defender; and
  - (e) a stamped envelope addressed for return of that certificate to the pursuer or his solicitor, if he has one.
- (2) The medical officer referred to in paragraph (1) shall send the certificate in Form F18 duly completed to the pursuer or his solicitor, as the case may be.
- (3) The certificate mentioned in paragraph (2) shall be attached to the certificate of citation.
- (4) Where such a certificate bears that the initial writ has not been delivered to the defender, the sheriff may, at any time before decree—
- (a) order such further medical inquiry, and
  - (b) make such order for further service or intimation,
- as he thinks fit.

#### *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 <sup>M50</sup>Act of 1976 (no cohabitation for two years with consent of defender to decree)—
    - (i) which is an action of divorce, a notice in form F19 and a notice of consent in form F20;
    - (ii) which is an action of separation, a notice in Form F21 and a form of notice of consent in form F22;
  - (b) in an action relying on section 1(2)(e) of the Act of 1976 (no cohabitation for five years)—
    - (i) which is an action of divorce, a notice in Form F23;
    - (ii) which is an action of separation, a notice in Form F24.
- (2) The certificate of [<sup>F277</sup>citation] of an initial writ in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been attached to the initial writ.

#### **Textual Amendments**

**F277** Word in rule 33.14(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(46)

#### **Marginal Citations**

**M50** 1976 c.39.

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### *Orders for intimation*

- [<sup>F278</sup>33.15] In any family action, the sheriff may, at any time—
- (a) subject to paragraph (2), order intimation to be made on such person as he thinks fit;
  - (b) postpone intimation, where he considers that such postponement is appropriate and, in that case, the sheriff shall make such order in respect of postponement of intimation as he thinks fit; or
  - (c) dispense with intimation, where he considers that such dispensation is appropriate.
- (2) Where the sheriff is considering whether to make a section 11 order by virtue of section 12 of the Act of 1995 (restrictions on decrees for divorce, separation or annulment affecting children), he shall, subject to paragraph (1)(c) and without prejudice to paragraph (1)(b) of this rule, order intimation in Form F9 to the child to whom the section 11 order would relate unless—
- (a) intimation has been given to the child under rule 33.7(1)(h); or
  - (b) the sheriff considers that the child is not of sufficient age or maturity to express his views.
- (3) Where a party makes a crave or averment in a family action which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, that party shall include a crave in his writ for a warrant for intimation or to dispense with such intimation; and rule 33.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.]

#### **Textual Amendments**

**F278** Rule 33.15 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 9

### *Appointment of curators ad litem to defenders*

- 33.16. (1) This rule applies to an action of divorce or separation where it appears to the court that the defender is suffering from a mental disorder.
- (2) In an action to which this rule applies, the sheriff shall—
- (a) appoint a curator ad litem to the defender;
  - (b) where the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on—
    - (i) make an order for intimation of the ground of the action to the Mental Welfare Commission for Scotland; and
    - (ii) include in such an order a requirement that the Commission sends to the sheriff clerk a report indicating whether in its opinion the defender is capable of deciding whether or not to give consent to the granting of decree.
- (3) Within 7 days after the appointment of a curator ad litem under paragraph (2)(a), the pursuer shall send to him—
- (a) a copy of the initial writ and any defences (including any adjustments and amendments) lodged; and
  - (b) a copy of [<sup>F279</sup>any notice] in Form G5 sent to him by the [<sup>F280</sup>sheriff] clerk.

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- (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.

#### Textual Amendments

**F279** Words in [rule 33.16\(3\)\(b\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(47\)\(a\)](#)

**F280** Word in [rule 33.16\(3\)\(b\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(47\)\(b\)](#)

#### Applications for sist

- 33.17. An application for a sist, or the recall of a sist, under Schedule 3 to the <sup>M51</sup>Domicile and Matrimonial Proceedings Act 1973 shall be made by written motion.

#### Marginal Citations

**M51** 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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### *Notices of consent to divorce or separation*

- 33.18. (1) Where, in an action of divorce or separation in which the facts in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree of divorce or separation he shall do so by giving notice in writing in Form F20 (divorce) or Form F22 (separation), as the case may be, to the sheriff clerk.
- (2) The evidence of one witness shall be sufficient for the purpose of establishing that the signature on a notice of consent under paragraph (1) is that of the defender.
- (3) In an action of divorce or separation where the initial writ includes, for the purposes of section 1(2)(d) of the Act of 1976, an averment that the defender consents to the grant of decree, the defender may give notice by letter sent to the sheriff clerk stating that he has not so consented or that he withdraws any consent which he has already given.
- (4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the pursuer.
- (5) On receipt of any intimation under paragraph (4), the pursuer may, within 14 days after the date of the intimation, if none of the other facts mentioned in section 1(2) of the Act of 1976 is averred in the initial writ, lodge a motion for the action to be sisted.
- (6) If no such motion is lodged, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.
- (7) If a motion under paragraph (5) is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

### *Procedure in respect of children*

[<sup>F281</sup>33.19. –

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

#### **Textual Amendments**

**F281** Rule 33.19 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 10

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### *Recording of views of the child*

[<sup>F282</sup>33.20] 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.]

#### **Textual Amendments**

**F282** Rule 33.20 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 10

### *Appointment of local authority or reporter to report on a child*

33.21. (1) This rule applies where, at any stage of a family action, the sheriff appoints—

- [<sup>F283</sup>(a) a local authority, whether under section 11(1) of the <sup>M52</sup>Matrimonial Proceedings (Children) Act 1958 (reports as to arrangements for future care and upbringing of children) or otherwise, or]
- (b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub-paragraph (a) or otherwise,

to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.

- (2) On making an appointment referred to in paragraph (1), the sheriff shall direct that the party who sought the appointment or, where the court makes the appointment of its own motion, the pursuer or minuter, as the case may be, shall—

- (a) instruct the local authority or reporter; and
- (b) be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.

- (3) Where a local authority or reporter is appointed—

- (a) the party who sought the appointment, or
- (b) where the sheriff makes the appointment of his own motion, the pursuer or minuter, as the case may be,

shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.

- (4) On completion of a report referred to in paragraph (1), the local authority or reporter, as the case may be, shall send the report, with a copy of it for each party, to the sheriff clerk.

- (5) On receipt of such a report, the sheriff clerk shall send a copy of the report to each party.

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- (6) Where a local authority or reporter has been appointed to investigate and report in respect of a child, an application for [<sup>F284</sup>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

**F283** Rule 33.21(1)(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 11(a)

**F284** Words in rule 33.21(6) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 11(b)

#### Marginal Citations

**M52** 1958 c.40; section 11(1) was amended by the Social Work (Scotland) Act 1968 (c.49), **Schedule 8**, paragraph 43, the Law Reform (Parent and Child) (Scotland) Act 1986 (c.9), **Schedule 2**, the Family Law Act 1986 (c.55), **Schedule 1**, paragraph 7 and by the Children (Scotland) Act 1995, Schedule 4, paragraph 9.

#### *Referral to family mediation*

- [<sup>F285</sup>33.22. In any family action in which an order in relation to parental responsibilities or parental rights is in issue, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that issue to a mediator accredited to a specified family mediation organisation.]

#### Textual Amendments

**F285** Rules 33.22, 33.22A substituted (1.11.1996) for rule 33.22 by S.I. 1996/2167, para. 2, Sch., para. 12

#### *Child Welfare Hearing*

<sup>F286</sup>33.11A Where—

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

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

- (2) On fixing the date for the Child Welfare Hearing, the sheriff clerk shall intimate the date of the Child Welfare Hearing to the parties in Form F41.
- (3) The fixing of the date of the Child Welfare Hearing shall not affect the right of a party to make any other application to the court whether by motion or otherwise.

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- (4) At the Child Welfare Hearing (which may be held in private), the sheriff shall seek to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute, and may—
- (a) order such steps to be taken, or
  - (b) make such order, if any, or
  - (c) order further procedure,
- as he thinks fit.
- (5) All parties (including a child who has indicated his wish to attend) shall, except on cause shown, attend the Child Welfare Hearing personally.
- (6) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the Child Welfare Hearing.

#### Textual Amendments

**F286** Rules 33.22, 33.22A substituted (1.11.1996) for rule 33.22 by S.I. 1996/2167, para. 2, Sch., para. 12

#### *Applications for orders to disclose whereabouts of children*

- 33.23. (1) An application for an order under section 33(1) of the <sup>M53</sup>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

**M53** 1986 c.55.

#### *Applications in relation to removal of children*

- 33.24. (1) An application for leave under <sup>M54</sup>section 51(1) of the Act of 1975 (authority to remove a child from the care and possession of the applicant for [<sup>F287</sup>a residence order]) or for an order under section 35(3) of the Family Law Act 1986 (application for interdict or interim interdict prohibiting removal of child from jurisdiction) shall be made—
- (a) by a party to the action, by motion; or
  - (b) by a person who is not a party to the action, by minute.
- (2) An application under section 35(3) of the Family Law Act 1986 need not be served or intimated.
- (3) An application under section 23(2) of the <sup>M55</sup>Child Abduction and Custody Act 1985 (declarator that removal of child from United Kingdom was unlawful) shall be made—
- (a) in an action depending before the sheriff—



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- (1) by a party, in the initial writ, defences or minute, as the case may be, or by motion; or
- (ii) by any other person, by minute; or
- (b) after final decree, by minute in the process of the action to which the application relates.

#### Textual Amendments

**F287** Words in [rule 33.24\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 13](#)

#### Marginal Citations

**M54** [Section 51\(1\)](#) was amended by the [Health and Social Services and Social Security Adjudications Act 1983 \(c.41\)](#), [Schedule 2](#), [paragraph 25](#).

**M55** [1985 c.60](#).

#### *Intimation to local authority before supervised [<sup>F288</sup>contact order]*

33.25. Where the sheriff, [<sup>F289</sup>at his own instance] or on the motion of a party, is considering making [<sup>F290</sup>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 [<sup>F291</sup>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 [<sup>F292</sup>the contact order] be supervised by the social work department of that local authority; and
- (c) that the local authority shall, within such period as the sheriff has determined—
  - (i) notify the sheriff clerk whether it intends to make representations to the sheriff; and
  - (ii) where it intends to make representations in writing, to do so within that period.

#### Textual Amendments

**F288** Words in [rule 33.25](#) heading substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 14\(a\)](#)

**F289** Words in [rule 33.25](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 14\(b\)](#)

**F290** Words in [rule 33.25](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 14\(c\)](#)

**F291** Words in [rule 33.25](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 14\(d\)](#)

**F292** Words in [rule 33.25\(b\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 14\(e\)](#)

#### *Joint minutes*

33.26. Where any parties have reached agreement in relation to—

- (a) [<sup>F293</sup>a section 11 order],
- (b) aliment for a child, or
- (c) an order for financial provision,



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a joint minute may be entered into expressing that agreement; [<sup>F294</sup>and, subject to rule 33.19(3) (no order before views of child expressed), the sheriff] may grant decree in respect of those parts of the joint minute in relation to which he could otherwise make an order, whether or not such a decree would include a matter for which there was no crave.

#### Textual Amendments

**F293** Words in rule 33.26(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 15(a)

**F294** Words in rule 33.26 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 15(b)

#### Affidavits

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

#### Applications for European matrimonial certificates

[<sup>F295</sup>33(2)A] The sheriff shall, on the request of any interested party, issue a certificate in Form F42 or Form F43, pursuant to Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses.

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

#### Textual Amendments

**F295** Sch. 1 rule 33.27A inserted (2.4.2001) by S.S.I. 2001/144, para. 2(1)(3)

## PART II

### UNDEFENDED FAMILY ACTIONS

#### Evidence in certain undefended family actions

33.28. (1) This rule—

- (a) subject to sub-paragraph (b), applies to all family actions in which no notice of intention to defend has been lodged, other than a family action—
  - (i) for [<sup>F296</sup>a section 11 order or for] aliment;
  - (ii) of affiliation and aliment;
  - (iii) for financial provision after an overseas divorce or annulment within the meaning of Part IV of the <sup>M56</sup>Matrimonial and Family Proceedings Act 1984; or
  - (iv) for an order under the <sup>M57</sup>Act of 1981;

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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

**F296** Words in [rule 33.28\(1\)\(a\)\(i\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 16](#)

#### Marginal Citations

**M56** [1984 c.42](#); Part IV was amended by the Act of 1985 (c.37), Schedule 1, paragraphs 12 and 13.

**M57** [1981 c.59](#).

#### *Procedure for decree in actions under rule 33.28*

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

#### *Extracts of undefended decree*

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

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*Procedure in undefended family actions for [F297]section 11 order]*

33.31. (1) Where no notice of intention to defend has been lodged in a family action for [F298]a section 11 order], any proceedings in the cause shall be dealt with by the sheriff in chambers.

(2) In an action to which paragraph (1) applies, decree may be pronounced after such inquiry as the sheriff thinks fit.

**Textual Amendments**

**F297** Words in rule 33.31 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 17(a)

**F298** Words in rule 33.31(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 17(b)

*No recording of evidence*

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

*Disapplication of Chapter 15*

33.33. [F299]Other than rule 15.1(1),]Chapter 15 (motions) shall not apply to a family action in which no notice of intention to defend has been lodged [F300], or to a family action in so far as it proceeds as undefended].

**Textual Amendments**

**F299** Words in rule 33.33 inserted (1.11.1996) by S.I. 1996/2445, para. 3(48)(a)

**F300** Words in rule 33.33 inserted (1.11.1996) by S.I. 1996/2445, para. 3(48)(b)

*PART III*

*DEFENDED FAMILY ACTIONS*

*Notice of intention to defend and defences*

33.34. (1) This rule applies where the defender in a family action seeks—

- (a) to oppose any crave in the initial writ;
- (b) to make a claim for—
  - (i) aliment;
  - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
  - (iii) [F301]a section 11 order]; or
- (c) an order—
  - (i) under section 16(1)(b) or (3) of the <sup>M58</sup>Act of 1985(setting aside or varying agreement as to financial provision);
  - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
  - (iii) under the Act of 1981; or

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(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.

[<sup>F302</sup>(3) Where a defender intends to make an application for a section 11 order which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, the defender shall include a crave in his notice of intention to defend for a warrant for intimation or to dispense with such intimation; and rule 33.7 shall, with the necessary modifications, apply to a crave for a warrant under this paragraph as it applies to a crave for a warrant under that rule.]

#### Textual Amendments

**F301** Words in [rule 33.34\(1\)\(b\)\(iii\)](#) substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 18\(a\)](#)

**F302** [Rule 33.34\(3\)](#) inserted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 18\(b\)](#)

#### Marginal Citations

**M58** [1985 c.37](#).

#### *Abandonment by pursuer*

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

#### *Attendance of parties at Options Hearing*

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

#### *Decree by default*

33.37. (1) In a family action in which the defender has lodged a notice of intention to defend, where a party fails—

- (a) to lodge, or intimate the lodging of, any production or part of process,
- (b) to implement an order of the sheriff within a specified period, or
- (c) to appear [<sup>F303</sup>or] be represented at any diet,

that party shall be in default.

(2) Where a party is in default under paragraph (1), the sheriff may—

- (a) where the family action is one mentioned in rule 33.1(1)(a) to (h), allow that action to proceed as undefended under Part II of this Chapter; or

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- (b) where the family action is one mentioned in rule 33.1(1)(i) to (m), grant decree as craved; or
  - (c) grant decree of absolvitor; or
  - (d) dismiss the family action or any claim made or order sought; and
  - (e) award expenses.
- (3) Where no party appears at a diet in a family action, the sheriff may dismiss that action.
- (4) In a family action, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process, or for intimating or implementing any order.

#### Textual Amendments

**F303** Word in rule 33.37(1)(c) substituted (1.11.1996) by S.I. 1996/2445, para. 3(49)

### PART IV

#### APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS

##### *Application and interpretation of this Part*

33.38. <sup>F304</sup> . . . This Part applies to an action of divorce or separation.

<sup>F305</sup>(2) . . . . .

#### Textual Amendments

**F304** Rule 33.38: “-(1)” at the beginning of paragraph (1) is omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 19(a)

**F305** Rule 33.38(2) omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 19(b)

##### *Applications in actions to which this Part applies*

- 33.39. (1) An application for an order mentioned in paragraph (2) shall be made—
- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
  - (b) where the application is made by a person other than the pursuer or defender, by minute in that action.
- (2) The orders referred to in paragraph (1) are:—
- (a) an order for [<sup>F306</sup>a section 11 order]; and
  - (b) an order for aliment for a child.

#### Textual Amendments

**F306** Words in rule 33.39(2)(a) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 20

<sup>F307</sup>33.40. . . . .

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#### Textual Amendments

**F307** Rule 33.40 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 21

<sup>F308</sup> 33.41. ....

#### Textual Amendments

**F308** Rule 33.41 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 22

<sup>F309</sup> 33.42. ....

#### Textual Amendments

**F309** Rule 33.42 omitted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 23

#### *Applications in depending actions by motion*

[<sup>F310</sup> 33.43. An application by a party in an action depending before the court to which this Part applies for, or for variation of, an order for—  
 (a) interim aliment for a child under the age of 18, or  
 (b) a residence order or a contact order,  
 shall be made by motion.]

#### Textual Amendments

**F310** Rule 33.43 substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 24

#### *Applications after decree relating to [<sup>F311</sup> a section 11 order]*

33.44<sup>F312</sup>(1) An application after final decree for, or for the variation or recall of, a section 11 order [<sup>F313</sup> or in relation to the enforcement of such an order] shall be made by minute in the process of the action to which the application relates.]  
 (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for any interim order which may be made pending the determination of the application.

#### Textual Amendments

**F311** Words in rule 33.44 heading substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(a)

**F312** Rule 33.44(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 25(b)

**F313** Words Sch. 1 rule 33.44(1) inserted (2.10.2000) by S.S.I. 2000/239, Sch. para. 3(15)

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*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 <sup>M59</sup>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**

**M59** 1985 c.37.

*PART V*

*ORDERS RELATING TO FINANCIAL PROVISION*

*Application and interpretation of this Part*

- 33.47. (1) This Part applies to an action of divorce.
- (2) In this Part, “incidental order” has the meaning assigned in section 14(2) of the Act of 1985.

*Applications in actions to which this Part applies*

- 33.48. (1) An application for an order mentioned in paragraph (2) shall be made—
- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
  - (b) where the application is made by a person other than the pursuer or defender, by minute in that action.
- (2) The orders referred to in paragraph (1) are:—

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- (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 <sup>M60</sup>Act of 1981 (transfer or vesting of tenancy).

#### Marginal Citations

**M60** 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.

#### *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.



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- (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.

- [<sup>F314</sup>(3) An application under—
- (a) paragraph (5) of section 12A of the Act of 1985 <sup>F315</sup> (recall or variation of order in respect of a pension lump sum), <sup>F316</sup> . . .
  - (b) paragraph (7) of that section (variation of order in respect of pension lump sum to substitute trustees or managers), [<sup>F317</sup>or
  - (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999 <sup>F318</sup>,]
- shall be made by minute in the process of the action to which the application relates.]

#### Textual Amendments

**F314** Rule 33.51(3) inserted (1.11.1996) by S.I. 1996/2445, para. 3(50)

**F315** Section 12A of the Family Law (Scotland) Act 1985 (c.37) was inserted by the Pensions Act 1995 (c.26), section 167(3).

**F316** Word in Sch. 1 rule 33.51(3)(a) omitted (24.1.2003) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(9)(a)

**F317** Sch. 1 rule 33.51(3)(c) and word inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.S.I. 2003/26), art. 2(9)(b)

**F318** 1999 c. 30.

#### *Applications after decree relating to agreements and avoidance transactions*

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

### PART VI

#### APPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS

#### *Form of applications*

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

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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 <sup>M61</sup>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**

**M61** 1984 c.42.

#### *Applications for financial provision [<sup>F319</sup>after overseas divorce or annulment]*

33.55. (1) An application under <sup>M62</sup>section 28 of the Act of 1984 for an order for financial provision after a divorce or annulment in an overseas country shall be made by initial writ.

(2) An application for an order in an action to which paragraph (1) applies made before final decree under—

- (a) section 13 of the <sup>M63</sup>Act of 1981 (transfer of tenancy of matrimonial home),
  - (b) section 29(4) of the Act of 1984 for interim periodical allowance, or
  - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by motion.

(3) An application for an order in an action to which paragraph (1) applies made after final decree under—

- (a) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum or date of transfer of property),
  - (b) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion [<sup>F320</sup>of] periodical allowance), or
  - (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),
- shall be made by minute in the process of the action to which the application relates.

[<sup>F321</sup>(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.]

[<sup>F322</sup>(5)] Where a minute has been lodged under paragraph (3), any party may apply by motion for an interim order pending the determination of the application.

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#### Textual Amendments

- F319** Words in [rule 33.55](#) heading inserted (1.11.1996) by [S.I. 1996/2445, para. 3\(51\)\(a\)](#)  
**F320** Word in [rule 33.55\(3\)\(b\)](#) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(51\)\(b\)](#)  
**F321** [Rule 33.55\(4\)](#) inserted (1.11.1996) by [S.I. 1996/2445, para. 3\(51\)\(d\)](#)  
**F322** [Rule 33.55\(4\)](#) renumbered as [rule 33.55\(5\)](#) (1.11.1996) by [S.I. 1996/2445, para. 3\(51\)\(c\)](#)

#### Marginal Citations

- M62** [Section 28](#) was extended by section 29A (inserted by the Act of 1985, Schedule 1, paragraph 12) to an annulment.  
**M63** [1981 c.51](#); [section 13\(2\)](#) was amended by the Act of 1985, Schedule 1, paragraph 11.

### PART VIII

#### ACTIONS OF ALIMENT

##### *Interpretation of this Part*

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

##### *Undefended actions of aliment*

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

##### *Applications relating to aliment*

- 33.58. (1) An application for, or for variation of, an order for interim aliment in a depending action of aliment shall be made by motion.
- (2) An application after final decree for the variation or recall of an order for aliment in an action of aliment shall be made by minute in the process of the action to which the application relates.
- (3) A person—
- (a) to whom an obligation of aliment is owed under section 1 of the <sup>M64</sup>Act of 1985,
  - (b) in whose favour an order for aliment while under the age of 18 years was made in an action of aliment, or
  - (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,
- shall apply by minute in the process of that action.
- (4) An application for interim aliment pending the determination of an application under paragraph (2) or (3) shall be made by motion.

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- (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

**M64** 1985 c.37.

#### *Applications relating to agreements on aliment*

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

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

### *[<sup>F323</sup>PART IX*

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

#### Textual Amendments

**F323** Chapter 33 Pt. IX (rules 33.60-33/65): heading substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 26](#)

#### *Application of this Part*

[<sup>F324</sup>33.60. This Part applies to an application for a section 11 order in a family action other than in an action of divorce or separation.]

#### Textual Amendments

**F324** Rule 33.60 substituted (1.11.1996) by [S.I. 1996/2167](#), para. 2, [Sch. para. 27](#)

#### *Form of applications*

33.61. Subject to any other provision in this Chapter, an application for [<sup>F325</sup>a section 11 order] shall be made—

- (a) by an action for [<sup>F326</sup>a section 11 order];
- (b) by a crave in the initial writ or defences, as the case may be, in any other family action to which this Part applies; or
- (c) where the application is made by a person other than a party to an action mentioned in paragraph (a) or (b), by minute in that action.

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#### Textual Amendments

**F325** Words in [rule 33.61](#) substituted (1.11.1996) by [S.I. 1996/2167, para. 2, Sch. para. 28\(a\)](#)

**F326** Words in [rule 33.61\(a\)](#) substituted (1.11.1996) by [S.I. 1996/2167, para. 2, Sch. para. 28\(b\)](#)

#### *Defences in action for a section 11 order*

- <sup>F327</sup>~~33.61~~<sup>F327</sup> In an action for a section 11 order, the pursuer shall call as a defender—
- (a) the parents or other parent of the child in respect of whom the order is sought;
  - (b) any guardian of the child;
  - (c) any person who has treated the child as a child of his family;
  - (d) any person who in fact exercises care or control in respect of the child; and
  - <sup>F328</sup>(e) .....

#### Textual Amendments

**F327** [Rule 33.62](#) substituted (1.11.1996) by [S.I. 1996/2167, para. 2, Sch. para. 29](#)

**F328** [Sch. 1 rule 33.62\(e\)](#) omitted (2.10.2000) by virtue of [S.S.I. 2000/239, para. 3\(16\)](#)

#### *Applications relating to interim orders in depending actions*

- 33.63. An application, in an action depending before the sheriff to which this Part applies, for, or for the variation or recall of, an order for [<sup>F329</sup>an interim residence order or an interim contact order] shall be made—
- (a) by a party to the action, by motion; or
  - (b) by a person who is not a party to the action, by minute.

#### Textual Amendments

**F329** [Rule 33.63](#): the words “an interim residence order or an interim contact order” substituted for the words “interim custody or interim access” (1.11.1996) by virtue of [S.I. 1996/2167, para. 2, Sch. para. 30](#)

<sup>F330</sup>33.64. ....

#### Textual Amendments

**F330** [Rule 33.64](#) omitted (1.11.1996) by [S.I. 1996/2167, para. 2, Sch. para. 31](#)

#### *Applications after decree*

- 33.65.<sup>F331</sup>(1) An application after final decree for variation or recall of a section 11 order shall be made by minute in the process of the action to which the application relates.]
- (2) Where a minute has been lodged under paragraph (1), any party may apply by motion for an interim order pending the determination of the application.

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#### Textual Amendments

**F331** Rule 33.65(1) substituted (1.11.1996) by S.I. 1996/2167, para. 2, Sch. para. 32

### PART X

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

#### *Interpretation of this Part*

- 33.66. Unless the context otherwise requires, words and expressions used in this Part which are also used in the <sup>M65</sup>Act of 1981 have the same meaning as in that Act.

#### Marginal Citations

**M65** 1981 c.59.

#### *Form of applications*

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

#### *Defenders*

- 33.68. The applicant for an order under the Act of 1981 shall call as a defender—
- (a) where he is seeking an order as a spouse, the other spouse;
  - (b) where he is a third party making an application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing), or 8(1) (payment from non-entitled spouse in respect of loan), of the Act of 1981, both spouses; and
  - (c) where the application is made under section 18 of the Act of 1981 <sup>M66</sup> (occupancy rights of cohabiting couples), or is one to which that section applies, the other partner.

#### Marginal Citations

**M66** Section 18 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 13(9).

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### *Applications by motion*

- 33.69. (1) An application under any of the following provisions of the Act of 1981 shall be made by motion in the process of the depending action to which the application relates:—
- (a) section 3(4) (interim order for regulation of rights of occupancy, etc.);
  - (b) section 4(6) (interim order suspending occupancy rights);
  - (c) section 7(1) (dispensing with consent of non-entitled spouse to a dealing);
  - (d) section 15(1) (order attaching power of arrest), if made after application for matrimonial interdict; and
  - (e) the proviso to section 18(1) <sup>F332</sup> (extension of period of occupancy rights).
- (2) Intimation of a motion under paragraph (1) shall be given—
- (a) to the other spouse or partner, as the case may be;
  - (b) where the motion is under paragraph (1)(a), (b) or (e) and the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
  - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

#### **Textual Amendments**

**F332** Section 18(1) of the Act of 1981 was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#), [section 13\(9\)\(a\)](#).

### *Applications by minute*

- 33.70. (1) An application for an order under—
- (a) section 5 of the Act of 1981 (variation and recall of orders regulating occupancy rights and of exclusion order), or
  - (b) section 15(2) and (5) of the Act of 1981 (variation and recall of matrimonial interdict and power of arrest),
- shall be made by minute.
- (2) A minute under paragraph (1) shall be intimated—
- (a) to the other spouse or partner, as the case may be;
  - (b) where the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
  - (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

### *Sist of actions to enforce occupancy rights*

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



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### *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 <sup>F333</sup> (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 [<sup>F334</sup>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**

**F333** Section 15(4) was amended by the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c.40\), section 64\(b\)](#).

**F334** Word in [rule 33.72\(2\)](#) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(53\)](#)

## *PART XI*

### *SIMPLIFIED DIVORCE APPLICATIONS*

#### *Application and interpretation of this Part*

- 33.73. (1) This Part applies to an application for divorce by a party to a marriage made in the manner prescribed in rule 33.74 (form of applications) if, but only if—
- (a) that party relies on the facts set out in section 1(2)(d) (no cohabitation for two years with consent of defender to decree), or section 1(2)(e) (no cohabitation for five years), of the <sup>M67</sup>Act of 1976;
  - (b) in an application under section 1(2)(d) of the Act of 1976, the other party consents to decree of divorce being granted;
  - (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
  - (d) there are no children of the marriage under the age of 16 years;
  - (e) neither party to the marriage applies for an order for financial provision on divorce; and
  - (f) neither party to the marriage suffers from mental disorder.
- (2) If an application ceases to be one to which this Part applies at any time before final decree, it shall be deemed to be abandoned and shall be dismissed.
- (3) In this Part “simplified divorce application” means an application mentioned in paragraph (1).



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#### Marginal Citations

M67 1976 c.39.

#### Form of applications

- 33.74. (1) A simplified divorce application in which the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form F31 and shall only be of effect if—
- (a) it is signed by the applicant; and
  - (b) the form of consent in Part 2 of Form [F335F31] 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.

#### Textual Amendments

F335 Word in rule 33.74(1)(b) substituted (1.11.1996) by S.I. 1996/2445, para. 3(54)

#### Lodging of applications

- 33.75. The applicant shall send a simplified divorce application to the sheriff clerk with—
- (a) an extract or certified copy of the marriage certificate; and
  - (b) the appropriate fee.

#### Citation and intimation

- 33.76. (1) This rule is subject to rule 33.77 (citation where address not known).
- (2) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application.
- (3) The form of citation—
- (a) in an application relying on the facts in section 1(2)(d) of the Act of 1976 shall be in Form F34; and
  - (b) in an application relying on the facts in section 1(2)(e) of the Act of 1976 shall be in Form F35.
- [F336(4) The citation or intimation required by paragraph (2) shall be made—
- (a) by the sheriff clerk by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);
  - (b) on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or
  - (c) where necessary, by the sheriff clerk in accordance with rule 5.5 (service on persons furth of Scotland).]

[F337(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

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required by rule 5.5(6) shall be provided by the party lodging the simplified divorce application.]

#### Textual Amendments

**F336** Sch. 1 rule 33.76(4) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(17)(a)

**F337** Sch. 1 rule 33.76(5) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(17)(b)

#### *Citation where address not known*

- 33.77. (1) In a simplified divorce application in which the facts in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on and the address of the other party to the marriage is not known and cannot reasonably be ascertained—
- (a) citation shall be executed by displaying a copy of the application and a notice in Form F36 on the walls of court on a period of notice of 21 days; and
  - (b) intimation shall be made to—
    - (i) every child of the marriage between the parties who has reached the age of 16 years, and
    - (ii) one of the next-of-kin of the other party to the marriage who has reached that age, unless the address of such person is not known and cannot reasonably be ascertained.
- (2) Intimation to a person referred to in paragraph (1)(b) shall be given by intimating a copy of the application and a notice of intimation in Form F37.

#### *Opposition to applications*

- 33.78. (1) Any person on whom service or intimation of a simplified divorce application has been made may give notice by letter sent to the sheriff clerk that he challenges the jurisdiction of the court or opposes the grant of decree of divorce and giving the reasons for his opposition to the application.
- (2) Where opposition to a simplified divorce application is made under paragraph (1), the sheriff shall dismiss the application unless he is satisfied that the reasons given for the opposition are frivolous.
- (3) The sheriff clerk shall intimate the decision under paragraph (2) to the applicant and the respondent.
- (4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

#### *Evidence*

- 33.79. Parole evidence shall not be given in a simplified divorce application.

#### *Decree*

- 33.80. (1) The sheriff may grant decree in terms of the simplified divorce application on the expiry of the period of notice if such application has been properly served provided that, when the application has been served in a country to which the <sup>M68</sup>Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil

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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**

**M68** 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.

#### *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 <sup>M69</sup>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**

**M69** 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.

**Status:** Point in time view as at 20/08/2004. This version of this Act contains provisions that are not valid for this point in time.

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- (3) Before lodging the initial writ, a copy of the initial writ certified by the pursuer or his solicitor shall be lodged, or sent by first class recorded delivery post to the Deputy Principal Clerk of Session to be lodged in the process of the cause in the Court of Session in which the original order was made.
- (4) The pursuer or his solicitor shall attach a certificate to the initial writ stating that paragraph (3) has been complied with.
- (5) The sheriff may, on cause shown, prorogate the time for lodging the certified copy of the interlocutor required under [<sup>F338</sup>paragraph (2)].

#### Textual Amendments

**F338** Words in [rule 33.84\(5\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(55\)](#)

#### *Defended actions*

- 33.85. (1) Where a notice of intention to defend has been lodged and no request is made under rule 33.87 (remit of applications to Court of Session), the pursuer shall within 14 days after the date of the lodging of a notice of intention to defend or within such other period as the sheriff may order, lodge in process the following documents (or copies) from the process in the cause in the Court of Session in which the original order was made:—
- (a) the pleadings;
  - (b) the interlocutor sheets;
  - (c) any opinion of the court; and
  - (d) any productions on which he seeks to found.
- (2) The sheriff may, on the joint motion of parties made at any time after the lodging of the documents mentioned in paragraph (1)—
- (a) dispense with proof;
  - (b) whether defences have been lodged or not, hear the parties; and
  - (c) thereafter, grant decree or otherwise dispose of the cause as he thinks fit.

#### *Transmission of process to Court of Session*

- 33.86. (1) Where decree has been granted or the cause otherwise disposed of—
- (a) and the period for marking an appeal has elapsed without an appeal being marked, or
  - (b) after the determination of the cause on any appeal,
- the sheriff clerk shall transmit to the Court of Session the sheriff court process and the documents from the process of the cause in the Court of Session which have been lodged in the sheriff court process.
- (2) A sheriff court process transmitted under paragraph (1) shall form part of the process of the cause in the Court of Session in which the original order was made.

#### *Remit of applications to Court of Session*

- 33.87. (1) A request for a remit to the Court of Session under section 8(3) of the Act of 1966 shall be made by motion.

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- (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. <sup>F339</sup> . . . In this Part—
- “the Act of 1991” means the <sup>M70</sup>Child Support Act 1991;
- “child” has the meaning assigned in section 55 of the Act of 1991;
- [<sup>F340</sup>“maintenance calculation”] has the meaning assigned in section [<sup>F341</sup>54] of the Act of 1991.

#### Textual Amendments

- F339** Rule 33.88: “-(1)” at the beginning is omitted (1.11.1996) by S.I. 1996/2445, para. 3(56)(a)
- F340** Words in Sch. 1 rule 33.88 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(10)
- F341** Word in rule 33.88 substituted (1.11.1996) by S.I. 1996/2445, para. 3(56)(b)

#### Marginal Citations

- M70** 1991 c.48.

#### Restriction of expenses

- 33.89. Where the Secretary of State is named as a defender in an action for declarator of nonparentage or illegitimacy, and the Secretary of State does not defend the action, no expenses shall be awarded against the Secretary of State.

#### Effect of maintenance [<sup>F342</sup>calculations]

- 33.90. The sheriff clerk shall, on receiving notification that a maintenance [<sup>F343</sup>calculation] has been made, cancelled or has ceased to have effect so as to affect an order of a kind prescribed for the purposes of section 10 of the Act of 1991, endorse on the interlocutor sheet relating to that order a certificate, in Form F39 or F40, as the case may be.

#### Textual Amendments

- F342** Word in Sch. 1 rule 33.90 substituted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), art. 2(11)(a)

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**F343** Word in [Sch. 1 rule 33.90](#) substituted (24.1.2003) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2003 \(S.I. 2003/26\)](#), [art. 2\(11\)\(b\)](#)

*Effect of maintenance [<sup>F344</sup>calculations] on extracts relating to aliment*

33.91. (1) Where an order relating to aliment is affected by a maintenance [<sup>F345</sup>calculation], any extract of that order issued by the sheriff clerk shall be endorsed with the following certificate:—

“A maintenance [<sup>F345</sup>calculation] having been made under the Child Support Act 1991 on (insert date), this order, in so far as it relates to the making or securing of periodical payments to or for the benefit of (insert name(s) of child/children), ceases to have effect from (insert date two days after the date on which the maintenance [<sup>F345</sup>calculation] was made)”.

(2) Where an order relating to aliment has ceased to have effect on the making of a maintenance [<sup>F345</sup>calculation], and that maintenance [<sup>F345</sup>calculation] is later cancelled or ceases to have effect, any extract of that order issued by the sheriff clerk shall be endorsed also with the following certificate:—

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

**Textual Amendments**

**F344** Word in [Sch. 1 rule 33.91](#) heading substituted (24.1.2003) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2003 \(S.I. 2003/26\)](#), [art. 2\(12\)\(a\)](#)

**F345** Word in [Sch. 1 rule 33.91](#) substituted (24.1.2003) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2003 \(S.I. 2003/26\)](#), [art. 2\(12\)\(b\)](#)

*[<sup>F346</sup>PART XIV*

*REFERRALS TO PRINCIPAL REPORTER*

**Textual Amendments**

**F346** [Pts. XIV](#) (rules 33.92-33.94) and [XV](#) (rule 33.95) inserted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 33](#)

*Application and interpretation of this Part*

33.92. (1) This Part applies where a sheriff, in a family action, refers a matter to the Principal Reporter under section 54 of the Act of 1995 (reference to the Principal Reporter by court).

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- (2) In this Part, “Principal Reporter” has the meaning assigned in section 93(1) of the Act of 1995.

#### *Intimation to Principal Reporter*

- 33.93. Where a matter is referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995, the interlocutor making the reference shall be intimated by the sheriff clerk forthwith to the Principal Reporter; and that intimation shall specify which of the conditions in paragraph (2)(a) to (h), (j), (k) or (l) of that section it appears to the sheriff has been satisfied.

#### *Intimation of decision by Principal Reporter*

- 33.94. (1) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having reached the view that compulsory measures of supervision are necessary, arranges a children’s hearing under section 69 of that Act (continuation or disposal of referral by children’s hearing), the Principal Reporter shall intimate to the court which referred the matter to him—
- (a) the decision to arrange such children’s hearing;
  - (b) where there is no appeal made against the decision of that children’s hearing once the period for appeal has expired, the outcome of the children’s hearing; and
  - (c) where such an appeal has been made, that an appeal has been made and, once determined, the outcome of that appeal.
- (2) Where a matter has been referred by the sheriff to the Principal Reporter under section 54 of the Act of 1995 and the Principal Reporter, having made such investigation as he thinks appropriate and having considered whether compulsory measures of supervision are necessary, decides not to arrange a children’s hearing under section 69 of that Act, the Principal Reporter shall intimate that decision to the court which referred the matter to him.]

### *F347 PART XV*

#### *MANAGEMENT OF MONEY PAYABLE TO CHILDREN*

##### **Textual Amendments**

**F347** [Pts. XIV](#) (rules 33.92-33.94) and XV (rule 33.95) inserted (1.11.1995) by [S.I. 1996/2167](#), para. 2, [Sch.](#), para. 33

- 33.95. Where the sheriff has made an order under section 13 of the Act of 1995 (awards of damages to children), an application by a person for an order by virtue of section 11(1)(d) of that Act (administration of child’s property) may be made in the process of the cause in which the order under section 13 of that Act was made.



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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 <sup>M71</sup>;

“the Act of 1995” means the Children (Scotland) Act 1995 <sup>M72</sup>;

“the Act of 2004” means the Civil Partnership Act 2004 <sup>M73</sup>;

“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 <sup>M74</sup>;

“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 <sup>M75</sup>;

“mental disorder” has the meaning assigned in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 <sup>M76</sup>;

“order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas proceedings as provided for in Schedule 11 to the Act of 2004), an order mentioned in section 8(1) of the Act of 1985;

“parental responsibilities” has the meaning assigned in section 1(3) of the Act of 1995;

“parental rights” has the meaning assigned in section 2(4) of the Act of 1995;



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“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  
M77 .

- (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

M71 1985 c. 37.

M72 1995 c. 36.

M73 2004 c. 33.

M74 2004 c. 7.

M75 1994 c. 39; section 2(2) was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).

M76 2003 asp 13.

M77 Section 11 was amended by S.S.I. 2005/42.

#### *Averments in actions of dissolution of civil partnership or separation of civil partners about other proceedings*

33A.2.(1) This rule applies to an action of dissolution of civil partnership or separation of civil partners.

- (2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—

- (a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the civil partnership to which the initial writ relates or are capable of affecting its validity or subsistence; and
- (b) where such proceedings are continuing—
  - (i) the court, tribunal or authority before which the proceedings have been commenced;
  - (ii) the date of commencement;
  - (iii) the names of the parties;
  - (iv) the date, or expected date of any proof (or its equivalent) in the proceedings; and
  - (v) such other facts as may be relevant to the question of whether or not the action before the sheriff should be sisted under Part XIII of this Chapter.

- (3) Where—

- (a) such proceedings are continuing;
- (b) the action before the sheriff is defended; and
- (c) either—

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(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.

*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<sup>F348</sup>) 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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### Textual Amendments

**F348** 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 <sup>F349</sup>;

“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 <sup>F350</sup> (top up maintenance orders) applies shall—

- (a) include averments stating, where appropriate—
  - (i) that a maintenance calculation under section 11 of that Act (maintenance calculations) is in force;
  - (ii) the date of the maintenance calculation;
  - (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance calculation; and
  - (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of that Act; and
- (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance calculation referred to in sub paragraph (a).

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

- (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom; or
- (b) that the child is not a child within the meaning of section 55 of that Act.

(4) A civil partnership action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—

- (a) include averments stating that such a decision has been made and giving details of that decision; and

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- (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

**F349** 1991 c. 48.

**F350** 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 <sup>M78</sup>,
- and a notice of intimation in Form CP2 shall be attached to the copy of the initial writ intimated to any such person;
- (c) in an action of dissolution of civil partnership or separation of civil partners where the sheriff may make a section 11 order in respect of a child—
- (i) who is in the care of a local authority, to that authority and a notice of intimation in Form CP3 shall be attached to the initial writ intimated to that authority;
  - (ii) who, being a child of one party to the civil partnership, has been accepted as a child of the family by the other party to the civil partnership and who is liable to be maintained by a third party, to that third party, and a notice of intimation in Form CP3 shall be attached to the initial writ intimated to that third party; or
  - (iii) in respect of whom a third party in fact exercises care or control, to that third party, and a notice of intimation in Form CP4 shall be attached to the initial writ intimated to that third party;
- (d) in an action where the pursuer craves a section 11 order, to any parent or guardian of the child who is not a party to the action, and a notice of intimation in Form CP5 shall be attached to the initial writ intimated to any such parent or guardian;

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- (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 <sup>M79</sup> (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 <sup>M80</sup> (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 <sup>M81</sup> (pension sharing orders), to the person responsible for the pension arrangement and a notice of intimation in Form CP12 shall be attached to the initial writ intimated to any such person.
- (2) Expressions used in paragraph (1)(i) which are also used in Chapter 3 of Part 3 of the Act of 2004 have the same meaning as in that Chapter.
- (3) A notice of intimation under paragraph (1) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.

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- (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

**M78** 2000 asp 4.

**M79** 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).

**M80** Section 8(1)(ba) was inserted by the [Pensions Act 1995](#) (c. 26), [section 167\(1\)](#).

**M81** Section 8(1)(baa) was inserted by the [Welfare Reform and Pensions Act 1999](#) (c. 30), [section 20\(1\)](#).

#### *Intimation where alleged association*

- 33A.8.(1) In a civil partnership action where the pursuer founds upon an alleged association between the defender and another named person, the pursuer shall, immediately after the expiry of the period of notice, lodge a motion for an order for intimation to that person or to dispense with such intimation.
- (2) In determining a motion under paragraph (1), the sheriff may—
    - (a) make such order for intimation as he thinks fit; or
    - (b) dispense with intimation; and
    - (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.
  - (3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form CP13 shall be intimated to the named person.



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- (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.

- (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.

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- (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.
  - (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–



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- (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.1§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.
- (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—

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- (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.
- (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

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- (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, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

#### *Procedure in respect of children*

- 33A.19(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.

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- (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<sup>F351</sup> (reports as to arrangements for future care and upbringing of children) or otherwise, or
- (b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub paragraph (a) or otherwise,

to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.

- (2) On making an appointment referred to in paragraph (1), the sheriff shall direct that the party who sought the appointment or, where the court makes the appointment of its own motion, the pursuer or minuter, as the case may be, shall–
- (a) instruct the local authority or reporter; and
  - (b) be responsible, in the first instance, for the fees and outlays of the local authority or reporter appointed.
- (3) Where a local authority or reporter is appointed–
- (a) the party who sought the appointment, or
  - (b) where the sheriff makes the appointment of his own motion, the pursuer or minuter, as the case may be,
- shall, within 7 days after the date of the appointment, intimate the name and address of the local authority or reporter to any local authority to which intimation of the family action has been made.
- (4) On completion of a report referred to in paragraph (1), the local authority or reporter, as the case may be, shall send the report, with a copy of it for each party, to the sheriff clerk.

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- (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

**F351** 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 <sup>F352</sup> (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

**F352** 1986 c. 55.

#### *Applications in relation to removal of children*

- 33A.25(1) An application in a civil partnership action for leave under section 51(1) of the Children Act 1975 <sup>F353</sup> (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 <sup>F354</sup> (declarator that removal of child from United Kingdom was unlawful) shall be made—
- (a) in an action depending before the sheriff—

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- (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

**F353** 1975 c. 72.

**F354** 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;
  - (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.



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## *<sup>F355</sup>PART II*

### *UNDEFENDED CIVIL PARTNERSHIP ACTIONS*

#### **Textual Amendments**

**F355** 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.

#### *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.



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### *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 <sup>F356</sup> (setting aside or varying agreement as to financial provision);
    - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
    - (iii) under Chapter 3 or Chapter 4 of Part 3 or section 127 of the Act of 2004; or
  - (d) to challenge the jurisdiction of the court.
- (2) In an action to which this rule applies, the defender shall—
- (a) lodge a notice of intention to defend in Form CP16 before the expiry of the period of notice; and
  - (b) make any claim or seek any order referred to in paragraph (1), as the case may be, in those defences by setting out in his defences—
    - (i) craves;
    - (ii) averments in the answers to the condescendence in support of those craves; and
    - (iii) appropriate pleas-in-law.

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- (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

**F356** 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
  - (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.

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## 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.

#### *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—

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- (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);
- (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

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- (b) the sheriff shall not be bound to determine such a motion if he considers that the application should properly be by a crave in the initial writ or defences, as the case may be.

- (2) In an action depending before the sheriff to which this Part applies, an application under section 14(4) of the Act of 1985 for the variation or recall of an incidental order shall be made by minute in the process of the action to which the application relates.

#### *Applications relating to interim aliment*

- 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 <sup>F357</sup> (recall or variation of order in respect of a pension lump sum);
  - (b) paragraph (7) of that section <sup>F358</sup> (variation of order in respect of pension lump sum to substitute trustees or managers); or
  - (c) section 28(10) or 48(9) of the Welfare Reform and Pensions Act 1999,
- shall be made by minute in the process of the action to which the application relates.

#### **Textual Amendments**

**F357** 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).

**F358** 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—

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- (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.

##### *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);

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- (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.

##### *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.



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### *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 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.);

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- (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).

#### *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

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- (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.
- (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)

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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);
    - (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—

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- (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.

#### *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 <sup>F359</sup> 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**

**F359** Cmnd. 3986 (1969).

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### *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.

#### *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 <sup>M82</sup>(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



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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

**M82** Section 69 was amended by the [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), [Schedule 4](#), paragraph 4(5).

### PART XIII

#### SISTING OF CIVIL PARTNERSHIP ACTIONS

##### *Application and interpretation of this Part*

- 33A.79(1) This Part applies to any action for—  
dissolution of civil partnership;  
separation of civil partners.
- (2) In this Part—  
“another jurisdiction” means any country outside Scotland.  
“related jurisdiction” means any of the following countries, namely, England and Wales, Northern Ireland, Jersey, Guernsey and the Isle of Man (the reference to Guernsey being treated as including Alderney and Sark).
- (3) For the purposes of this Part—  
(a) neither the taking of evidence on commission nor a separate proof relating to any preliminary plea shall be regarded as part of the proof in the action; and  
(b) an action is continuing if it is pending and not sisted.
- (4) Any reference in this Part to proceedings in another jurisdiction is to proceedings in a court or before an administrative authority of that jurisdiction.

##### *Duty to furnish particulars of concurrent proceedings*

- 33A.80. While any action to which this Part applies is pending in a sheriff court and proof in that action has not begun, it shall be the duty of the pursuer, and of any other person who has entered appearance in the action, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be so prescribed of any proceedings which—  
(a) he knows to be continuing in another jurisdiction; and  
(b) are in respect of that civil partnership or capable of affecting its validity.

##### *Mandatory sists*

- 33A.81. Where before the beginning of the proof in any action for dissolution of civil partnership it appears to the sheriff on the application of a party to the civil partnership—



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- (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.

(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.

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### *Orders in sisted actions*

33A.841) 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).

(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

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- (c) to make a relevant order in connection with an action which was, but is no longer, sisted.

VALID FROM 04/05/2006

## [<sup>F360</sup>CHAPTER 33B

### FINANCIAL PROVISION FOR FORMER COHABITANTS

#### Textual Amendments

**F360** 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 <sup>M83</sup>;
- “cohabitant” has the meaning given in section 25 of the Act;
- “the deceased” means the cohabitant referred to in section 29(1)(a) of the Act;
- “net intestate estate” has the meaning given in section 29(10) of the Act;
- “the survivor” means the cohabitant referred to in section 29(1)(b) of the Act.

#### Marginal Citations

**M83** 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.

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- (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

#### PART I

#### SEQUESTRATION FOR RENT

##### *Actions craving payment <sup>F361</sup>of rent]*

- 34.1. (1) In an action for sequestration and sale—

- (a) for non-payment of rent,
- (b) for recovery of rent, or
- (c) in security of rent,

whether brought before or after the term of payment, payment of rent may be craved; and decree for payment of such rent or part of it, when due and payable, may be pronounced and extracted in common form.

- (2) There shall be served on the defender in such an action, with the initial writ, warrant and citation, a notice in Form H1.

##### Textual Amendments

**F361** Words in [rule 34.1](#) heading substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(57\)](#)

##### *Warrant to inventory and secure*

- 34.2. (1) In the first deliverance on an initial writ for sequestration and sale, the sheriff may sequester the effects of the tenant, and grant warrant to inventory and secure them.

- (2) A warrant to sequester, inventory, sell, eject or relet shall include authority to open <sup>F362</sup>. . . shut and lockfast places for the purpose of executing such warrant.

##### Textual Amendments

**F362** [Rule 34.2\(2\)](#): comma omitted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(58\)](#)

##### *Sale of effects*

- 34.3. (1) In an action for sequestration and sale, the sheriff may order the sequestered effects to be sold by a sheriff officer or other named person.

- (2) Where a sale follows an order under paragraph (1), the sale shall be reported within 14 days after the date of the sale and the pursuer shall lodge with the sheriff clerk the roup rolls or certified copies of them and a state of debt.

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- (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*

- 34.4. The sheriff may, at any stage of an action for sequestration and sale 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.

## *PART II*

### *REMOVING*

#### *Actions of removing where fixed term of removal*

- 34.5. (1) Subject to section 21 of the Agricultural Holdings (Scotland) Act 1991 <sup>M84</sup>(notice to quit and notice of intention to quit)—
- (a) where the tenant has bound himself to remove by writing, dated and signed—
    - (i) within 12 months after the term of removal, or
    - (ii) where there is more than one ish, after the ish first in date to remove an action of removing may be raised at any time; and
  - (b) where the tenant has not bound himself, an action of removing may be raised at any time, but—
    - (i) in the case of a lease of lands exceeding two acres in extent for three years and upwards, an interval of not less than one year nor more than two years shall elapse between the date of notice of removal and the term of removal first in date;
    - (ii) in the case of a lease of lands exceeding two acres in extent, whether written or verbal, held from year to year or under tacit relocation, or for any other period less than three years, an interval of not less than six months shall elapse between the date of notice of removal and the term of removal first in date; and
    - (iii) in the case of a house let with or without land attached not exceeding two acres in extent, as also of land not exceeding two acres in extent without houses, as also of mills, fishings, shootings, and all other heritable subjects excepting land exceeding two acres in extent, and let for a year or more, 40 days at least shall elapse between the date of notice of removal and the term of removal first in date.
- (2) In any defended action of removing the sheriff may order the defender to find caution for violent profits.
- (3) In an action for declarator of irritancy and removing by a superior against a vassal, the pursuer shall call as parties the last entered vassal and such heritable creditors and holders of postponed ground burdens as are disclosed by a search for 20 years before the raising of the action, and the expense of the search shall form part of the pursuer's expenses of process.

#### **Marginal Citations**

**M84** 1991 c.55.

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### *Form of notice of removal*

34.6. (1) A notice under the following sections of [<sup>F363</sup>the <sup>M85</sup>Sheriff Courts (Scotland) Act 1907] shall be in Form H2:—

- (a) section 34 (notice in writing to remove where lands exceeding two acres held on probative lease),
- (b) section 35 (letter of removal where tenant in possession of lands exceeding two acres), and
- (c) section 36 (notice of removal where lands exceeding two acres occupied by tenant without written lease).

(2) A letter of removal shall be in Form H3.

#### **Textual Amendments**

**F363** Words in [rule 34.6\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(59\)](#)

#### **Marginal Citations**

**M85** [1907 c. 51](#)

### *Form of notice under section 37 of [<sup>F364</sup>the Act of 1907]*

34.7. A notice under section 37 of [<sup>F365</sup>the Sheriff Courts (Scotland) Act 1907] (notice of termination of tenancy) shall be in Form H4.

#### **Textual Amendments**

**F364** Words in [rule 34.7](#) heading substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(60\)\(a\)](#)

**F365** Words in [rule 34.7](#) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(60\)\(b\)](#)

### *Giving notice of removal*

34.8. (1) A notice under section 34, 35, 36, 37 or 38 of [<sup>F366</sup>the Sheriff Courts (Scotland) Act 1907] (which relate to notices of removal) may be given by—

- (a) a sheriff officer,
- (b) the person entitled to give such notice, or
- (c) the solicitor or factor of such person,

posting the notice by registered post or the first class recorded delivery service at any post office within the United Kingdom in time for it to be delivered at the address on the notice before the last date on which by law such notice must be given, addressed to the person entitled to receive such notice, and bearing the address of that person at the time, if known, or, if not known, to the last known address of that person.

(2) A sheriff officer may also give notice under a section of [<sup>F366</sup>the Sheriff Courts (Scotland) Act 1907] mentioned in paragraph (1) in any manner in which he may serve an initial writ; and, accordingly, rule 5.4 (service within Scotland by sheriff officer) shall, with the necessary modifications, apply to the giving of notice under this paragraph as it applies to service of an initial writ.

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### Textual Amendments

**F366** Words in [rule 34.8](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(61\)](#)

### *Evidence of notice to remove*

- 34.9. (1) A certificate of the sending of notice under rule 34.8 dated and endorsed on the lease or an extract of it, or on the letter of removal, signed by the sheriff officer or the person sending the notice, his solicitor or factor, or an acknowledgement of the notice endorsed on the lease or an extract of it, or on the letter of removal, by the party in possession or his agent, shall be sufficient evidence that notice has been given.
- (2) Where there is no lease, a certificate of the sending of such notice shall be endorsed on a copy of the notice or letter of removal.

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

- 34.10. (1) An application or counter-application to the sheriff under any of the following provisions of Part II of the <sup>M86</sup>Conveyancing and Feudal Reform (Scotland) Act 1970 (which relates to the standard security) shall be made by initial writ where any other remedy is craved:—
- (a) <sup>M87</sup>section 18(2) (declarator that obligations under contract performed);
  - (b) section 20(3) (application by creditor for warrant to let security subjects);
  - (c) section 22(1) (objections to notice of default); and
  - (d) section 22(3) (counter-application for remedies under the Act);
  - (e) section 24(1) (application by a creditor for warrant to exercise remedies on default); and
  - (f) section 28(1) (decree of foreclosure).
- (2) An interlocutor of the sheriff disposing of an application or counter-application under paragraph (1) shall be final and not subject to appeal except as to a question of title or any other remedy granted.

### Marginal Citations

**M86** [1970 c.35.](#)

**M87** [Section 18\(2\)](#) was amended by the [Redemption of Standard Securities \(Scotland\) Act 1971 \(c.45\)](#), [section 1.](#)

### *Service on unnamed occupiers*

- [<sup>F367</sup>34.11]. Subject to paragraph (2), this rule applies only to a crave for removing in an action of removing against a person or persons in possession of heritable property without right or title to possess the property.
- (2) This rule shall not apply with respect to a person who has or had a title or other right to occupy the heritable property and who has been in continuous occupation since that title or right is alleged to have come to an end.



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- (3) Where this rule applies, the pursuer may apply by motion to shorten or dispense with the period of notice or other period of time in these Rules relating to the conduct of the action or the extracting of any decree.
- (4) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the pursuer shall call that person as a defender by naming him as an “occupier”.
- (5) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the initial writ shall be served (whether or not it is also served on a named person), unless the court otherwise directs, by a sheriff officer—
  - (a) affixing a copy of the initial writ and a citation in Form H5 addressed to “the occupiers” to the main door or other conspicuous part of the premises, and if practicable, depositing a copy of each of those documents in the premises; or
  - (b) in the case of land only, inserting stakes in the ground at conspicuous parts of the occupied land to each of which is attached a sealed transparent envelope containing a copy of the initial writ and a citation in Form H5 addressed to “the occupiers”.]

#### Textual Amendments

**F367** Sch. 1 rule 34.11 inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(18)

### *Applications under the Mortgage Rights (Scotland) Act 2001*

- [<sup>F368</sup>34.12] In an action to which rule 3.2(3) applies, an application under either of the following provisions of the Mortgage Rights (Scotland) Act 2001 shall be made by minute in the action:—
- (a) section 1(2)(application to the court for an order under section 2);
  - (b) section 2(5)(application to vary or revoke an order or to further continue proceedings).
- (2) Any such minute may be lodged by a person who is entitled to make an application even although that person has not been called as a defender and such a person may appear or be represented at any hearing to determine the application.]

#### Textual Amendments

**F368** Rule 34.12 inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (2002/7), {para. 2(5)}

## CHAPTER 35

### ACTIONS OF MULTIPLEPOINDING

#### *Application of this Chapter*

- 35.1. This Chapter applies to an action of multiplepoinding.

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### *Application of Chapters 9 and 10*

- 35.2. Chapter 10 (additional procedure) and the following rules in Chapter 9 (standard procedure in defended causes) shall not apply to an action of multiplepounding:—
- rule9.1 (notice of intention to defend),
  - rule9.2 (fixing date for Options Hearing),
  - rule9.4 (lodging of pleadings before Options Hearing),
  - rule9.8 (adjustment of pleadings),
  - rule9.9 (effect of sist on adjustment),
  - rule9.10 (open record),
  - rule9.11 (record for Option Hearing),
  - rule9.12 (Option Hearing),
  - rule9.15 (applications for time to pay directions).

### *Parties*

- 35.3. (1) An action of multiplepounding may be brought by any person holding, or having an interest in, or claim on, the fund in medio in his own name.
- (2) The pursuer shall call as defenders to such an action—
- (a) all persons so far as known to him as having an interest in the fund in medio; and
  - (b) where he is not the holder of the fund, the holder of that fund.

### *Condescence of fund in medio*

- 35.4. (1) Where the pursuer is the holder of the fund in medio, he shall include a detailed statement of the fund in the condescence in the initial writ.
- (2) Where the pursuer is not the holder of the fund in medio, the holder shall, before the expiry of the period of notice—
- (a) lodge in process—
    - (i) a condescence of the fund in medio, stating any claim or lien which he may profess to have on that fund;
    - (ii) a list of all persons known to him as having an interest in the fund; and
  - (b) intimate a copy of the condescence and list to any other party.

### *Warrant of citation in multiplepoundings*

- 35.5. The warrant of citation of the initial writ in an action of multiplepounding shall be in Form M1.

### *Citation*

- 35.6. (1) Subject to rule 5.6 (service where address of person is not known), citation of any person in an action of multiplepounding shall be in Form M2 which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of appearance in Form M4.
- (2) The certificate of citation shall be in Form M3 and shall be attached to the initial writ.

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### *Advertisement*

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

### *Lodging of notice of appearance*

- 35.8. Where a party intends to lodge—
- (a) defences to challenge the jurisdiction of the court or the competency of the action,
  - (b) objections to the condescendence of the fund in medio, or
  - (c) a claim on the fund,
- he shall, before the expiry of the period of notice, lodge a notice of appearance in Form M4.

### *Fixing date of first hearing*

- 35.9. Where a notice of appearance, or a condescendence on the fund in medio and a list under rule 35.4(2)(a) has been lodged, the sheriff clerk shall—
- (a) fix a date and time for the first hearing, which date shall be the first suitable court day occurring not sooner than four weeks after the expiry of the period of notice;
  - (b) on fixing the date for the first hearing forthwith intimate that date in Form M5 to each party; and
  - (c) prepare and sign an interlocutor recording the date of the first hearing.

### *Hearings*

- 35.10. (1) The sheriff shall conduct the first, and any subsequent hearing, with a view to securing the expeditious progress of the cause by ascertaining from the parties the matters in dispute.
- (2) The parties shall provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this Chapter.
  - (3) At the first, or any subsequent hearing, the sheriff shall fix a period within which defences, objections or claims shall be lodged, and appoint a date for a second hearing.
  - (4) Where the list lodged under rule 35.4(2)(a) contains any person who is not a party to the action, the sheriff shall order—
    - (a) the initial writ to be amended to add that person as a defender;
    - (b) service of the pleadings so amended to be made on that person, with a citation in Form M6; and
    - (c) intimation to that person of any condescendence of the fund in medio lodged by a holder of the fund who is not the pursuer.
  - (5) Where a person to whom service has been made under paragraph (4) lodges a notice of appearance under rule 35.8, the sheriff clerk shall intimate to him in Form M5 the date of the next hearing fixed in the action.

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### *Lodging defences, objections and claims*

- 35.11. (1) Defences, objections and claims by a party shall be lodged with the sheriff clerk in a single document under separate headings.
- (2) Each claimant shall lodge with his claim any documents founded on in his claim, so far as they are within his custody or power.

### *Disposal of defences*

- 35.12. (1) Where defences have been lodged, the sheriff may order the initial writ and defences to be adjusted and thereafter close the record and regulate further procedure.
- (2) Unless the sheriff otherwise directs, defences shall be disposed of before any further procedure in the action.

### *Objections to fund in medio*

- 35.13. (1) Where objections to the fund in medio have been lodged, the sheriff may, after disposal of any defences, order the condescendence of the fund and objections to be adjusted; and thereafter close the record and regulate further procedure.
- (2) If no objections to the fund in medio have been lodged, or if objections have been lodged and disposed of, the sheriff may, on the motion of the holder of the fund, and without ordering intimation to any party approve the condescendence of the fund and find the holder liable only in one single payment.

### *Preliminary pleas in multiplepoindings*

- 35.14. (1) A party intending to insist on a preliminary plea shall, not later than 3 days before any hearing to determine further procedure following the lodging of defences, objections or claims, lodge with the sheriff clerk a note of the basis of the plea.
- (2) Where a party fails to comply with the provisions of paragraph (1), he shall be deemed to be no longer insisting on the plea and the plea shall be repelled by the sheriff at the hearing referred to in paragraph (1).
- (3) If satisfied that there is a preliminary matter of law which justifies a debate, the sheriff shall, after having heard parties and considered the note lodged under this rule, appoint the action to debate.

### *Consignation of the fund and discharge of holder*

- 35.15. (1) At any time after the condescendence of the fund in medio has been approved, the sheriff may order the whole or any part of the fund to be sold and the proceeds of the sale consigned into court.
- (2) After such consignation the holder of the fund in medio may apply for his exoneration and discharge.
- (3) The sheriff may allow the holder of the fund in medio, on his exoneration and discharge, his expenses out of the fund as a first charge on the fund.

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#### *Further service or advertisement*

- 35.16. The sheriff may at any time, of his own motion or on the motion of any party, order further service on any person or advertisement.

#### *Ranking of claims*

- 35.17. (1) After disposal of any defences, and approval of the condescendence of the fund in medio, the sheriff may, where there is no competition on the fund, rank and prefer the claimants and grant decree in terms of that ranking.
- (2) Where there is competition on the fund, the sheriff may order claims to be adjusted and thereafter close the record and regulate further procedure.

#### *Remit to reporter*

- 35.18. (1) Where several claims have been lodged, the sheriff may remit to a reporter to prepare a scheme of division and report.
- (2) The expenses of such remit, when approved by the sheriff, shall be made a charge on the fund, to be deducted before division.

## CHAPTER 36

### ACTIONS OF DAMAGES

#### *PART I*

#### *INTIMATION TO CONNECTED PERSONS IN CERTAIN ACTIONS OF DAMAGES*

#### *Application and interpretation of this Part*

- 36.1. (1) This Part applies to an action of damages in which, following the death of any person from personal injuries, damages are claimed—
- (a) by the executor of the deceased, in respect of the injuries from which the deceased died; or
  - (b) by any relative of the deceased, in respect of the death of the deceased.
- (2) In this Part—
- “connected person” means a person, not being a party to the action, who has title to sue the defender in respect of the personal injuries from which the deceased died or in respect of his death;
- “relative” has the meaning assigned to it in Schedule 1 to the <sup>M88</sup>Damages (Scotland) Act 1976.

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#### **Marginal Citations**

**M88** 1976 c.13; Schedule 1 was amended by the Administration of Justice Act 1982 (c.53), section 14(4).

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### *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
    - (ii) such persons are unlikely to be awarded more than £200 each.

### *Warrants for intimation*

- 36.3. (1) Where the pursuer makes averments under rule 36.2(b) (existence of connected persons), he shall include a crave in the initial writ for intimation to any person who is believed to have title to sue the defender in an action in respect of the death of the deceased or the personal injuries from which the deceased died.
- (2) A notice of intimation in Form D1 shall be attached to the copy of the initial writ where intimation is given on a warrant under paragraph (1).

### *Applications to dispense with intimation*

- 36.4. (1) Where the pursuer makes averments under rule 36.2(c) (dispensing with intimation to connected persons), he shall apply by crave in the initial writ for an order to dispense with intimation.
- (2) In determining an application under paragraph (1), the sheriff shall have regard to—
- (a) the desirability of avoiding a multiplicity of actions; and
  - (b) the expense, inconvenience or difficulty likely to be involved in taking steps to ascertain the name or whereabouts of the connected person.
- (3) Where the sheriff is not satisfied that intimation to a connected person should be dispensed with, he may—
- (a) order intimation to a connected person whose name and whereabouts are known;
  - (b) order the pursuer to take such further steps as he may specify in the interlocutor to ascertain the name or whereabouts of any connected person; and
  - (c) order advertisement in such manner, place and at such times as he may specify in the interlocutor.

### *Subsequent disclosure of connected persons*

- 36.5. Where the name or whereabouts of a person, in respect of whom the sheriff has dispensed with intimation on a ground specified in rule 36.2(c) (dispensing with intimation to connected persons), subsequently becomes known to the pursuer, the pursuer shall apply to the sheriff by motion for a warrant for intimation to such a person; and such intimation shall be made in accordance with rule 36.3(2).

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### *Connected persons entering process*

- 36.6. (1) A connected person may apply by minute craving leave to be sisted as an additional pursuer to the action.
- (2) Such a minute shall also crave leave of the sheriff to adopt the existing grounds of action, and to amend the craves, condescendence and pleas-in-law.
- (3) The period within which answers to a minute under this rule may be lodged shall be 14 days from the date of intimation of the minute.
- (4) [<sup>F369</sup>Rule 14.13 (procedure following grant of minute)] shall not apply to a minute to which this rule applies.

#### **Textual Amendments**

**F369** Words in rule 36.6(4) substituted (1.11.1996) by S.I. 1996/2445, para. 3(62)

### *Failure to enter process*

- 36.7. Where a connected person to whom intimation is made in accordance with this Part—
- (a) does not apply to be sisted as an additional pursuer to the action,
  - (b) subsequently raises a separate action against the same defender in respect of the same personal injuries or death, and
  - (c) would, apart from this rule, be awarded the expenses or part of the expenses of that action,
- he shall not be awarded those expenses except on cause shown.

## *PART II*

### *INTERIM PAYMENTS OF DAMAGES*

#### *Application and interpretation of this Part*

- 36.8. (1) This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.
- (2) In this Part—
- “defender” includes a third party against whom the pursuer has a crave for damages;
  - “personal injuries” includes any disease or impairment of a physical or mental condition.

#### *Applications for interim payment of damages*

- 36.9. (1) In an action to which this Part applies, a pursuer may, at any time after defences have been lodged, apply by motion for an order for interim payment of damages to him by the defender or, where there are two or more of them, by any one or more of them.
- (2) The pursuer shall intimate a motion under paragraph (1) to every other party on a period of notice of 14 days.



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- (3) On a motion under paragraph (1), the sheriff may, if satisfied that—
- (a) the defender has admitted liability to the pursuer in the action, or
  - (b) if the action proceeded to proof, the pursuer would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part, or on the part of any person in respect of whose injury or death the claim of the pursuer arises, and would obtain decree for damages against any defender,
- ordain that defender to make an interim payment to the pursuer of such amount as the sheriff thinks fit, not exceeding a reasonable proportion of the damages which, in the opinion of the sheriff, are likely to be recovered by the pursuer.
- (4) Any such payment may be ordered to be made in one lump sum or otherwise as the sheriff thinks fit.
- (5) No order shall be made against a defender under this rule unless it appears to the sheriff that the defender is—
- (a) a person who is insured in respect of the claim of the pursuer;
  - (b) a public authority; <sup>F370</sup> . . .
  - (c) a person whose means and resources are such as to enable him to make the interim payment. [<sup>F371</sup>; or
  - (d) the person's liability will be met by—
    - (i) an insurer under section 151 of the Road Traffic Act 1988 <sup>F372</sup>; or
    - (ii) an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself.]
- (6) Notwithstanding the grant or refusal of a motion for an interim payment, a subsequent motion may be made where there has been a change of circumstances.
- (7) Subject to Part IV (management of damages payable to persons under legal disability), an interim payment shall be made to the pursuer unless the sheriff otherwise directs.
- (8) This rule shall, with the necessary modifications, apply to a counterclaim for damages for personal injuries made by a defender as it applies to an action in which the pursuer may apply for an order for interim payment of damages.

#### Textual Amendments

**F370** Word in Sch. 1 rule 36.9(5)(b) omitted (21.5.2004) by virtue of Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(13)(a)

**F371** Sch. 1 rule 36.9(5)(d) and word 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(13)(b)

**F372** 1988 c. 52; section 151 repealed in part by the Road Traffic Act 1991 (c. 40), Schedule 8.

#### *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

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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 <sup>M89</sup>Administration of Justice Act 1982;

“further damages” means the damages referred to in section 12(4)(b) of the Act of 1982;

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

##### **Marginal Citations**

**M89** 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—

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- (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.

#### *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 [<sup>F373</sup>(other than a person under the age of 18 years)], the sheriff shall make such order regarding the payment and management of that sum for the benefit of that person as he thinks fit.
- (2) An order under paragraph (1) shall be made on the granting of decree for payment or of absolvitor.

##### **Textual Amendments**

**F373** Words in [rule 36.14\(1\)](#) inserted (1.11.1996) by [S.I. 1996/2167](#), [para. 2](#), [Sch. para. 34](#)

##### *Methods of management*

- 36.15. In making an order under rule 36.14(1), the sheriff may—
- (a) appoint a judicial factor to apply, invest or otherwise deal with the money for the benefit of the person under legal disability;
  - (b) order the money to be paid to—
    - (i) the Accountant of Court, or
    - (ii) the guardian of the person under legal disability,
 as trustee, to be applied, invested or otherwise dealt with and administered under the directions of the sheriff for the benefit of the person under legal disability;
  - (c) order the money to be paid to the sheriff clerk of the sheriff court district in which the person under legal disability resides, to be applied, invested or otherwise dealt with and administered, under the directions of the sheriff of that district, for the benefit of the person under legal disability; or
  - (d) order the money to be paid directly to the person under legal disability.

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### *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.
- (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 <sup>M90</sup>Trustee Investments Act 1961.

#### **Marginal Citations**

**M90** 1961 c.62.

## *<sup>F374</sup>PART V*

### *PRODUCTIONS IN CERTAIN ACTIONS OF DAMAGES*

#### **Textual Amendments**

**F374** Sch. 1 Chapter 36 Pt. IV A (rules 36.17A - 36.17C) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1) (19)

### *Application of this Part*

- <sup>F375</sup>36.17A. This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.

#### **Textual Amendments**

**F375** Sch. 1 Chapter 36 Pt. IV A (rules 36.17A - 36.17C) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1) (19)

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### *Averments of medical treatment*

- <sup>F376</sup>36.17B. The condescendence of the initial writ in an action to which this Part applies shall include averments naming—
- (a) every general medical practitioner or general medical practice from whom;  
and
  - (b) every hospital or other institution in which,  
the pursuer or, in an action in respect of the death of a person, the deceased received treatment for the injuries sustained, or disease suffered, by him.

#### **Textual Amendments**

**F376** Sch. 1 Chapter 36 Pt. IV A (rules 36.17A - 36.17C) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(19)

### *Lodging of medical reports*

- <sup>F377</sup>36.17C. In an action to which this Part applies, the pursuer shall lodge as productions, with the initial writ when it is presented for warranting in accordance with rule 5.1, all medical reports on which he intends, or intends to reserve the right, to rely in the action.
- (2) Where no medical report is lodged as required by paragraph (1), the defender may apply by motion for an order specifying a period within which such a report shall be lodged in process.]

#### **Textual Amendments**

**F377** Sch. 1 Chapter 36 Pt. IV A (rules 36.17A - 36.17C) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(19)

## *SEX DISCRIMINATION ACT 1975*

### *Causes under section 66 of the Act of 1975*

- 36.18. (1) In a cause in which a breach of statutory duty under section 66(1) of the <sup>M91</sup>Sex Discrimination Act 1975 (proceedings for act of discrimination) is averred, the sheriff may, of his own motion or on the motion of any party, appoint an assessor.
- (2) An assessor appointed under paragraph (1) shall be a person who the sheriff considers has special qualifications to be of assistance in determining [<sup>F378</sup>a cause] referred to in that paragraph.
- (3) In a cause referred to in paragraph (1), the pursuer should send a copy of the initial writ by post by the first class recorded delivery service to the Equal Opportunities Commission.

#### **Textual Amendments**

**F378** Words in rule 36.18(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(1)(63)

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#### Marginal Citations

M91 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 <sup>M92</sup>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

M92 1977 c.27.

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

37.2.<sup>F379</sup> (1) In an action of declarator—

- (a) the missing person shall be named as the defender;
- (b) subject to paragraph (2), service on that person shall be executed by advertisement in such newspaper or other publication as the sheriff thinks fit of such facts relating to the missing person and set out in the initial writ as the sheriff may specify; and
- (c) the period of notice shall be 21 days from the date of publication of the advertisement unless the sheriff otherwise directs.]

[<sup>F380</sup> (2) The advertisement mentioned in paragraph (1) shall be in Form P1.]

(3) Subject to paragraph (5), in an action of declarator, the pursuer shall include a crave for a warrant for intimation to—

- (a) the missing person’s—
  - (i) spouse, and
  - (ii) children, or, if he has no children, his nearest relative known to the pursuer,
- (b) any person, including any insurance company, who so far as known to the pursuer has an interest in the action, and
- (c) the Lord Advocate,

in the following terms:— “For intimation to (name and address) as [husband or wife, child or nearest relative] [a person having an interest in the presumed death] of (name and last known address of the missing person) and to the Lord Advocate.”.

(4) A notice of intimation in Form P2 shall be attached to the copy of the [<sup>F381</sup> initial writ] where intimation is given on a warrant under paragraph (3).

(5) The sheriff may, on the motion of the pursuer, dispense with intimation on a person mentioned in paragraph (3)(a) or (b).

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- (6) An application by minute under section 1(5) of the Act of 1977 (person interested in seeking determination or appointment not sought by pursuer) shall contain a crave for the determination or appointment sought, averments in the answers to the condescendence in support of that crave and an appropriate plea-in-law.
- (7) On lodging a minute under paragraph (6), the minuter shall—
  - (a) send a copy of the minute by registered post or the first class recorded delivery service to each person to whom intimation of the action has been made under paragraph (2); and
  - (b) lodge in process the Post Office receipt or certificate of posting of that minute.

#### Textual Amendments

**F379** Sch. 1 rule 37.2(1) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(20)(a)

**F380** Sch. 1 rule 37.2(2) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(20)(b)

**F381** Words in Sch. 1 rule 37.2(4) substituted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(20)(c)

#### Further advertisement

- 37.3. Where no minute has been lodged indicating knowledge of the present whereabouts of the missing person, at any time before the determination of the action, the sheriff may, of his own motion or on the motion of a party, make such order for further advertisement as he thinks fit.

#### Applications for proof

- 37.4. (1) In an action of declarator where no minute has been lodged, the pursuer shall, after such further advertisement as may be ordered under rule 37.3, apply to the sheriff by motion for an order for proof.
- (2) A proof ordered under paragraph (1) shall be by affidavit evidence unless the sheriff otherwise directs.

#### Applications for variation or recall of decree

- 37.5. (1) An application under section 4(1) of the Act of 1977 (variation or recall of decree) shall be made by minute in the process of the action to which it relates.
- (2) On the lodging of such a minute, the sheriff shall make an order—
- (a) for service on the missing person, where his whereabouts have become known;
  - (b) for intimation to those persons mentioned in rule 37.2(3) or to dispense with intimation to a person mentioned in rule 37.2(3)(a) or (b); and
  - (c) for any answers to the minute to be lodged in process within such period as the sheriff thinks fit.
- (3) An application under section 4(3) of the Act of 1977 (person interested seeking determination or appointment not sought by applicant for variation order) shall be made by lodging answers containing a crave for the determination or appointment sought.



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- (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 <sup>F382</sup> 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**

**F382** [S.I. 1992/272](#).

## **CHAPTER 38**

### **EUROPEAN COURT**

#### *Interpretation of this Chapter*

- 38.1. (1) In this Chapter—
- “appeal” includes an application for leave to appeal;
  - “the European Court” means the Court of Justice of the European Communities;
  - “reference” means a reference to the European Court for—
    - (a) a preliminary ruling under Article [<sup>F383</sup>234] of the E.E.C. Treaty, Article 150 of the Euratom Treaty, or Article 41 of the E.C.S.C. Treaty; or
    - (b) a ruling on the interpretation of the Conventions, as defined in section 1(1) of the <sup>M93</sup>Civil Jurisdiction and Judgments Act 1982, under Article 3 of Schedule 2 to that Act.
- (2) The expressions “E.E.C. Treaty”, “Euratom Treaty” and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the <sup>M94</sup>European Communities Act 1972.

#### **Textual Amendments**

**F383** Word in [Sch. 1 rule 38.1\(1\)\(a\)](#) substituted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(21\)](#)

**Status:** Point in time view as at 20/08/2004. This version of this Act contains provisions that are not valid for this point in time.

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

#### **Marginal Citations**

- M93** 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 \(c.12\)](#).  
**M94** 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.

<sup>F384</sup>(2) . . . . .

#### **Textual Amendments**

- F384** [Sch. 1 rule 38.2\(2\)](#) omitted (2.10.2000) by virtue of [S.S.I. 2000/239](#), [para. 3\(1\)\(22\)](#)

#### *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.

[<sup>F385</sup>(1A) Except in so far as the sheriff may otherwise direct, a reference shall be prepared in accordance with Form E1, having regard to the guidance set out in the <sup>M95</sup>Notes for Guidance issued by the Court of Justice of the European Communities.]

- (2) On the reference being drafted, the sheriff clerk shall send a copy to each party.  
 (3) Within 4 weeks after the date on which copies of the draft have been sent to parties, each party may—  
     (a) lodge with the sheriff clerk, and  
     (b) send to every other party,  
 a note of any adjustments he seeks to have made in the draft reference.  
 (4) Within 14 days after the date on which any such note of adjustments may be lodged, the sheriff, after considering any such adjustments, shall make and sign the reference.  
 (5) The sheriff clerk shall forthwith intimate the making of the reference to each party.

#### **Textual Amendments**

- F385** [Sch. 1 rule 38.3\(1A\)](#) inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(23\)](#)

#### **Marginal Citations**

- M95** The Notes for Guidance are reproduced in the Parliament House Book.

#### *Sist of cause*

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

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- (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.

## <sup>F386</sup> CHAPTER 39

### PROVISIONS IN RELATION TO CURATORS AD LITEM

#### Textual Amendments

**F386** 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*

- <sup>F387</sup>39.(1) This rule applies to any civil proceedings whether or not the child is a party to the action.
- (2) In an action where the sheriff appoints a curator *ad litem* to a child, the pursuer shall in the first instance, unless the court otherwise directs, be responsible for the fees and outlays of the curator *ad litem* incurred during the period from his appointment until the occurrence of any of the following events:—
- (a) he lodges a minute stating that he does not intend to lodge defences or to enter the process;
  - (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
  - (c) the discharge, before the occurrence of the events mentioned in sub paragraphs (a) and (b), of the curator.]

#### Textual Amendments

**F387** Sch. 1 Ch. 39 (rule 39(1) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(24)

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## [<sup>F388</sup> CHAPTER 40

### COMMERCIAL ACTIONS

#### Textual Amendments

**F388** 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.

#### *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.

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*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.

*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.

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### *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.
- (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;

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- (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 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.



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### *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”.]

## [<sup>F389</sup>CHAPTER 41

### PROTECTION FROM ABUSE (SCOTLAND) ACT 2001

#### **Textual Amendments**

**F389** Sch. 1 Ch. 41 inserted (8.3.2002) by Act of Sederunt (Ordinary Cause Rules) Amendment (Applications under the Protection from Abuse (Scotland) Act 2001) 2002 (S.S.I. 2002/7), {para. 2(2)}

### *Interpretation*

- 41.1. (1) In this Chapter a section referred to by number means the section so numbered in the Protection from Abuse (Scotland) Act 2001.
- (2) Words and expressions used in this Chapter which are also used in the Protection from Abuse (Scotland) Act 2001 have the same meaning as in that Act.

### *Attachment of power of arrest to interdict*

- 41.2. (1) An application under section 1(1) (application for attachment of power of arrest to interdict)—
- (a) shall be made in the crave in the initial writ, defences or counterclaim in which the interdict to which it relates is applied for, or, if made after the application for interdict, by motion in the process of the action in which the interdict was sought [<sup>F390</sup>, or by minute, with answers if appropriate, should the sheriff so order]; and

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- (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).

#### Textual Amendments

**F390** Words in [Sch. 1 rule 41.2\(1\)\(a\)](#) inserted (24.1.2003) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2003 \(S.I. 2003/26\)](#), [art. 2\(13\)](#)

#### *Extension or recall of power of arrest*

- 41.3. (1) An application under either of the following provisions shall be made by minute in the process of the action in which the power of arrest was attached:–
- (a) section 2(3) (extension of duration of power of arrest);
  - (b) section 2(7) (recall of power of arrest).
- (2) Where the sheriff extends the duration of, or recalls, a power of arrest, the person who obtained the extension or recall must deliver a copy of the interlocutor granting the extension or recall in accordance with section 3(1).

#### *Documents to be delivered to chief constable in relation to recall or variation of interdict*

- 41.4. Where an interdict to which a power of arrest has been attached under section 1(2) is varied or recalled, the person who obtained the variation or recall must deliver a copy of the interlocutor varying or recalling the interdict in accordance with section 3(1).

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### *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.]

## [<sup>F391</sup>CHAPTER 42

### **Textual Amendments**

**F391** Sch. 1 Ch. 42 inserted (20.8.2004) by Act of Sederunt (Ordinary Cause Rules) Amendment (Competition Appeal Tribunal) 2004 (S.S.I. 2004/350), art. 2

## *COMPETITION APPEAL TRIBUNAL*

### *Interpretation*

- 42.1. In this Chapter—  
     “the 1998 Act” means the Competition Act 1998 <sup>F392</sup>; and  
     “the Tribunal” means the Competition Appeal Tribunal established by section 12 of the Enterprise Act 2002.

### **Textual Amendments**

**F392** 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 <sup>F393</sup> applies may apply by motion to the sheriff for an order transferring the proceedings, or any part of them, to the Tribunal.
- (2) Where the sheriff orders that such proceedings (or any part of them) are transferred to the Tribunal, the sheriff clerk shall, within 7 days from the date of such order—
- (a) transmit the process (or the appropriate part) to the clerk of the Tribunal;
  - (b) notify each party to the proceedings in writing of the transmission under sub paragraph (a); and
  - (c) certify, by making an appropriate entry on the interlocutor sheet, that he has made all notifications required under sub paragraph (b).
- (3) Transmission of the process under paragraph (2)(a) shall be valid notwithstanding any failure by the sheriff clerk to comply with paragraph (2)(b) and (c).]

### **Textual Amendments**

**F393** Section 47A was inserted by the Enterprise Act 2002, section 18.

**Status:** Point in time view as at 20/08/2004. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 16/06/2006

## <sup>F394</sup> CHAPTER 43

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

#### Textual Amendments

**F394** 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—

- (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.]

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VALID FROM 03/11/2006

## [<sup>F395</sup> CHAPTER 44

### EQUALITY ENACTMENTS

#### Textual Amendments

**F395** 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.
- (2) The assessor shall be a person who the sheriff considers has special qualifications to be of assistance in determining the cause.

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### *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.]

VALID FROM 01/11/2007

## <sup>F396</sup> CHAPTER 45

### VULNERABLE WITNESSES (SCOTLAND) ACT 2004

#### Textual Amendments

**F396** 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)}

**Status:** Point in time view as at 20/08/2004. This version of this Act contains provisions that are not valid for this point in time.

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

### *Interpretation*

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;
- (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.



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#### *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,

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.

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#### *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.
- (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.

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#### *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.]

Rule 1.4 ]

F397F398F399F400F401F402F403F404F405F406F406F406F407F408F409F410F411F397F412F413 **APPENDIX 1**

## FORMS

### Textual Amendments

- F397** 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**
- F398** Sch. 1 Appendix 1: forms F5, F6, F7, F8, F9, F19, F21, F23, F24 and F26 substituted (1.11.1996) by Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 (S.I. 1996/2167), para. 2, **Sch.** {para. 35(a)}
- F399** Sch. 1 Appendix 1: forms F25 omitted (1.11.1996) by virtue of Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 (S.I. 1996/2167), para. 2, **Sch.** {para. 35(b)}
- F400** Sch. 1 Appendix 1: forms F41 inserted (1.11.1996) by Act of Sederunt (Family Proceedings in the Sheriff Court) 1996 (S.I. 1996/2167), para. 2, **Sch.** {para. 35(c)}
- F401** Sch. 1 Appendix 1: forms G7, G8, G9 substituted (1.11.1996) by Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 1996 (S.I. 1996/2445), **para. 3(65)(b)**
- F402** Sch. 1 Appendix 1: forms G7A, G7B, G7C inserted (1.11.1996) by Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 1996 (S.I. 1996/2445), **para. 3(65)(c)**, Sch.

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- Form G1 Rule 3.1(1)

Form of initial writ

INITIAL WRIT

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

[A.B.] (design and state any special capacity in which the pursuer is suing). Pursuer.  
Against

Against  
[C.D.] (design and state any special capacity in which the defender is being sued). Defender.

The Pursuer craves the court (here state the specific decree, warrant or order sought).

CONDESCENDENCE

(State in numbered paragraphs the facts which form the ground of action)

## PLEAS-IN-LAW

(State in numbered sentences)

Signed  
[A.B.], Pursuer.  
or [X.Y.], Solicitor for the pursuer (*state  
designation and business address*)

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Rule 3.1(1)(b) and 40.4

FORM G1A

Form of initial writ in a commercial action

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

COMMERCIAL ACTION

[A.B.] *(design and state any special capacity in which the pursuer is suing)*. Pursuer.

Against

[C.D.] *(design and state any special capacity in which the defender is being sued)*. Defender.

[A.B.] for the Pursuer craves the Court *(specify the orders sought)*

CONDESCENDENCE

*(provide the following, in numbered paragraphs–*

- *information sufficient to identify the transaction or dispute from which the action arises;*
- *a summary of the circumstances which have resulted in the action being raised; and*
- *details setting out the grounds on which the action proceeds.)*

Note: *Where damages are sought, the claim may be summarised in the pleadings–*

- *in the form of a statement of damages; or*
- *by lodging with the initial writ a schedule detailing the claim.*

PLEAS-IN-LAW

*(state in numbered sentences)*

Signed  
[A.B.], Pursuer  
or [X.Y.], Solicitor for the  
Pursuer *(state designation  
and business address)*

Form G2

Rule 4.2(1)

Form of caveat

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

CAVEAT for [A.B.] *(insert designation and address\*)*

Should any application be made for *(here specify the nature of the application(s) to which this caveat is to apply)* before the lodging of a notice of intention to defend, it is requested that intimation be made to the caveator before any order is pronounced.

Date *(insert date)*

Signed

[A.B.]  
or [X.Y.] Solicitor for [A.B.] *(add designation  
and business address)*

Caveator's telephone and fax number *(insert where caveat is not lodged by solicitor)*

Solicitor *(insert name and address, telephone and fax number and reference)*

Out of hours contacts:

1. *(insert name and telephone number)*
2. *(insert name and telephone number)*

\*State whether the caveat is lodged in an individual capacity, or a specified representative capacity (e.g. as trustee of a named trust) or both. Where appropriate, state also the nature of the caveator's interest (e.g. shareholder, debenture holder).

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Form G3

Rule 5.6(1)(a)

Form of advertisement

NOTICE TO [C.D.]

Court ref. no.

An action has been raised in

Sheriff Court by [A.B.], Pursuer, calling as a Defender [C.D.] whose last known address was (insert last known address of defender). If [C.D.] wishes to defend the action [where notice is given in a family action add: or make any claim or seek any order] he [or she] should immediately contact the sheriff clerk at (insert address) from whom the service copy initial writ may be obtained. If he [or she] fails to do so decree may be granted against him [or her].

Signed

[X.Y.], (add designation and business address)  
Solicitor for the pursuer  
or [P.Q.], (add business address)  
Sheriff officer

Form G4

Rules 5.6(1)(b) and 33.16(3)(b)

Form of notice for writs of court

NOTICE TO [C.D.]

Court ref. no.

An action has been raised in

Sheriff Court by [A.B.], Pursuer, calling as a Defender [C.D.] whose last known address was (insert last known address of defender). If [C.D.] wishes to defend the action (where notice is to be given in a family action add: or make any claim or seek any order) he [or she] should immediately contact the sheriff clerk at (insert address) from whom the service copy initial writ may be obtained. If he [or she] fails to do so decree may be granted against him [or her].

Date (insert date)

Signed  
Sheriff clerk (depute)  
Telephone no. (insert telephone number of sheriff clerk's office)

FORM G5

Rules 9.2(2)(a) and 33.16(3)(b)

Form of intimation of Options Hearing

Sheriff Court (insert address and telephone number)

Court ref.no.

[A.B.] (design) Pursuer against [C.D.] (design) Defender

You are given notice that in this action :-

(insert date) is the last day for lodging defences;

(insert date) is the last day for making adjustments to the writ or defences;

(insert date, time and place) is the date, time and place for the Options Hearing.

Date (insert date)

Signed  
Sheriff clerk (depute)

NOTE:

If you fail to comply with the terms of this notice or with any of the rules 9.3, 9.4, 9.6, 9.10, and 9.11 of the Standard Procedure of the Ordinary Cause Rules of the Sheriff Court, decree by default may be granted in terms of rule 16.2 (2) of those Rules.

NOTE TO BE ADDED WHERE PARTY UNREPRESENTED

NOTE:  
IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information from any Citizens Advice Bureau or other advice agency.

Form G6

Rule 15.1(1)(b)

Form of motion

SHERIFFDOM OF (insert name of sheriffdom)

Court ref.no.

AT (insert place of sheriff court)

MOTION FOR THE PURSUER (or DEFENDER)

in the cause

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

The (insert description of party) moves the court to (insert details of motion and, where appropriate, the reasons) for seeking the order.

List the documents or parts of process lodged with the motion :-  
(insert description of document or name part of process)

Date (insert date)

Signed  
Party (insert name and description of party)  
or Solicitor for party  
(insert designation and business address)



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**FORM G7**

**Rule 15.2(1)**

**Form of intimation of motion**

SHERIFFDOM OF (insert name of sheriffdom)

Court Ref. no.

AT (insert place of sheriff court)

in the cause

[A.B.] (insert name and address)

Pursuer

against

[C.D.] (insert name and address)

Defender

**LAST DATE FOR LODGING NOTICE OF OPPOSITION:**

**APPLICATION IS MADE BY MOTION FOR THE ORDER(S) SOUGHT IN THE ATTACHED FORM** (attach a copy of the motion in Form G6)

\* A copy of the document(s) or part(s) of process referred to in Form G6 is/are attached.

**OPPOSITION TO THE MOTION MAY BE MADE** by completing Form G9 (notice of opposition to motion) and lodging it with the sheriff clerk at (insert address) on or before the last date for lodging notice of opposition. A copy of the notice of opposition must be sent immediately to any other party in the action.

**IN THE EVENT OF A NOTICE OF OPPOSITION BEING LODGED** the sheriff clerk will assign a date, time and place for hearing parties on the motion. Intimation of this hearing will be sent to parties by the sheriff clerk.

**IF NO NOTICE OF OPPOSITION IS LODGED**, the motion may be considered by the sheriff without the attendance of parties.

Date (insert date)

(Signed)

Pursuer (or as the case may be)

[or Solicitor for pursuer [or as the case may be]  
(insert name and business address)]

**EXPLANATORY NOTE TO BE ADDED WHERE PARTY TO WHOM INTIMATION IS MADE IS NOT LEGALLY REPRESENTED**

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.

**NOTE:** If you intend to oppose the motion you must appear or be represented on the date of the hearing. If you return Form G9 (notice of opposition to motion) and then fail to attend or be represented at the court hearing, the court may consider the motion in your absence and may grant the order(s) sought.

\* Delete if not applicable



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## FORM G7A

## Rule 14.4(1)(a)

### Form of intimation of minute (answers lodged)

SHERIFFDOM OF (insert name of sheriffdom)

Court Ref. no.

AT (insert place of sheriff court)

in the cause

[A.B.] (insert name and address)

Pursuer

against

[C.D.] (insert name and address)

Defender

#### LAST DATE FOR LODGING ANSWERS:

#### APPLICATION IS MADE FOR THE ORDER(S) SOUGHT IN THE MINUTE ATTACHED

(attach a copy of minute and interlocutor)

\* A copy of the document(s) or part(s) of process referred to in the minute is/are attached.

**IN THE EVENT OF ANSWERS BEING LODGED** the sheriff clerk will assign a date, time and place for hearing parties on the minute and answers. Intimation of this hearing will be sent to parties by the sheriff clerk.

**IF NO ANSWERS ARE LODGED**, the minute may be considered by the sheriff without the attendance of parties.

Date (insert date)

(Signed)

Pursuer [or as the case may be]

[or Solicitor for pursuer [or as the case may be]

(Add name and business address)]

#### EXPLANATORY NOTE TO BE ADDED WHERE PARTY TO WHOM INTIMATION IS MADE IS NOT LEGALLY REPRESENTED

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.

**NOTE:** If you intend to oppose the minute you must appear or be represented on the date of the hearing. If you return Form G9 (notice of opposition to minute) and then fail to attend or be represented at the court hearing, the court may consider the minute in your absence and may grant the order(s) sought.

\*Delete if not applicable

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**FORM G7B**

**Rule 14.4(1)(a)**

**Form of intimation of minute (no order for answers or no hearing fixed)**

SHERIFFDOM OF (insert name of sheriffdom)

Court Ref. no.

AT (insert place of sheriff court)

in the cause

[A.B.] (insert name and address)

Pursuer

against

[C.D.] (insert name and address)

Defender

**LAST DATE FOR LODGING NOTICE OF OPPOSITION:**

**APPLICATION IS MADE BY MINUTE FOR THE ORDER(S) SOUGHT IN THE MINUTE ATTACHED** (attach a copy of minute and interlocutor)

\*A copy of the document(s) or part(s) of process referred to in the minute is/are attached.

**OPPOSITION TO THE MINUTE MAY BE MADE** by completing Form G9 (notice of opposition to minute) and lodging it with the sheriff clerk at (insert address) on or before the last date for lodging notice of opposition. A copy of the notice of opposition must be sent immediately to any other party in the action.

**IN THE EVENT OF A NOTICE OF OPPOSITION BEING LODGED** the sheriff clerk will assign a date, time and place for hearing parties on the minute. Intimation of this hearing will be sent to parties by the sheriff clerk.

**IF NO NOTICE OF OPPOSITION IS LODGED**, the minute may be considered by the sheriff without the attendance of parties.

Date (insert date)

(Signed)

Pursuer [or as the case may be]

[or Solicitor for pursuer [or as the case may be]

(Add name and business address)]

**EXPLANATORY NOTE TO BE ADDED WHERE PARTY TO WHOM INTIMATION IS MADE IS NOT LEGALLY REPRESENTED**

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.

**NOTE:** If you intend to oppose the minute you must appear or be represented on the date of the hearing. If you return Form G9 (notice of opposition to minute) and then fail to attend or be represented at the court hearing, the court may consider the minute in your absence and may grant the order(s) sought.

\* Delete if not applicable

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## FORM G7C

## Rule 14.4(1)(a)

### Form of intimation of minute (hearing fixed)

SHERIFFDOM OF *(insert name of sheriffdom)*

Court Ref. no.

AT *(insert place of sheriff court)*

in the cause

[A.B.] *(insert name and address)*

Pursuer

against

[C.D.] *(insert name and address)*

Defender

<b>DATE AND TIME FOR HEARING MINUTE:</b>
--

<b>*DATE FOR LODGING ANSWERS OR AFFIDAVIT EVIDENCE:</b>
---

**APPLICATION IS MADE FOR THE ORDER(S) SOUGHT IN THE MINUTE ATTACHED**  
*(attach a copy of minute and interlocutor)*

\*A copy of the document(s) or part(s) of process referred to in the minute is/are attached.

**IF YOU WISH TO OPPOSE THE MINUTE OR MAKE ANY REPRESENTATIONS** you must attend or be represented at *(insert name and address of court)* on the date and time referred to above.

\*If an order has been made for you to lodge answers or affidavit evidence these must be lodged with the sheriff clerk *(insert address)* on or before the above date.

**IF YOU FAIL TO ATTEND OR BE REPRESENTED** the minute may be determined in your absence.

Date *(insert date)*

*(Signed)*

Pursuer *[or as the case may be]*

*[or Solicitor for pursuer [or as the case may be]*

*(Add name and business address)]*

**EXPLANATORY NOTE TO BE ADDED WHERE PARTY TO WHOM INTIMATION IS MADE IS NOT LEGALLY REPRESENTED**

<b>IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE</b> you should consult a solicitor. You may also obtain advice from a Citizens Advice Bureau or other advice agency.
--

<b>NOTE:</b> If you intend to oppose the minute you must appear or be represented on the date of the hearing. If you return Form G9 (notice of opposition to minute) and then fail to attend or be represented at the court hearing, the court may consider the minute in your absence and may grant the order(s) sought.
---

\* Delete if not applicable

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**FORM G8**

**Rules 14.6 and 15.1(2)**

**Form of certificate of intimation of motion or minute**

**CERTIFICATE OF INTIMATION OF MOTION [or MINUTE]**

I certify that intimation of the motion [or minute] was made to (insert names of parties or solicitors for the parties, as appropriate) by (insert method of intimation; where intimation is by facsimile transmission, insert fax number to which intimation sent) on (insert date of intimation).

(Signed)

Solicitor [or Sheriff Officer]

(Add name and business address)

Date (insert date)

**FORM G9**

**Rules 14.7(1)(a) and 15.3(1)(a)**

**Form of notice of opposition to motion or minute**

**NOTICE OF OPPOSITION TO MOTION [or MINUTE]**

SHERIFFDOM OF (insert name of sheriffdom)

Court Ref. no:

AT (insert place of sheriff court)

in the cause

[A.B.] (insert name and address)

Pursuer

against

[C.D.] (insert name and address)

Defender

Notice of opposition to motion [or minute] given by (insert name of party opposing motion) to (insert names of all other parties, or solicitors for the parties, to the action) by (insert method of intimation; where intimation is made by facsimile transmission, insert fax number to which notice of opposition sent) on (insert date of intimation).

Date (insert date)

(Signed)

Pursuer [or as the case may be]

(insert name and address of party)

[or Solicitor for Pursuer [or as the case may be]

(Add name and business address)]

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**Form G10** Rule 24.2(3)

**Form of intimation to a party whose solicitor has withdrawn**

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

In the cause  
[A.B.], (insert designation),  
Pursuer  
against  
[C.D.], (insert designation)  
Defender

Court ref. no.

The court has been informed that your solicitors have ceased to act for you.

As a result the sheriff has ordered that you appear or be represented on (insert date and time) within the Sheriff Court at the above address. A copy of the order is attached.

When you appear you will be asked by the sheriff to state whether you intend to proceed with your action [or defences or answers].

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

\* Delete as appropriate

**NOTE:**  
IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**FORM G11** Rule 28.3(1)

**Form of notice in optional procedure for commission and diligence**

Order by the Sheriff Court at (insert address) Court ref. no.

In the cause  
[A.B.] (design) Pursuer  
against  
[C.D.] (design) Defender

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

You are given notice that you are required to produce to the sheriff clerk at the above address within seven days of (insert date on which service was executed, *N.B. Rule 5.5(2) relating to postal service or intimation*):

(1) this order, which must be produced intact;

(2) a certificate signed and completed in terms of the form appended to this notice; and

(3) all documents in your possession falling within the enclosed specification, with an inventory of such documents signed by you relating to this order and your certificate.

Production may be made by lodging the documents with the sheriff clerk at the above address, by posting them by registered post or the first class recorded delivery service addressed to the sheriff clerk at the above address.

Date (insert date) Signed  
Solicitor for party (add designation and business address of the solicitor for the party in whose favour commission and diligence granted)

**NOTE**  
If you claim confidentiality for any of the documents produced by you, such documents must nevertheless be produced, but may be placed in a special sealed packet by themselves, marked "confidential".

.....

**CERTIFICATE**

I hereby certify with reference to the order of the Sheriff Court at (insert place of sheriff court) in the cause (insert court ref. no.) and the relative specification of documents, served upon me and marked respectively X and Y:

(1) that the documents which are produced and which are numbered in the inventory signed by me and marked 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);

(2) that, to the best of my knowledge and belief, there are in existence other documents falling within the specification, but not in my possession, namely (describe them by reference to one or more of the descriptions of documents in the specification), which were last seen by me on or about (insert date), at (insert place), in the hands of (insert name and address of the person) (or that I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification).

Signed

**FORM G12** Rules 28.3(3) and 29.7(4)

**Form of certificate of citation of witness or haver**

I certify that on (insert date of citation) I duly cited [K.L.], (design) to attend at (insert name of sheriff court) Sheriff Court on (insert date) at (insert time) as a witness for the pursuer [or defender] in the action at the instance of [A.B.] (design), Pursuer, against [C.D.] (design), Defender, [and I required him [or her] to bring with him [or her] (specify documents)]. This I did by (state mode of citation).

Date (insert date) Signed

[P.Q.], Sheriff officer;  
or [X.Y.], (add designation and business address)  
Solicitor for the pursuer [or defender]



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Rules 28.4(4) and 29.7(4)

## FORM G13

### Form of citation of witness or haver

#### CITATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

To [K.L.] *(design)*

You are required to attend the above sheriff court on *(insert date)* at *(insert time)* as a witness for the pursuer [*or* defender] in the action by [A.B.] *(design)*, Pursuer, against [C.D.] *(design)*, Defender, [and to bring with you *(specify documents)*].

**If you fail to attend, warrant may be granted for your arrest.**

Date *(insert date)*

Signed .....

[P.Q.], Sheriff Officer,

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

Solicitor for the pursuer [*or* defender]

#### NOTE

Claims for necessary outlays and loss of earnings within certain specified limits will be paid. Claims should be made to the person who has cited you to attend court. Proof of any loss of earnings should be given to that person.

If you wish your travelling expenses to be paid prior to your attendance you should apply for payment to the person who has cited you.

**If you fail to attend without reasonable cause, having requested and been paid your travelling expenses, you may be ordered to pay a penalty not exceeding £250.**

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Form G14 Rules 28.4(5)(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(5)(b), 28.10(4)(b) and 29.16

**Form of affirmation for witness**

The witness to repeat after the sheriff (or commissioner): "I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth".

## SCHEDULE 1

Rule 4(4)

### FORM G16

Rules 28.14(3) and 28.14A(2)

## Form of minute for [letter of request] [taking of evidence in the European Community]\*

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

MINUTE FOR PURSUER [DEFENDER]\*

in the cause

[A.B.] *(insert designation and address)*

Pursuer

against

[C.D.] *(insert designation and address)*

Defender

Court ref. no.

The Minuter states that the evidence specified in the attached [letter of request] [Form A] [Form I]\* is required for the purpose of these proceedings and craves the court to issue [a letter of request] [that Form]\* to *(specify in the case of a letter of request the central or other appropriate authority of the country or territory in which the evidence is to be obtained, and in the case of Form A or I the applicable court, tribunal, central body or competent authority)* to obtain the evidence specified.

Date *(insert date)*

Signed *(insert designation and address)*

\* *delete as applicable*



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FORM G17 Rule 28.14(3)

Form of letter of request

LETTER OF REQUEST

1. Sender (insert name and address)

2. Central authority of the requested state (insert name and address)

3. Person to whom the executed request is to be returned (insert name and address)

4. The undersigned applicant has the honour to submit the following request:

5. a. Requesting judicial authority (insert name and address)

b. To the competent authority (insert name of requested state)

6. Names and addresses of the parties and their representatives

a. 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

14. Request for notification of the time and place for the execution of the request and identity and address of any person to be notified

15. Request for attendance or participation of judicial personnel of the requesting authority at the execution of the letter of request

16. Specification of privilege or duty to refuse to give evidence under the law of the state of origin

17. The fees and expenses (costs) incurred will be borne by (insert name and address)

(Items to be included in all letters of request)

18. Date of request

19. Signature and seal of the requesting authority

FORM G18 Rule 30.3(2)

Form of certificate of rate of exchange

CERTIFICATE OF RATE OF EXCHANGE

I (insert designation and address) certify that the rates current in London for the purchase of (state the unit of currency in which the decree is expressed) on (insert date) was (state rate of exchange) to the £ sterling and at this rate the sum of (state the amount of the sum in the decree) amounts to (insert sterling equivalent).

Date (insert date)

Signed

For and on behalf of the bank manager or other official

Form O1 Rule 3.3(1)

Form of warrant of citation

(Insert place and date) Grants warrant to cite the defender (insert name and address) by serving upon him [or her] a copy of the writ and warrant on a period of notice of (insert period of notice) days, and ordains 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 ordains him [or her] if he [or she]

(a) intends to defend the action or make any claim, to lodge a notice of intention to defend; or

(b) admits the claim and intends to apply for a time to pay direction [and apply for recall or restriction of an arrestment] to lodge the appropriate part of Form O3 duly completed;

with the sheriff clerk at (insert place of sheriff court) within the said period of notice after such service [and grants warrant to arrest on the dependence].

[Meantime grants interim interdict, or grants warrant to arrest to found jurisdiction, or sequestrates and grants warrant to inventory, or otherwise, as the case may be.]

Signed

Sheriff [or sheriff clerk]

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## Rule 3.3(4)

### FORM O2A

#### Form of warrant in an action to which rule 3.2(3) applies

(Insert place and date) Grants warrant to cite the defender (insert name and address) by serving a copy of the writ and warrant and Form O7 on a period of notice of (insert period of notice) days and ordains him [or her] if he [or she]—

- (a) intends to defend the action or make any claim, to lodge a notice of intention to defend with the sheriff clerk at (insert place of sheriff court) within the said period of notice after such service [and grants warrant to arrest on the dependence]; or
- (b) intends to apply for an order under section 2 of the Mortgage Rights (Scotland) Act 2001, to lodge a minute applying for an order under that section before the conclusion of the proceedings.

[Meantime grants interim interdict or otherwise as the case may be.]

Form O3 Rules 3.3(3), 7.3(2) and 18.5(1)(XXX)

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 OPPOSE 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".

**HOW TO COMPLETE THE APPLICATION**

PLEASE WRITE IN INK USING BLOCK CAPITALS

**PART A** of the application will have been completed in advance by the pursuer and gives details of the pursuer and you as the defender.

**PART B** - If you wish to apply to pay by instalments enter the amount and tick the appropriate box at B3(1). If you wish to apply to pay the full sum due in one deferred payment enter the period of deferment you propose at B3(2).

**PART C** - Give full details of your financial position in the space provided.

**PART D** - If you wish the court, when making the time to pay direction to recall or restrict an arrestment made in connection with the action, enter the appropriate details about what has been arrested and the place and date of the arrestment at D5, and attach the schedule of arrestment or copy.

Sign the application where indicated and detach pages 3 and 4. Retain the copy initial writ and pages 1 and 2 of this form as you may need them at a later stage. You should ensure that your application arrives at the court before the expiry of the period of notice.

**WHAT WILL HAPPEN NEXT**

If the pursuer objects to your application, a hearing will be fixed and the court will advise you in writing of the date and time.

If the pursuer does not object to your application, a copy of the court order for payment (called an extract decree) will be served on you by the pursuer's solicitor advising when instalment payments should commence or deferred payment be made.

Court ref. no.

**APPLICATION FOR A TIME TO PAY DIRECTION**

**UNDER THE DEBTORS (SCOTLAND) ACT 1987**

**\*PART A** By

DEFENDER

**\*(This section must be completed by pursuer before service)** In an action raised by

PURSUER

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**PART B**

- 1 The applicant is a defender in the action brought by the above named pursuer.  
2 The defender admits the claim and applies to the court for a time to pay direction.  
3 The defender applies (1) To pay by instalments of £

(Tick one box only) EACH WEEK ☐ FORTNIGHT ☐ MONTH ☐

OR

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

**PART C**

4. Defender's financial position

My weekly fortnightly monthly My weekly fortnightly monthly

outgoings are: ☐ ☐ ☐ income is: ☐ ☐ ☐

Rent / mortgage £ Wages / pensions £

Heating £ Social security £

Food £ Other £

HP £

Other £

Total £ Total £

Dependants: Children - how many ☐ Dependant relatives - how many ☐

Here list all capital (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:

Here list any outstanding debts:

**PART D**

- 5 The defender seeks to recall or restrict an arrestment of which the details are as follows (please state, and attach the schedule of arrestment or copy):

6 This application is made under sections 1(1) and 2(3) of the Debtors (Scotland) Act 1987.

Therefore the defender asks the court

\*a. to make a time to pay direction.

\*b. to recall the above arrestment.

\*c. to restrict the above arrestment (in which case state restriction wanted):

\* Delete what does not apply

Date (insert date)

Signed

Defender

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## Rule 5.2(1)

### FORM 04

#### Form of Citation

#### CITATION

SHERIFFDOM OF *(insert name of Sheriffdom)*

AT *(insert place of sheriff court)*

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

Court Ref No:

*(Insert place and date).* You [C.D.], are hereby served with this copy writ and warrant, with Form 07 (notice of intention to defend).

**Form 07** is served on you for use should you wish to intimate an intention to defend this action.

**IF YOU WISH TO DEFEND THIS ACTION** you should consult a solicitor with a view to lodging a notice of intention to defend (Form 07). The notice of intention to defend, together with the court fee of £*(insert amount)* must be lodged with the Sheriff Clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed. NB Rule 5.3(2) relating to postal service).*

A copy of any notice of intention to defend should be sent to the Solicitor for the pursuer at the same time as your notice of intention to defend is lodged with the Sheriff Clerk.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens' Advice Bureau or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT** the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed .....

[P.Q.], Sheriff Officer

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

Solicitor for the Pursuer

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## FORM 05

### Form of citation where time to pay direction may be applied for

#### CITATION

SHERIFFDOM OF *(insert name of Sheriffdom)*

AT *(insert place of Sheriff Court)*

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

Defender

Court Ref No:

*(insert place and date)*. You [C.D.], are hereby served with this copy writ and warrant, together with the following forms—

Form 03 (application for time to pay direction); and

Form 07 (notice of intention to defend).

**Form 03** is served on you because it is considered that you may be entitled to apply for a time to pay direction [and for the recall or restriction of an arrestment used on the dependence of the action or in security of the debt referred to in the copy writ]. See Form 03 for further details.

**IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION**, you must complete Form 03 and return it to the Sheriff Clerk at *(insert address)* within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed. NB Rule 5.3(2) relating to postal service)*.

**IF YOU ADMIT THE CLAIM AND WISH TO AVOID A COURT ORDER BEING MADE AGAINST YOU**, the whole sum claimed including interest and any expense due should be paid to the pursuer or his solicitor in good time before the expiry of the period of notice.

**Form 07** is served on you for use should you wish to intimate an intention to defend the action.

**IF YOU WISH TO DEFEND THIS ACTION** you should consult a solicitor with a view to lodging a notice of intention to defend (Form 07). The notice of intention to defend, together with the court fee of £*(insert amount)* must be lodged with the Sheriff Clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed. NB Rule 5.3(2) relating to postal service)*.

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**A copy of any notice of intention to defend should be sent to the Solicitor for the pursuer at the same time as your notice of intention to defend is lodged with the Sheriff Clerk.**

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT** the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed .....

[P.Q.], Sheriff Officer

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

Solicitor for the Pursuer



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## Rule 5.2(2A)

### FORM O5A

Form of citation in an action to which rule 3.2(3) applies

#### CITATION

SHERIFFDOM OF *(insert name of Sheriffdom)*

AT *(insert place of Sheriff Court)*

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

Court Ref No:

*(Insert place and date)*. You [C.D.], are hereby served with this copy writ and warrant, with Form O7 (notice of intention to defend).

**Form O7** is served on you for your use should you wish to intimate an intention to defend this action.

**IF YOU WISH TO DEFEND THIS ACTION** you should consult a solicitor with a view to lodging a notice of intention to defend (Form O7). The notice of intention to defend, together with the court fee of £ *(insert amount)*, must be lodged with the Sheriff Clerk at the above address within 21 days *(or insert the appropriate period of notice)* of *(insert the date on which service was executed NB Rule 5.3(2) relating to postal service)*.

**A copy of any notice of intention to defend should be sent to the Solicitor for the pursuer at the same time as your notice of intention to defend is lodged with the Sheriff Clerk.**

**IF YOU WISH TO MAKE AN APPLICATION FOR AN ORDER UNDER SECTION 2 OF THE MORTGAGE RIGHTS (SCOTLAND) ACT 2001** you should consult a solicitor with a view to lodging a minute applying for an order under that section. The minute, together with the court fee of £ *(insert amount)*, must be lodged with the Sheriff Clerk at the above address before the conclusion of the proceedings.

**IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens' Advice Bureau, or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT** the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed  
[P.Q.], Sheriff Officer,  
or [X.Y.] *(add designation and business address)*  
Solicitor for the Applicant



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FORM O6  
Form of certificate of citation

CERTIFICATE OF CITATION

(Insert place and date) I, \_\_\_\_\_ hereby certify that upon the \_\_\_\_\_ day of \_\_\_\_\_ I duly cited [C.D.], Defendant, to answer to the foregoing writ. This I did by (state method of service; if by officer and not by post, add: in presence of [L.M.], (insert designation), witness hereto with me subscribing; and where service executed by post state whether by registered post or the first class recorded delivery service).

(In actions in which a time to pay direction may be applied for, state whether Form O2 and Form O3 were sent in accordance with rule 3.3).

(In actions to which rule 3.2(3) applies, state whether Form O2A was sent in accordance with rule 3.3).

Signed  
[P.Q.], Sheriff officer  
[L.M.], witness  
or [X.Y.], (add designation and business address)  
Solicitor for the pursuer

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Rules 5.2(1) and 9.1(1)

## FORM 07

### Form of notice of intention to defend

#### NOTICE OF INTENTION TO DEFEND

in an action raised at Sheriff Court

##### \*PART A

Court Ref No

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

Pursuer

Defender

Solicitor for the Pursuer

\*(This section to be completed by the  
Pursuer before service)

Date of service:

Date of expiry of period of notice:

##### PART B

(This section to be completed by the defender or defender's solicitors, and both parts of this form to be returned to the Sheriff Clerk (*insert address of Sheriff Clerk*) on or before the date of expiry of the period of notice referred to in PART A above. At the same time a copy of the form should be sent to the Solicitor for the Pursuer).

(Insert place and date)

[C.D.], (*insert designation and address*), Defender, intends to defend the action raised by [A.B.], (*insert designation and address*), Pursuer, against him (and others).

Signed .....  
[C.D.], Defender  
or [X.Y.], (*add designation and business  
address*)  
Solicitor for the defender

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**FORM O8** Rule 18.5(1)(a)(i)  
**Form of notice to additional or substitute defender where time to pay direction may be applied for**

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

To [E.F.] (insert designation and address of additional (or substitute) defender) Court ref. no.

You [E.F.] are given notice that in this action in which [A.B.] is the pursuer and [C.D.] is the defender, your name has, by order of the court dated (insert date of court order) been added (or substituted) as a defender to the said action; and the action, originally against [C.D.] is now (or also) directed against you.

Enclosed with this notice are the following documents -

Copies of the (insert as appropriate, the pleadings as adjusted or closed record);  
Form O3 (application for a time to pay direction); and  
Form O7 (notice of intention to defend).

**Form O3** is served on you because it is considered that you may be entitled to apply for a time to pay direction (and for the recall or restriction of an arrestment used on the dependence of the action or in security of the debt referred to in the copy writ). See Form O3 for further details.

**IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION**, you must complete Form O3 and return it to the sheriff clerk at (insert address) within 21 days (or insert the appropriate period of notice) of (insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal citation).

**IF YOU ADMIT THE CLAIM AND WISH TO AVOID A COURT ORDER BEING MADE AGAINST YOU**, the whole sum claimed including interest and any expenses due should be paid to the pursuer or his solicitor in good time before the expiry of the period of notice.

**Form O7** is served on you for use should you wish to intimate an intention to defend the action.

**IF YOU WISH TO DEFEND THIS ACTION** you should consult a solicitor with a view to lodging a notice of intention to defend (Form O7). The notice of intention to defend, together with the court fee of £ (insert amount) must be lodged with the sheriff clerk at the above address within 21 days (or insert the appropriate period of notice) of (insert the date on which service was executed. N.B. See Rule 5.3(2) relating to postal service).

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT** the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed  
[P.Q.] Sheriff officer,  
or [X.Y.] (add designation and business address)  
Solicitor for the pursuer (or defender)

**FORM O9** Rule 18.5(1)(a)(ii)  
**Form of notice to additional or substitute defender**

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

To [E.F.] (insert designation and address of additional (or substitute) defender) Court ref. no.

You [E.F.] are given notice that in this action in which [A.B.] is the pursuer and [C.D.] is the defender, your name has, by order of the court dated (insert date of court order) been added (or substituted) as a defender to the said action; and the action, originally against the said [C.D.] is now (or also) directed against you.

Enclosed with this notice are the following documents -

Copies of the (insert as appropriate pleadings as adjusted or closed record); and  
Form O7 (notice of intention to defend).

**Form O7** is served on you for use should you wish to intimate an intention to defend the action.

**IF YOU WISH TO DEFEND THIS ACTION** you should consult a solicitor with a view to lodging a notice of intention to defend (Form O7). The notice of intention to defend, together with the court fee of £ (insert amount) must be lodged with the sheriff clerk at the above address within 28 days (or insert the appropriate period of notice) of (insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal service).

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT** the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed  
[P.Q.] Sheriff officer,  
or [X.Y.] (add designation and business address)  
Solicitor for the pursuer (or defender)

**Form O10** Rule 20.1  
**Form of third party notice**

SHERIFFDOM OF (insert name of sheriffdom) Court ref. no.  
AT (insert place of sheriff court)

**THIRD PARTY NOTICE**

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

To [E.F.]

You are given notice by [C.D.] of an order granted by Sheriff (insert name of sheriff) in this action in which [A.B.] is the pursuer and [C.D.] the defender. In the action the pursuer claims against the defender the sum of £ as damages in respect of (insert brief description 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

\*Delete as appropriate. \*The defender denies liability for the injury claimed to have been suffered by the pursuer and maintains that liability, if any, to the pursuer rests solely on you (insert names of any other person whom defender maintains is liable to him (or her) by way of contribution, relief or indemnity) as more fully appears from the defences lodged by him (or her) in the action.

or

\*The defender denies liability for the injury said to have been suffered by the pursuer but maintains that (if there is any liability he shares that with you as more fully appears from the defences lodged by him (or her) in the action.

or

\*The defender admits liability in part for the injury suffered by the pursuer but disputes the amount of damages and maintains that liability falls to be shared by you, as more fully appears from the defences lodged by him (or her) in the action.

or

\*The defender admits liability in part for the injury suffered by the pursuer and for the damages claimed but maintains that liability falls to be shared by you, as more fully appears from the defences lodged by him (or her) in the action.

or

\*(Otherwise as the case may be)

IF YOU WISH TO resist either the claim of the pursuer against the defender, or the claim of the defender against you, you must lodge answers with the sheriff clerk at the above address within 28 days of (insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal service). You must also pay the court fee of £ (insert amount).

Date (insert date) Signed  
Solicitor for the defender.

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**Form A1**

**Rule 31.4(1)**

**Form of note of appeal to the sheriff principal**

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert name of sheriff court)*

Court Ref. no.

in the cause

[A.B.] *(insert name and address)*

Pursuer [*or as the case may be*]

against

[C.D.] *(insert name and address)*

Defender [*or as the case may be*]

The pursuer (*or defender or as the case may be*) appeals to the sheriff principal on the following grounds:—

*(state grounds on which appeal is to proceed)*

[and requests the sheriff to write a note].

Date *(insert date)*

*(Signed)*  
[*or* Solicitor for pursuer [*or*  
*as the case may be*]  
*(Add name and business*  
*address)*]

**FORM F1**

Rule 33.7(1)(a)

Form of intimation to children and next-of-kin in an action of divorce or separation where the defender's address is not known

To *(insert name and address as in warrant)*

Court ref. no.

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)*.

Date *(insert date)*

Signed

Solicitor for the pursuer *(add designation and business address)*

**NOTE**

If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of *(insert amount)* and a copy of this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**FORM F2**

Rule 33.7(1)(b)

Form of intimation to alleged adulterer in action of divorce or separation

To *(insert name and address as in warrant)*

Court ref. no.

You are given NOTICE that in this action, you are alleged to have committed adultery. A copy of the initial writ is attached. If you wish to dispute the truth of the allegation made against you, you must lodge a minute with the sheriff clerk *(insert address of sheriff clerk)* for leave to appear as a party. Your minute must be lodged within 21 days of *(insert date on which intimation given, N.B. Rule 5.3(2) relating to postal service or intimation)*.

Date *(insert date)*

Signed

Solicitor for the pursuer

**NOTE**  
If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk together with the appropriate fee of *(insert amount)* and a copy of this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

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**FORM F3**

Rule 33.7(1)(c)

Form of intimation to children, next of kin and carer or family in an action of divorce or separation where the defender suffers from a mental disorder  
 Court ref. no.

To (insert name and address as in warrant)

You are given NOTICE that an action of divorce (or separation) has been raised against (insert name, and designation) your (insert relationship, e.g. father, mother, brother or other relative, or ward, as the case may be). A copy of the initial writ is enclosed. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk), for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given, N.B. Rule 5.3(2) relating to postal service or intimation).  
 Date (insert date)

Signed

Solicitor for the pursuer (insert designation and business address)

**NOTE:**

If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk together with the appropriate fee of (insert amount) and a copy of this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**FORM F4**

Rule 33.7(1)(d)

Form of intimation to additional spouse of either party in proceedings relating to a polygamous marriage

To (name and address as in warrant)

Court ref. no.

You are given NOTICE that this action for divorce (or separation), involves (insert name and designation) your spouse. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given, N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date)

Signed

Solicitor for the pursuer

**NOTE:**

If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**FORM F5**

Rule 33.7(1)(e)(i) and (ii)

**Form of intimation to a local authority or third party who may be liable to maintain a child**

To (insert name and address as in warrant)

Court ref. no.

**YOU ARE GIVEN NOTICE** that in this action, the court may make an order under section 11 of the Children (Scotland) Act 1995 in respect of (insert name and address), a child in your care [or liable to be maintained by you]. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given, N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date)

Signed

Solicitor for the pursuer

**NOTE:** If you decide to lodge a minute it may be in your best interests to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

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**FORM F6**

Rule 33.7(1)(e)(iii)

**Form of intimation to person who in fact exercises care or control of a child**

To (insert name and address as in warrant)

Court ref. no.

**YOU ARE GIVEN NOTICE** that in this action, the court may make an order under section 11 of the Children (Scotland) Act 1995 in respect of (insert name and address) a child at present in your care or control. A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. *N.B. Rule 5.3(2) relating to postal service or intimation*).

Date (insert date)

Signed  
Solicitor for the pursuer

**NOTE:** If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**FORM F7**

Rule 33.7(1)(f)

**Form of notice to parent or guardian in action for a section 11 order in respect of a child**

**1. YOU ARE GIVEN NOTICE** that in this action, the pursuer is applying for an order under section 11 of the Children (Scotland) Act 1995 in respect of the child (insert name of child). A copy of the initial writ is served on you and is attached to this notice.

**2.** If you wish to oppose this action, or oppose the granting of any order applied for by the pursuer in respect of the child, you must lodge a notice of intention to defend (Form F26). See Form F26 attached for further details.

Date (insert date)

Signed  
Pursuer  
or Solicitor for the pursuer (add designation  
and business address)

**NOTE: IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.



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**FORM F8** Rules 33.7(1)(g), 33.7(4) and 33.12(2) and (3)

**Form of notice to local authority requesting a report in respect of a child**

To *(insert name and address)*

Court ref. no.

**1. YOU ARE GIVEN NOTICE** that in an action in the Sheriff Court at *(insert address)* the pursuer has applied for a residence order in respect of the child *(insert name of child)*. A copy of the initial writ is enclosed.

**2.** You are required to submit to the court a report on all the circumstances of the child and on the proposed arrangements for the care and upbringing of the child.

Date *(insert date)*

Signed  
Solicitor for the pursuer *(add designation and business address)*



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**FORM F9**

Rules 33.7(1)(h)

**Form of intimation in an action which includes a crave for a section 11 order**

**PART A**

Court Ref. No.

This part must be completed by the Pursuer's solicitor in language a child is capable of understanding.

To (1)

The Sheriff (the person who has to decide about your future) has been asked by (2) to decide:-

- (a) (3) and (4)
- (b) (5)
- (c) (6)

If you want to tell the Sheriff what you think about the things your (2) has asked the Sheriff to decide about your future you should complete Part B of this form and send it to the Sheriff Clerk at (7) by (8). An envelope which does not need a postage stamp is enclosed for you to use to return the form.

**IF YOU DO NOT UNDERSTAND THIS FORM OR IF YOU WANT HELP TO COMPLETE IT you may get help from a SOLICITOR or contact the SCOTTISH CHILD LAW CENTRE ON the FREE ADVICE TELEPHONE LINE ON 0800 317 500.**

If you return the form it will be given to the Sheriff. The Sheriff may wish to speak with you and may ask you to come and see him or her.

**NOTES FOR COMPLETION**

(1) Insert name and address of child.	(2) Insert relationship to the child of party making the application to court.
(3) Insert appropriate wording for residence order sought.	(4) Insert address.
(5) Insert appropriate wording for contact order sought.	(6) Insert appropriate wording for any other order sought.
(7) Insert address of sheriff clerk.	(8) Insert the date occurring 21 days after the date on which intimation is given. N.B. Rule 5.3(2) relating to intimation and service.
(9) Insert court reference number.	(10) Insert name and address of parties to the action.

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## **PART B**

### **IF YOU WISH THE SHERIFF TO KNOW YOUR VIEWS ABOUT YOUR FUTURE YOU SHOULD COMPLETE THIS PART OF THE FORM**

To the Sheriff Clerk, (7)

Court Ref. No. (9)

(10) .....

**QUESTION (1): DO YOU WISH THE SHERIFF TO KNOW WHAT YOUR VIEWS ARE ABOUT YOUR FUTURE?**

**(PLEASE TICK BOX)**

Yes	
No	

If you have ticked YES please also answer Question (2) or (3)

**QUESTION (2): WOULD YOU LIKE A FRIEND, RELATIVE OR OTHER PERSON TO TELL THE SHERIFF YOUR VIEWS ABOUT YOUR FUTURE?**

**(PLEASE TICK BOX)**

Yes	
No	

If you have ticked YES please write the name and address of the person you wish to tell the Sheriff your views in Box (A) below. You should also tell that person what your views are about your future.

<b>BOX A:</b>	(NAME) .....			
	(ADDRESS) .....			
	.....			
Is this person:-	A friend?	<input type="checkbox"/>	A relative?	<input type="checkbox"/>
	A teacher?	<input type="checkbox"/>	Other?	<input type="checkbox"/>

**OR**

**QUESTION (3): WOULD YOU LIKE TO WRITE TO THE SHERIFF AND TELL HIM WHAT YOUR VIEWS ARE ABOUT YOUR FUTURE?**

**(PLEASE TICK BOX)**

Yes	
No	

If you decide that you wish to write to the Sheriff you can write what your views are about your future in Box (B) below or on a separate piece of paper. If you decide to write your views on a separate piece of paper you should send it along with this form to the Sheriff Clerk in the envelope provided.

<b>BOX B:</b>	<b><u>WHAT I HAVE TO SAY ABOUT MY FUTURE:-</u></b>

**NAME:** .....

**ADDRESS:** .....

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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 apply to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date)

Signed

Solicitor for the pursuer

**NOTE**  
If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

FORM F12

Rule 33.7(1)(k)

Form of intimation in an action where a non-entitled pursuer makes an application for an order  
under the Matrimonial Homes (Family Protection) (Scotland) Act 1981

To (insert name and address as in warrant)

Court ref. no.

You are given NOTICE that in this action, the pursuer craves the court to make an order under section 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.

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## FORM F12A

## Rule 33.7(1)(I)

### Form of intimation to trustees or managers of pension scheme in relation to order for payment in respect of pension lump sum under section 12A of the Family Law (Scotland) Act 1985

To *(insert name and address as in warrant)*

Court ref no:

You are given NOTICE that in this action the pursuer has applied for an order under section 8 of the Family Law (Scotland) Act 1985 for a capital sum in circumstances where the matrimonial property includes rights in a pension scheme under which a lump sum is payable. The relevant pension scheme is *(give brief details, including number, if known)*. If you wish to apply to appear as a party, you must lodge a minute with the sheriff clerk *(insert address of sheriff clerk)* for leave to do so. Your minute must be lodged within 21 days of *(insert date on which intimation was given. NB: rule 5.3(2) relating to postal service or intimation.)*

Date *(insert date)*

Signed  
Solicitor for the pursuer  
*(Add designation and business address)*

**NOTE:** If you decide to lodge a minute it may be in your best interests to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of *(insert amount)* and a copy of this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

#### FORM F13

Rule 33.8(3)

Form of intimation to person with whom an improper association is alleged to have occurred

To *(insert name and address as in warrant)*

Court ref. no.

You are given NOTICE that in this action, the defender is alleged to have had an improper association with you. A copy of the initial writ is attached. If you wish to dispute the truth of the allegations made against you, you must lodge a minute with the sheriff clerk *(insert address of sheriff clerk)* for leave to appear as a party. Your minute must be lodged within 21 days of *(insert date on which intimation was given. NB: Rule 5.3(2) relating to postal service or intimation.)*

Date *(insert date)*

Signed  
Solicitor for the pursuer

**NOTE**  
If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of *(insert amount)* and a copy of this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

#### FORM F14

Rule 33.10

Form of warrant of citation in family action

*(Insert place and date)*

Grants warrant to cite the defender *(insert name and address of defender)* by serving upon him (or her) a copy of the writ and warrant upon a period of notice of *(insert period of notice)* days, and 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.

[Meantime grants interim interdict, or warrant to arrest on the dependence].

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**FORM F15** Rules 33.11(1) and 33.13(1)(a)  
**Form of citation in family action**

**CITATION**

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

[A.B.], (insert designation and address) Pursuer, against [C.D.], (insert designation and address), Defender.  
Court ref. no.

(Insert place and date) You [C.D.], are hereby served with this copy writ and warrant, with Form F26 (notice of intimation to defend) and (insert details of any other form of notice served, e.g. any of the forms served in accordance with rule 33.14).

Form F26 is served on you for use should you wish to intimate an intention to defend the action.

**IF YOU WISH TO -**

(a) challenge the jurisdiction of the court;  
(b) oppose any claim made or order sought;  
(c) make any claim or seek any order; or  
(d) seek any order;

you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26). The notice of intention to defend, together with the court fee of £ (insert amount) must be lodged with the sheriff clerk at the above address within 21 days (or insert appropriate period of notice) of (insert the date on which service was executed. *N.B. Rule 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 1 day cited [C.D.], Defender, to answer to the foregoing writ. This I did by (state method of service: if by officer and not by post, add in presence of [L.M.], (insert designation), witness hereto with me subscribing, and (insert details of any forms of intimation or notice sent including details of the person to whom intimation sent and the method of service).

Signed  
[P.Q.], Sheriff officer  
[L.M.], witness  
or  
[X.Y.], (add designation and business address)  
Solicitor for the pursuer

**FORM F17** Rule 33.13(1)(c)  
**Form of request to medical officer of hospital or similar institution**

To (insert name and address of medical officer)

In terms of rule 33.13(1)(c) of the Ordinary Cause Rules of the Sheriff Court a copy of the initial writ at the instance of (insert name and address of pursuer), Pursuer, against (insert name and address of defender), Defender, is enclosed and you are requested to

(a) deliver it personally to the (insert name of defender), and  
(b) explain the contents to him or her, unless you are satisfied that such delivery or explanation would be dangerous to his or her health or mental condition. You are further requested to complete and return to me in the enclosed stamped addressed envelope the certificate appended hereto, making necessary deletions.

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

**FORM F18** Rules 33.13(1)(d) and 33.13(2)  
**Form of certificate by medical officer of hospital or similar institution**

Court ref. no.

I (insert name and designation) certify that I have received a copy initial writ in an action of (type of family action to be inserted by the party requesting service) at the instance of (insert name and designation), Pursuer, against (insert name and designation), Defender, and that

\* I have on the day of personally delivered a copy thereof to the said defender who is under my care at (insert address) and I have explained the contents or purport thereof to him or her, or

\* I have not delivered a copy thereof to the said defender who is under my care at (insert address) and I have not explained the contents or purport thereof to him or her because (state reasons).

Date (insert date) Signed  
Medical officer (add designation and address)

\* Delete as appropriate.



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## FORM F19

Rule 33.14(1)(a)(i)

### Form of notice to defender where it is stated that defender consents to the granting of decree of divorce

**YOU ARE GIVEN NOTICE** that the copy initial writ served on you with this notice states that you consent to the grant of decree of divorce.

1. If you do so consent the consequences for you are that:–

- (a) provided the pursuer establishes the fact that he [or she] has not cohabited with you at any time during a continuous period of two years after the date of your marriage and immediately preceding the bringing of this action and that you consent, a decree of divorce will be granted;
- (b) on the grant of a decree of divorce you may lose your rights of succession to the pursuer's estate; and
- (c) decree of divorce will end the marriage thereby affecting any right to such pension as may depend on the marriage continuing, or, on your being left a widow the state widow's pension will not be payable to you when the pursuer dies.

Apart from these, there may be other consequences for you depending upon your particular circumstances.

2. You are entitled, whether or not you consent to the grant of decree of divorce in this action, to apply to the sheriff in this action–

- (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
- (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

3. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

4. If, after consideration, you wish to consent to the grant of decree of divorce in this action, you should complete and sign the attached notice of consent (Form F20) and send it to the sheriff clerk at the sheriff court referred to in the initial writ within 21 days of (*insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal service*).

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

Date (*insert date*)

Signed  
Solicitor for the pursuer (*add designation and business address*)

FORM F 20

Rule 33.14(1)(a)(i) and 33.18(1)

Court ref. no.

Form of notice of consent in actions of divorce under section 1(2)(d) of the Divorce (Scotland) Act 1976

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

I (*full name and address of the defender to be inserted by pursuer or pursuer's solicitor before sending notice*) have received a copy of the initial writ in the action against me at the instance of (*full name and address of pursuer to be inserted by pursuer or pursuer's solicitor before sending notice*). I understand that it states that I consent to the grant of decree of divorce in this action. I have considered the consequences for me mentioned in the notice (Form F19) sent to me with this notice. I consent to the grant of decree of divorce in this action.

Date (*insert date*)

Signed  
Defender

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**FORM F21**

Rule 33.14(1)(a)(ii)

**Form of notice to defender where it is stated that defender consents to the granting of decree of separation**

**YOU ARE GIVEN NOTICE** that the copy initial writ served on you with this notice states that you consent to the grant of decree of separation.

1. If you do so consent the consequences for you are that—
  - (a) provided the pursuer establishes the fact that he [or she] has not cohabited with you at any time during a continuous period of two years after the date of your marriage and immediately preceding the bringing of this action and that you consent, a decree of separation will be granted;
  - (b) on the grant of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist; you will continue to have a legal obligation to support your wife [or husband] and children;

Apart from these, there may be other consequences for you depending upon your particular circumstances.

2. You are entitled, whether or not you consent to the grant of decree of separation in this action, to apply to the sheriff in this action—

- (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
  - (b) for an order under Section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
  - (c) for any other competent order.

3. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

4. If, after consideration, you wish to consent to the grant of decree of separation in this action, you should complete and sign the attached notice of consent (Form F22) and send it to the sheriff clerk at the sheriff court referred to in the initial writ and other papers within 21 days of (*insert the date on which service was executed. N.B. Rule 5.3(2) relating to postal service or intimation*).

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

Date (*insert date*)

Signed  
Solicitor for the pursuer (*add designation and business address*)

FORM F22 Rules 33.14(1)(a)(ii) and 33.18(1)

Court ref. no.

Form of notice of consent in actions of separation under section 1(2)(d) of the Divorce (Scotland) Act 1976

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

I (*full name and address of the defender to be inserted by pursuer or pursuer's solicitor before sending notice*) confirm that I have received a copy of the initial writ in the action against me at the instance of (*full name and address of pursuer to be inserted by pursuer or pursuer's solicitor before sending notice*). I understand that it states that I consent to the grant of decree of separation in this action. I have considered the consequences for me mentioned in the notice (Form F21) sent together with this notice. I consent to the grant of decree of separation in this action.

Date (*insert date*)

Signed  
Defender



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**FORM F23**

Rule 33.14(1)(b)(i)

**Form of notice to defender in an action of divorce where it is stated that there has been five years' non-cohabitation**

**YOU ARE GIVEN NOTICE** that–

1. The copy initial writ served on you with this notice states that there has been no cohabitation between you and the pursuer at any time during a continuous period of five years after the date of the marriage and immediately preceding the commencement of this action. If the pursuer establishes this as a fact and the Sheriff is satisfied that the marriage has broken down irretrievably, a decree will be granted, unless the sheriff is of the opinion that to grant decree would result in grave financial hardship to you.

2. Decree of divorce will end the marriage thereby affecting any right to such pension as may depend the marriage continuing, or, on your being left a widow the state widow's pension will not be payable to you when the pursuer dies. You may also lose your rights of succession to the pursuer's estate.

3. You are entitled, whether or not you dispute that there has been no such cohabitation during that five year period, to apply to the sheriff in this action–

- (a) to make financial or other provision for you under the Family Law (Scotland) Act 1985;
- (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

4. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

Date (insert date)

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

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**FORM F24**

Rule 33.14(1)(b)(ii)

**Form of notice to defender in an action of separation where it is stated that there has been five years' non-cohabitation**

**YOU ARE GIVEN NOTICE** that–

1. The copy initial writ served on you together with this notice states that there has been no cohabitation between you and the pursuer at any time during a continuous period of five years after the date of the marriage and immediately preceding the commencement of this action and that if the pursuer establishes this as a fact, and the sheriff is satisfied that there are grounds justifying decree of separation, a decree will be granted, unless the sheriff is of the opinion that to grant decree would result in grave financial hardship to you.

2. On the granting of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist. You will continue to have a legal obligation to support your wife [or husband] and children.

3. You are entitled, whether or not you dispute that there has been no such cohabitation during that five year period, to apply to the sheriff in this action–

- (a) to make provision under the Family Law (Scotland) Act 1985;
- (b) for an order under section 11 of the Children (Scotland) Act 1995 in respect of any child of the marriage, or any child accepted as such, who is under 16 years of age; or
- (c) for any other competent order.

4. **IF YOU WISH TO APPLY FOR ANY OF THE ABOVE ORDERS** you should consult a solicitor with a view to lodging a notice of intention to defend (Form F26).

Date (*insert date*)

Signed  
Solicitor for the pursuer (*add designation and business address*)

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Rules 33.11(1) and 33.34(2)(a)

## FORM F26

### Form of notice of intention to defend in family action

#### NOTICE OF INTENTION TO DEFEND

##### PART A

##### PART A

(This section to be completed by the pursuer's solicitor before service.)

[Insert name and business address of solicitor for the pursuer]

Court ref. No.

In an action brought in Sheriff Court

.....  
 .....  
 .....

Pursuer

.....  
 .....

Defender

Date of service:

Date of expiry of period of notice

---

##### PART B

(This section to be completed by the defender or defender's solicitor, and both parts of the form to be returned to the Sheriff Clerk at the above Sheriff Court on or before the date of expiry of the period of notice referred to in Part A above.)

(Insert place and date)

[C.D.] (Insert designation and address), Defender, intends to

- (a) challenge the jurisdiction of the court;
- (b) oppose a crave in the initial writ;
- (c) make a claim;
- (d) seek an order;

in the action against him [or her] raised by [A.B.], (insert designation and address), Pursuer.

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## PART C

(This section to be completed by the defender or the defender's solicitor where an order under section 11 of the Children (Scotland) Act 1995 in respect of a child is sought by the pursuer or is to be sought by the defender).

DO YOU WISH TO OPPOSE THE MAKING OF ANY ORDER CRAVED BY THE PURSUER IN RESPECT OF A CHILD?

YES/NO\*

\*delete as appropriate

If you answered YES to the above question, please state here the order(s) which you wish to oppose and the reasons why the court should not make such order(s).

DO YOU WISH THE COURT TO MAKE ANY ORDER UNDER SECTION 11 OF THE CHILDREN (SCOTLAND) ACT 1995 IN RESPECT OF A CHILD?

YES/NO\*

\*delete as appropriate

If you answered YES to the above question, please state here the order(s) which you wish the court to make and the reasons why the court should make such order(s).

## PART D

IF YOU HAVE COMPLETED PART C OF THIS FORM YOU MUST INCLUDE EITHER CRAVE (1) OR (2) BELOW (\*delete as appropriate)

(1)\*Warrant for intimation of notice in terms of Form F9 on the child(ren) (insert full name(s) and date(s) of birth) is sought.

(2)\*I seek to dispense with intimation on the child(ren) (insert full name(s) and date(s) of birth) for the following reasons:–

Signed

[C.D.] Defender

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

Solicitor for Defender

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FORM F27

Rule 33.29(1)(b)

Form of minute for decree in family action to which rule 33.28 applies

(Insert name of solicitor for the pursuer) having considered the evidence contained in the affidavits and the other documents all as specified in the schedule hereto, and being satisfied that upon the evidence a motion for decree (in terms of the crave of the initial writ) [ or in such restricted terms as may be appropriate] may properly be made, moves the court accordingly.

In respect whereof  
Signed  
Solicitor for the pursuer (add designation and business address)

SCHEDULE  
(Number and specify documents considered)

FORM F28

Rules 33.40(c) and 33.64(1)(c)

Form of notice of intimation to local authority or third party to whom care of a child is to be given

To (name and address as in warrant) Court ref. no.

You are given NOTICE that in this action, the sheriff proposes to commit to your care the child (insert name and address). A copy of the initial writ is attached. If you wish to appear as a party, you must lodge a minute with the sheriff clerk (insert address of sheriff clerk) for leave to do so. Your minute must be lodged within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(2) relating to postal service or intimation).

Date (insert date) Signed  
Solicitor for the pursuer

NOTE  
If you decide to lodge a minute it may be in your best interest to consult a solicitor. The minute should be lodged with the sheriff clerk with the appropriate fee of (insert amount) and a copy of this intimation.

IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE you should consult a solicitor. You may be entitled to legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

FORM F29

Rules 33.41 and 33.64(2)

Form of notice of intimation to local authority of supervision order

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

To (insert name and address of local authority) Court ref. no.

You are given NOTICE that on (insert date) in the Sheriff Court at (insert place) the sheriff made a supervision order under section 12 of the Matrimonial Proceedings (Children) Act 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.

Date (insert date) Signed  
Sheriff clerk (depute)

FORM F30

Rules 33.72(1) and 33.72(2)

Form of certificate of delivery of documents to chief constable

(Insert place and date), hereby certify that upon the day of 1 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).

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

FORM F31

Rule 33.74 (1)

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

Sheriff Clerk  
Sheriff Court House  
  
  
(Telephone).

APPLICATION FOR DIVORCE WITH CONSENT OF OTHER PARTY TO THE MARRIAGE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST TWO YEARS)

Before completing this form, you should have read the leaflet entitled "Do it yourself Divorce", which explains the circumstances in which a divorce may be sought by this method. If simplified procedure 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)

Consent of husband/wife (Part 2)

Affidavit (Part 3)

Returning completed application form to court

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 completed Part 1 of the form, attach the (blue) instruction sheet SP3 to it and send both documents to your spouse for completion of the consent at Part 2 ( page 9)  
  
NOTE: If your spouse does NOT complete and sign the form of consent, your application cannot proceed further under the simplified procedure. In that event, if you still wish to obtain a divorce, you should consult a solicitor.

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.

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.  
5. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the sheriff clerk immediately.

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PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname .....  
Other name(s) in full .....  
.....  
Present address .....  
Daytime telephone number (if any) .....

2. NAME AND ADDRESS OF SPOUSE

Surname .....  
Other name(s) in full .....  
.....  
Present address .....  
Daytime telephone number (if any) .....

3. JURISDICTION

Please indicate with a tick ( ) in the appropriate box or boxes which of the following apply:

PART A

- (i) I consider myself to be domiciled in Scotland ☐  
(ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application ☐  
(iii) My spouse considers himself or herself to be domiciled in Scotland ☐  
(iv) My spouse has lived in Scotland for a period of at least 12 months immediately before the date of signing this application ☐

PART B

- (v) I have lived at the address shown in paragraph 1 above for at least 40 days immediately before the date I signed this application ☐  
(vi) My spouse has lived at the address shown in paragraph 2 above for at least 40 days immediately before the date I signed this application ☐

4. DETAILS OF PRESENT MARRIAGE

Place of Marriage ..... (Registration District)  
Date of Marriage: Day ..... month ..... year .....

5. PERIOD OF SEPARATION

- (i) Please state the date on which you ceased to live with your spouse. (If more than 2 years, just give the month and year) Day, ..... Month, ..... Year, .....  
(ii) Have you lived with your spouse since that date? \* [YES /NO]  
(iii) If yes, for how long in total did you live together before finally separating again? ..... months

6. RECONCILIATION

Is there any reasonable prospect of reconciliation with your spouse? \* [YES /NO]  
Do you consider that the marriage has broken down irretrievably? \* [YES/ NO]

7. CONSENT

Does your spouse consent to a divorce being granted? \* [YES /NO]

8. MENTAL DISORDER

Is your spouse suffering from any mental disorder (whether illness or handicap)? \* [YES /NO]

9. CHILDREN

Are there any children of the marriage under the age of 16? \* [YES/NO]

10. OTHER COURT ACTIONS

Are you aware of any court actions currently proceeding in any country (including Scotland) which may affect your marriage? (If yes, give details) \* [YES /NO]

\*Delete as appropriate

11. REQUEST FOR DIVORCE AND DISCLAIMER OF FINANCIAL PROVISION

I confirm that the facts stated in paragraphs 1-10 above apply to my marriage.

I do NOT ask the sheriff to make any financial provision in connection with this application.

I request the sheriff to grant decree of divorce from my spouse.

Date ..... Signature of applicant.....

IMPORTANT

Part 1 MUST be completed, signed and dated before sending the application form to your spouse.

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#### CONSENT BY APPLICANT'S SPOUSE TO DIVORCE

NOTE: Before completing this part of the form,  
 please read the notes opposite ( page 8)

I, .....  
*(Insert full name, in BLOCK letters, of Applicant's spouse)*

residing at

.....  
*(Insert address, also in BLOCK letters)*

#### HEREBY STATE THAT

- (a) I have read Part 1 of this application;  
 (b) the Applicant has lived apart from me for a continuous period of two years immediately preceding the date of the application (paragraph 11 of Part 1);  
 (c) I do not ask the sheriff to make any financial provision for me including:  
     (i) the payment by the Applicant of a periodical allowance (i.e. a regular payment of money weekly or monthly, etc. for maintenance);  
     (ii) the payment by the Applicant of a capital sum (i.e. a lump sum payment);  
 (d) I understand that divorce may result in the loss to me of property rights; and  
 (e) I CONSENT TO DECREE OF DIVORCE BEING GRANTED IN RESPECT OF THIS APPLICATION.

Date                      Signature of applicant.....

NOTE: You may withdraw your consent, even after giving it, at any time before divorce is granted by the sheriff. Should you wish to do so, please contact the sheriff clerk immediately.

#### PART 3

##### APPLICANT'S AFFIDAVIT

To be completed by the Applicant only after Parts 1 and 2 have been signed and dated.

I, *(insert Applicant's full name)* .....  
 residing at *(insert Applicant's present home address)* .....

SWEAR that to the best of my knowledge and belief:

- (1) the facts stated in Part 1 of this Application are true; and  
 (2) the signature in Part 2 of this Application is that of my  
     \*husband/wife.

Signature of Applicant .....

SWORN at *(insert place)* .....

To be completed  
 by Justice of the  
 Peace, Notary Public  
 or Commissioner  
 for Oaths  
 this ..... day of ..... 19 .....  
 before me *(insert full name)* .....  
*insert full address* .....

Signature .....

\*Justice of the Peace / Notary Public / Commissioner for Oaths

\*Delete as appropriate

#### FORM F33

Rule 33.74(2)

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

Sheriff Clerk  
 Sheriff Court House  
 .....  
 (Telephone) .....

**APPLICATION FOR DIVORCE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST FIVE YEARS)**  
 Before completing this form, you should have read the leaflet entitled "Do it yourself Divorce", which explains the circumstances in which a divorce may be sought by this method. If the simplified procedure appears to suit your circumstances, you may use this form to apply for divorce.  
 Below you will find directions designed to assist you with your application. Please follow them carefully. In the event of difficulty, you may contact any sheriff clerk's office or Citizens Advice Bureau.

##### Directions for making application

##### WRITE IN INK, USING BLOCK CAPITALS

- |   |  |
|---|--|
| Application<br>(Part 1)                       | 1. Complete and sign Part 1 of the form (pages 3-7), paying particular attention to the notes opposite each section.   |
| Affidavits<br>(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:<br>(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<br>(ii) either a cheque or postal order in respect of the court fee, crossed and made out to the "the Sheriff Clerk". |
|   | 4. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the sheriff clerk immediately.  |



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PART 1

WRITE IN INK, USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname .....

Other name(s) in full .....

Present address .....

Daytime telephone number (if any).....

2. NAME OF SPOUSE

Surname .....

Other name(s) in full .....

3. ADDRESS OF SPOUSE (if the address of your spouse is not known, please enter "not known" in this paragraph and proceed to paragraph 4)

Present address .....

Daytime telephone number (if any).....

4. Only complete this paragraph if you do not know the present address of your spouse

NEXT-OF-KIN

Name .....

Address .....

Relationship to your spouse .....

5. CHILDREN OF THE MARRIAGE

Names and dates of birth      Addresses

.....

.....

.....

.....

.....

If insufficient space is available to list all the children of the marriage, please continue on a separate sheet and attach to this form.

6. JURISDICTION Please indicate with a tick ( ) in the appropriate box or boxes which of the following apply:

PART A

(i) I consider myself to be domiciled in Scotland

(ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application

(iii) My spouse considers himself or herself to be domiciled in Scotland

(iv) My spouse has lived in Scotland for a period of at least 12 months immediately before the date of signing this application

PART B

(v) I have lived at the address shown in paragraph 1 above for at least 40 days immediately before the date I signed this application

(vi) My spouse has lived at the address shown in paragraph 2 above for at least 40 days immediately before I signed this application

7. DETAILS OF PRESENT MARRIAGE

Place of Marriage ..... (Registration District)

Date of Marriage:(Day).....(month).....(year).....

8. PERIOD OF SEPARATION

(i) Please state the date on which you ceased to live with your spouse. (If more than 5 years, just give the month and year) Day..... Month ..... Year .....

(ii) Have you lived with your spouse since that date?

\*[YES/ NO]

(iii) If yes, for how long in total did you live together before finally separating again? ..... months

9. RECONCILIATION

Is there any reasonable prospect of reconciliation with your spouse?

\*[YES/ NO]

Do you consider that the marriage has broken down irretrievably?

\*[YES/ NO]

10. MENTAL DISORDER

Is your spouse suffering from any mental disorder (whether illness or handicap)? (If yes, give details)

\*[YES / NO]

11. CHILDREN

Are there any children of the marriage under the age of 16?

\*[YES/ NO]

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12. OTHER COURT ACTIONS

Are you aware of any court actions currently proceeding in any country (including Scotland) which may affect your marriage?  
(If yes, give details)

\*[YES/ NO]

\* Delete as appropriate

13. DECLARATION AND REQUEST FOR DIVORCE

I confirm that the facts stated in paragraphs 1-11 above apply to my marriage.

I do NOT ask the sheriff to make any financial provision in connection with this application.

I believe that no grave financial hardship will be caused to my spouse as a result of the granting of this application.

I request the sheriff to grant decree of divorce from my husband or wife.

Date .....

Signature of Applicant .....

PART 2

APPLICANT'S AFFIDAVIT

(To be completed by the Applicant only after Part 1 has been signed and dated.)

I, (insert full name) .....

residing at (insert present home address) .....

.....

SWEAR that to the best of my knowledge and belief that the facts stated in Part 1 of this Application are true.

Signature of Applicant .....

SWORN at (insert place) .....

To be completed this ..... day of ..... 19 .....

by Justice of the before me (insert full name) .....

Peace, Notary Public of (insert full address) .....

or Commissioner .....

for Oaths .....

.....

Signature .....

\*Justice of the Peace / Notary Public / Commissioner for Oaths

\*Delete as appropriate

FORM F34 Rule 33.76(3)(a)

Form of citation in application relying on the facts in section 1 (2)(d) of the Divorce (Scotland) Act 1976

(Insert name and address of non-applicant spouse)

APPLICATION FOR DIVORCE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST TWO YEARS WITH CONSENT OF OTHER PARTY)

Your spouse has applied to the sheriff for divorce on the ground that the marriage has broken down irretrievably because you and he or she have lived apart for a period of at least two years and you consent to divorce being granted.

A copy of the application is hereby served upon you.

1. Please note:
- (a) that the sheriff may not make financial provision under this procedure and that your spouse is making no claim for -
- (i) the payment by you of a periodical allowance (i.e. a regular payment of money weekly or monthly, etc. for maintenance);
- (ii) the payment by you of a capital sum (i.e. a lump sum payment);
- (b) that your spouse states that you will not suffer grave financial hardship in the event of decree of divorce being granted.
2. Divorce may result in the loss to you of property rights (e.g. the right to succeed to the Applicant's estate on his or her death) or the right, where appropriate, to a widow's pension.
3. If you wish to oppose the granting of a divorce, you should put your reasons in writing and send your letter to the address shown below. Your letter must reach the sheriff clerk before (insert date).
4. In the event of the divorce being granted, you will be sent a copy of the extract decree. Should you change your address before receiving the copy extract decree, please notify the sheriff clerk immediately.

Signed

Sheriff clerk (depute)

(insert address and telephone number of the sheriff clerk)

or Sheriff Officer

NOTE: If you wish to exercise your right to make a claim for financial provision you should immediately advise the sheriff clerk that you oppose the application for that reason, and thereafter consult a solicitor.

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FORM F35 Rule 33.76(3)(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 court)  
or Sheriff officer

NOTE: If you wish to exercise your right to make a claim for financial provision you should immediately advise the sheriff clerk that you oppose the application for that reason, and thereafter consult a solicitor.

FORM F36 Rule 33.77(1)(a)

Form of intimation of simplified divorce application for display on the walls of court

Court ref. no.

An application for divorce has been made in this sheriff court by [A.B.] (insert designation and address), Applicant, naming [C.D.] (insert designation and address) as Respondent.

If [C.D.] wishes to oppose the granting of decree of divorce he [or she] should immediately contact the sheriff clerk from whom he [or she] may obtain a copy of the application.

Date (insert date) Signed  
Sheriff clerk (depute)

FORM F37 Rule 33.77(2)

Form of intimation to children and next-of-kin in simplified divorce application

To (insert name and address)

Court ref.no.

You are hereby given NOTICE that an application for divorce has been made against (insert name of respondent) your (insert relationship e.g. father, mother, brother or other relative as the case may be). A copy of this application is attached.

If you know of his or her present address, you are requested to inform the sheriff clerk (insert address of sheriff clerk) in writing immediately. You may also, if you wish, oppose the granting of decree of divorce by sending a letter to the court giving your reasons for your opposition to the application. Your letter must be sent to the sheriff clerk within 21 days of (insert date on which intimation was given. N.B. Rule 5.3(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.

FORM F38 Rule 33.80(2)

Form of extract decree of divorce in simplified divorce application

At (insert place and date)

in an action in the Sheriff Court of the Sheriffdom of (insert name of sheriffdom) at (insert place of sheriff court)

at the instance of [A.B.] (insert full name of applicant), Applicant,

against (insert full name of respondent), Respondent,

who were married at (insert place) on (insert date),

the sheriff pronounced decree divorcing the Respondent from the Applicant.

Extracted at (insert place and date)

by me, sheriff clerk of the Sheriffdom of (insert name of sheriffdom).

Signed  
Sheriff clerk (depute)

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FORM F39                      Rule 33.90

**Form of certificate relating to the making of a maintenance assessment under the Child Support Act 1991**

Sheriff Court (insert address)  
 Date (insert date)

I certify that notification has been received from the Secretary of State under section 10 of the Child Support Act 1991 of the making of a maintenance assessment under that Act which supersedes the decree or order granted on (insert date) in relation to aliment for (insert the name(s) of child(ren)) with effect from (insert date).

Signed  
 Sheriff clerk (depute)

FORM F40                      Rule 33.90

**Form of certificate relating to the cancellation or ceasing to have effect of a maintenance assessment under the Child Support Act 1991**

Sheriff Court (insert address)  
 Date (insert date)

I certify that notification has been received from the Secretary of State under section 10 of the Child Support Act 1991 that the maintenance assessment made on (insert date) has been cancelled (or ceased to have effect) on (insert date).

Signed  
 Sheriff clerk (depute)

Rule 33.22A(2)

## FORM F41

### Form of intimation to parties of a Child Welfare Hearing

Sheriff Court (insert address and telephone number)

Court Ref No:

In the action [A.B.], (design), Pursuer against [C.D.], (design), Defender

**YOU ARE GIVEN NOTICE** that a Child Welfare Hearing has been fixed for (insert time) on (insert date) at (insert place).

Date (insert date) Signed .....

Sheriff Clerk (Depute)

#### NOTE

**Please note that in terms of Rule 33.22A(5) parties to the action must attend personally**

**\*IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your financial circumstances, and you can get information about legal aid from a solicitor. You may also obtain information from any Citizens' Advice Bureau or other advice agency.

**\*This section to be deleted where service is to be made on a solicitor.**

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## FORM F42

### Rule 33.27A(1)

Form of Certificate under Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses

#### Matrimonial matters

Sheriffdom of *(insert name of sheriffdom)*

at *(insert place of Sheriff Court)*

I hereby certify, pursuant to Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, concerning judgments in matrimonial matters, the following:

1. Member State of origin: *(insert country)*
2. Court or authority issuing the certificate:
  - 2.1 Name: Sheriff Court of *(insert name)*
  - 2.2 Address: *(insert address of sheriff court)*
  - 2.3 Tel/Fax/E-mail: *(insert Tel/Fax/E-mail)*
3. Marriage:
  - 3.1 Wife:
    - 3.1.1 Full Name: *(insert name)*
    - 3.1.2 Country and place of birth: *(insert country and place)*
    - 3.1.3 Date of birth: *(insert date)*
  - 3.2 Husband:
    - 3.2.1 Full Name: *(insert name)*
    - 3.2.2 Country and place of birth: *(insert country and place)*
    - 3.2.3 Date of birth: *(insert date)*
  - 3.3 Country, place (where available ) and date of marriage
    - 3.3.1 Country of marriage : *(insert country)*
    - 3.3.2 Place of marriage (where available): *(insert place)*
    - 3.3.3 Date of marriage: *(insert date)*

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4. Court which delivered the judgment:

4.1 Name of Court: *(insert name)*

4.2 Place of Court: *(insert place)*

5. Judgment:

5.1 Date: *(insert date)*

5.2 Case reference number: *(insert reference number)*

5.3 Type of judgment:

5.3.1 Divorce ☐

5.3.3 Legal separation ☐

5.4 Was the Judgment given in default of appearance ?

5.4.1 No ☐

5.4.2 Yes ☐

6. Name of parties to whom legal aid has been granted: *(insert names)*

7. Is the judgment subject to further appeal under the law of the Member State of origin ?

7.1 No ☐

7.2 Yes ☐

8. Date of legal effect in the Member State where the judgment was given:

8.1 of divorce: *(insert date)*

8.2 of separation: *(insert date)*

*(Signed)*

Sheriff Clerk

*(Place and date)*

τ\

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## FORM F43

### Rule 33.27A(1)

Form of Certificate under Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses

### Parental Responsibility

Sheriffdom of *(insert name of sheriffdom)*

at *(insert place of Sheriff Court)*

I hereby certify, pursuant to Article 32 of Council Regulation (EC) No. 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in Matrimonial matters and in matters of parental responsibility for children of both spouses, concerning judgments in matters of parental responsibility, the following:

1. Member State of origin: *(insert country)*
2. Court or authority issuing the certificate:
  - 2.1 Name: Sheriff Court of *(insert name)*
  - 2.2 Address: *(insert address of sheriff court)*
  - 2.3 Tel/Fax/E-mail: *(insert tel/fax/e-mail)*
3. Parents:
  - 3.1 Mother:
    - 3.1.1 Full Name: *(insert name)*
    - 3.1.2 Date and place of birth: *(insert date and place)*
  - 3.2 Father:
    - 3.2.1 Full Name: *(insert name)*
    - 3.2.2 Date and place of birth: *(insert date and place)*
4. Court which delivered Judgment:
  - 4.1 Name of Court: *(insert name)*
  - 4.2 Place of Court: *(insert place)*
5. Judgment:
  - 5.1 Date: *(insert date)*
  - 5.2 Case Reference number: *(insert reference number)*
  - 5.3 Was the Judgment given in default of appearance?
    - 5.3.1 No ☐
    - 5.3.2 Yes ☐



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6. Children who are covered by the judgment:

6.1 Full Name and date of birth: *(insert name and date of birth)*

6.2 Full Name and date of birth: *(insert name and date of birth)*

6.3 Full Name and date of birth: *(insert name and date of birth)*

6.4 Full Name and date of birth: *(insert name and date of birth)*

7. Names of parties to whom legal aid has been granted: *(insert names)*

8. Attestation of enforceability and service

8.1 Is the judgment enforceable according to the law of the Member State of origin?

8.1.1 Yes ☐

8.1.2 No ☐

8.2 Has the judgment been served on the party against whom enforcement is sought?

8.2.1 Yes ☐

8.2.1.1 Full name of party: *(insert name)*

8.2.1.2 Date of service: *(insert date)*

8.2.2 No ☐

*(Signed)*

Sheriff Clerk

*(Place and date)*

**FORM III**

Rule 34.1(2)

**Form of notice informing defender of right to apply for certain orders under the Debtors (Scotland) Act 1987 on sequestration for rent**

Sheriff Court *(insert address)*

Court ref. no.

You are given NOTICE that, where articles are sequestered for rent you have the right to apply to the sheriff for certain orders under the Debtors (Scotland) Act 1987.

1. You may apply to the sheriff within fourteen days after the date the articles are sequestered for an order releasing any article on the ground that:

- (a) it is exempt from sequestration for rent (articles which are exempt are listed in section 16 of the Debtors (Scotland) Act 1987); or
- (b) its inclusion in the sequestration for rent or its subsequent sale is unduly harsh.

2. Where a mobile home, such as a caravan, is your only or principal residence and it has been sequestered for rent you may apply to the sheriff before a warrant to sell is granted for an order that for a specified period no further steps shall be taken in the sequestration.

Any enquiry relating to the above rights should be made to a solicitor, Citizens Advice Bureau or other advice centre or to the sheriff clerk at the above address.

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FORM H2

Rule 34.6(1)

Form of notice of removal

To (insert name, designation, and address of party in possession). You are required to remove from (describe subjects) at the term of ( or if different terms state them and the subjects to which they apply), in terms of lease (describe it) (or in terms of your letter of removal dated (insert date)) (or otherwise as the case may be).

Date (insert date)

Signed

(add designation and address)

FORM H3

Rule 34.6(2)

Form of letter of removal

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

[K.L.] (add designation and address).

(If not holograph, to be attested thus:

[M.N.] (add designation and address), witness).

FORM H4

Rule 34.7

Form of notice of removal under section 37 of the 1907 Act

NOTICE OF REMOVAL UNDER SECTION 37 OF THE SHERIFF COURTS (SCOTLAND) ACT 1907

To (insert designation and address).

You are required to remove from (insert description of heritable subjects, land, ground etc.) at the term of (Whitsunday or Martinmas), (insert date)

Date (insert date)

Signed

(add designation and address)

Rule 34.11(4)

FORM H5

Form of citation of unnamed occupiers

CITATION

SHERIFFDOM OF (insert name of sheriffdom)

AT (insert place of sheriff court)

[A.B.] (insert designation and address)

Pursuer

against

The Occupier[s] of (address)

Defender

An action has been brought in the above Sheriff Court by [A.B.]. [A.B.] calls as a defender the occupier[s] of the property at (insert address). If the occupier[s] [or any of them] wish[es] to challenge the jurisdiction of the court or to defend the action, he [or she [or it] [or they]] should contact the sheriff clerk at (insert address of sheriff court) immediately and in any event by (date on which period of notice expires).

Signed .....

Sheriff [or Sheriff Clerk]

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**FORM M1** Rule 35.5  
Form of warrant of citation in an action of multiplepoinding

(Insert place and date) Grants warrant to cite the defender (insert name and address) by serving a copy of the writ and warrant upon a period of notice of (insert period of notice) days, and entitles him [or her], if he [or she] intends to lodge:-

(a) defences challenging the jurisdiction of the court or the competence of the action; or

(b) objections to the condescendence on the fund in medio; or

(c) a claim on the fund;

to lodge a notice of appearance with the sheriff clerk at (insert name and address of sheriff court) within the said period of notice after such service [ and grants warrant to arrest on the dependence].

[Where the holder of the fund in medio is a defender, insert: Appoints the holder of the fund in medio to (a) lodge with the sheriff clerk at (insert place of sheriff court) within the said period of notice after such service (i) a detailed condescendence on the fund in medio; and (ii) a list of parties having an interest in the fund; and (b) intimate to all parties to the action a copy of the condescendence and list.]

**FORM M2** Rule 35.6(1)  
Form of citation in an action of multiplepoinding

**CITATION**

SHERIFFDOM OF (insert name of sheriffdom) Court ref. no.  
AT (insert place of sheriff court)

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

(Insert place and date) You [C.D.] are hereby served with this copy writ and warrant, together with Form M4 (notice of appearance).

[Where the defender is the holder of the fund in medio, insert the following paragraph:-  
As holder of the fund in medio you must lodge with the sheriff clerk at the above address within (insert period of notice) days of (insert date on which service was executed N.B. Rule 5.3(2) relating to postal service):-  
(a) a detailed condescendence on the fund in medio; and  
(b) a list of parties having an interest in the fund.  
You must at the same time intimate to all other parties to the action a copy of  
(a) the detailed condescendence on the fund; and  
(b) the list of parties having an interest in the fund.]

**Form M4** is served on you for use should you wish to intimate that you intend to lodge:-

- (a) defences challenging the jurisdiction of the court or the competence of the action; or  
(b) objections to the condescendence on the fund in medio; or  
(c) a claim on the fund.

**IF YOU WISH TO APPEAR IN THIS ACTION** you should consult a solicitor with a view to lodging a notice of appearance (Form M4). The notice of appearance, together with the court fee of £(insert amount) must be lodged with the sheriff clerk at the above address within (insert the appropriate period of notice) days of (insert the date on which service was executed N.B. Rule 5.3(2) relating to postal service).

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income. You can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT** the court may regard you as having no interest in the fund in medio and will proceed accordingly.

Signed  
[P.Q.], Sheriff officer,  
or [X.Y.] (add designation and business address)  
Solicitor for the pursuer

**Form M3** Rule 35.6(2)  
Form of certificate of citation in an action of multiplepoinding

**CERTIFICATE OF CITATION**

(Insert place and date), hereby certify that upon the day of

I duly cited [C.D.], Defender, to answer to the foregoing writ. This I did by (state method of service: if by officer and not by post, add: in presence of [L.M.], (insert designation), witness hereto with me subscribing; and where service is executed by post state whether made by registered post or the first class recorded delivery service).

Signed  
[P.Q.], Sheriff officer  
[L.M.], witness  
or [X.Y.], (add designation and business address)  
Solicitor for the pursuer

**FORM M4** Rule 35.6(1) and 35.8  
Form of notice of appearance in an action of multiplepoinding

**NOTICE OF APPEARANCE (MULTIPLEPOINDING)**

\*Part A  
Court ref. no.

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

Solicitor for the pursuer

in an action raised at Sheriff Court

Pursuer

Defender

\*This part to be completed by the pursuer before service)

DATE OF SERVICE: DATE OF EXPIRY OF PERIOD OF NOTICE:

\*PART B

\*This section to be completed by the defender or the defender's solicitor and both parts of this form returned to the sheriff clerk at (insert address of sheriff clerk) on or before the expiry of the period of notice referred to in PART A above)

(Insert place and date)  
[C.D.], (design), Defender, intends to lodge:

- Tick the appropriate box(es)
- ☐ defences challenging the jurisdiction of the court or the competence of the action.
- ☐ objections to the condescendence on the fund in medio
- ☐ a claim on the fund in medio.

Signed  
[C.D.], Defender,  
or [X.Y.] (add designation and business address)  
Solicitor for the defender

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Form M5 Rules 35.9(b) and 35.10(5)

Form of intimation of first hearing in an action of multiplepinding

SHERIFFDOM OF ( *insert name of sheriffdom* ) Court ref.no.  
AT ( *insert place of sheriff court* )  
[A, B, ] ( *insert designation and address* ), Pursuer, against, [C, D, ] ( *insert designation and address* ), Defender

You are given notice that in this action of multiplepinding

( *insert date, time and place* ) is the date, time and place for the first hearing.

Date ( *insert date* ) Signed Sheriff clerk ( *depute* )

**NOTE**  
If the pursuer fails to return the writ in terms of rule 9.3 of the Ordinary Cause Rules of the Sheriff Court or any party fails to comply with the terms of this notice or to provide the sheriff at the hearing with sufficient information to enable it to be conducted in terms of rule 35.10 of these Rules, the sheriff may make such order or finding against that party as he thinks fit.

NOTE TO BE ADDED WHERE PARTY UNREPRESENTED

**NOTE**  
**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income. You can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

Form M6 Rule 35.10(4)(b)

Form of citation of person having an interest in the fund in an action of multiplepinding

CITATION

SHERIFFDOM OF ( *insert name of sheriffdom* ) Court ref.no.  
AT ( *insert place of sheriff court* )  
[A,B, ], ( *insert designation and address* ), Pursuer, against [C,D, ], ( *insert designation and address* ), Defender

( *insert place and date* ) In the above action the court has been advised that you ( *insert name and address* ) have an interest in ( *insert details of the fund in medio* ). You are hereby served with a copy of the pleadings in this action, together with Form M4 (notice of appearance).

Form M4 is served on you for use should you wish to intimate that you intend to lodge:-

(a) defences challenging the jurisdiction of the court or the competence of the action; or  
(b) objections to the condescence on the fund in medio; or  
(c) a claim on the fund.

**IF YOU WISH TO APPEAR IN THIS ACTION** you should consult a solicitor with a view to lodging a notice of appearance (Form M4 ). The notice of appearance, together with the court fee of £ ( *insert amount* ) must be lodged with the sheriff clerk at the above address within days of ( *insert date on which service was executed N.B. Rule 3.3(2) relating to postal service* ).

NOTE

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income. You can get information about legal aid from a solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

**PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT** the court may regard you as having no interest in the fund in medio and will proceed accordingly.

Signed  
[P,Q, ], Sheriff officer,  
or [X,Y, ] ( *add designation and business address* )  
Solicitor for the pursuer

Form D1 Rule 36.3(2)

Form of intimation to connected person in damages action

SHERIFFDOM OF ( *insert name of sheriffdom* ) Court ref.no.  
AT ( *insert place of sheriff court* )

You are given NOTICE that an action has been raised in the above sheriff court by ( *insert name and designation of pursuer* ) against ( *insert name and designation of defender* ).  
A copy of the initial writ is attached.

It is believed that you may have a title or interest to sue the said ( *insert name of defender* ) in an action based upon [the injuries from which the late ( *insert name and designation* ) died] or the death of the late ( *insert name and designation* ). You may therefore be entitled to enter this action as an additional pursuer. If you wish to do so, you may apply by lodging a minute with the sheriff clerk at the above address to be cited as an additional pursuer within ( *insert the appropriate period of notice* ) days of ( *insert the date on which service was executed N.B. Rule 3.3(2) relating to postal service* ).

Signed  
Solicitor for the pursuer

**NOTE**  
The minute must be lodged with the sheriff clerk with the court fee of ( *insert amount* ) and a motion seeking leave for the minute to be received and for answers to be lodged. When lodging the minute you must present to the sheriff clerk a copy of the initial writ and this intimation.

**IF YOU ARE UNCERTAIN WHAT ACTION TO TAKE** you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can obtain information about legal aid from any solicitor. You may also obtain advice from any Citizens Advice Bureau or other advice agency.

FORM D2 Rule 36.17(1)

Form of receipt for payment into court

RECEIPT

In the Sheriff Court of ( *insert name of sheriffdom* ) at ( *insert place of sheriff court* ) in the cause, ( *state names of parties or other appropriate description* ) [A,B, ] ( *insert designation* ) has this day paid into court the sum of ( *insert sum concerned* ) being a payment into court in terms of rule 36.14 of the Ordinary Cause Rules of the Sheriff Court of money which in an action of damages, has become payable to a person under legal disability.

[If the payment is made under rule 36.15(c) add: [the custody of which money has been accepted at the request of ( *insert name of court making request* ).]

Date ( *insert date* ) Signed Sheriff clerk ( *depute* )

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FORM P1

Rule 37.2(2)

Form of advertisement in an action of declarator under section 1(1) of the Presumption of Death (Scotland) Act 1977

Sheriff Court (insert address)

Court ref.no.

An action has been raised in (insert name of sheriff court) by [A.B.], Pursuer, to declare that [C.D.], Defender, whose last known address was (insert last known address of [C.D.]) is dead.

Any person wishing to defend the action must apply to do so by (insert date, being 121 days after the date of the advertisement) by lodging a minute seeking to be joined 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.

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Rule 38.3(1A)

“FORM E1

*Form of reference to the European Court*

REQUEST

for

PRELIMINARY RULING

of

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

from

THE SHERIFFDOM OF *(insert name of sheriffdom)* at *(insert place of court)*

in the cause

[A.B.] *(insert designation and address),*

Pursuer

against

[C.D.] *(insert designation and address),*

Defender

*[Here set out a clear and succinct statement of the case giving rise to the request for the ruling of the European Court in order to enable the European Court to consider and understand the issues of Community law raised and to enable governments of Member States and other interested parties to submit observations. The statement of the case should include:*

- (a) particulars of the parties;*
- (b) the history of the dispute between the parties;*
- (c) the history of the proceedings;*
- (d) the relevant facts as agreed by the parties or found by the court or, failing such agreement or finding, the contentions of the parties on such facts;*
- (e) the nature of the issues of law and fact between the parties;*
- (f) the Scots law, so far as relevant;*
- (g) the Treaty provisions or other acts, instruments or rules of Community law concerned;*  
*and*
- (h) an explanation of why the reference is being made.]*

The preliminary ruling of the Court of Justice of the European Communities is accordingly requested on the following questions:

1, 2, etc. *[Here set out the question on which the ruling is sought, identifying the Treaty provisions or other acts, instruments or rules of Community law concerned.]*

Dated the                      day of                      20                      .”.

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## Paragraph 2(3)

### SCHEDULE

#### FORM PA1

## Rule 41.5

Form of certificate of delivery of documents to chief constable

(Insert place and date) I, \_\_\_\_\_ hereby certify that upon the \_\_\_\_\_ day of \_\_\_\_\_ I duly delivered to (insert name and address) chief constable of (insert name of constabulary) (insert details of the documents delivered). This I did by (state method of delivery).

Signed

Solicitor/sheriff officer  
(add designation and  
business address)

Rule 30.6(1)

## <sup>F414</sup>APPENDIX 2

### FORMS FOR EXTRACT DECREES

#### Textual Amendments

**F414** Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by S.I. 1993/1956, para. 2, Sch. 1

#### Modifications etc. (not altering text)

**C23** Sch. 1 Appendix 2: form 8 omitted (1.1.1996) by virtue of S.I. 1996/2445, para. 3(66)  
 Sch. 1 Appendix 2: forms 10, 11, 12 substituted, form 13 omitted (2.10.2000) by S.S.I. 2000/239, para. 3(26)(a)(b), Sch. 2



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APPENDIX 2 Rule 30.6 (1)

FORMS FOR EXTRACT DECREES

FORM 1

Form of extract decree for payment

EXTRACT DECREE FOR PAYMENT

Sheriff Court Court ref. no.

Date of decree \* In absence

Pursuer(s) Defender(s)

The sheriff granted decree against the of the undersigned sum, for payment to the

Sum decreed for £ with interest at per cent a year from until payment  
and expenses against the of £ .

\* A time to pay direction was made under section 1(1) of the Debtors (Scotland) Act 1987.

\* The amount is payable by instalments of £ per of instalment of this extract decree.

\* The amount is payable by lump sum within of instalment of this extract decree.

This extract is warrant for all lawful execution hereto.

Date \* Delete as appropriate. Sheriff clerk (depute)

FORM 2

Form of extract decree ad factum praeiudicium

EXTRACT DECREE AD FACTUM PRAEJUDICIUM

Sheriff Court Court ref. no.

Date of decree \* In absence

Pursuer(s) Defender(s)

The sheriff ordained the defender(s)

and granted decree against the for payment of expenses of £ .

This extract is warrant for all lawful execution hereto.

Date \* Delete as appropriate. Sheriff clerk (depute)

FORM 3

Form of extract decree of removing

EXTRACT DECREE OF REMOVING

Sheriff Court Court ref. no.

Date of decree \* In absence

Pursuer(s) Defender(s)

The sheriff ordained the defender(s) to remove \* In either self themselves and his/her their sub-tenants, dependents and others, and all effects from the premises at the undersigned address and to leave those premises vacant \*\* Just that after a charge of days.

In the event that the defender(s) fails to remove the sheriff granted warrant to sheriff officers to eject the defender(s), sub-tenants, dependents and others, with all effects, from those premises so as to leave them vacant.

The sheriff granted decree against the for payment of expenses of £ .

Full address of premises: This extract is warrant for all lawful execution hereto.

Date Sheriff clerk ( depute)

\* Delete as appropriate.

\*\* Delete if period of charge is not specified in the decree.

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FORM 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

and granted decree against the

\* This extract is warrant for all lawful execution hereon.

defender(s)

for payment of expenses of £

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 undermentioned address and to exercise in relation to those subjects all of the remedies competent to a creditor in lawful possession of the subjects, by virtue of the Conveyancing and Feudal Reform (Scotland) Act 1970, and in particular granted warrant to the pursuer(s) to sell those subjects.

The sheriff ordered the defender(s) to remove \* himself/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 subject(s):

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	Court ref. no.
Date of decree	* In absence
Pursuer	Defender

Date of parties marriage                      Place of parties marriage

The sheriff granted decree

(1) divorcing the defender from the pursuer;

\*(2) awarding custody to the \* pursuer / defender of the following child(ren):

Full name(s)	Date(s) of birth
--------------	------------------

and finding the \* pursuer / defender entitled to access to the following child(ren):

as follows:

\*(3) ordering payment

*(a) by the	to the	of a periodical allowance of £	per	:
*(b) by the	to the	of a capital sum of £	:	
*(c) by the	to the	of £	per	as aliment for each child until that child attains years of age, said sum payable in advance and beginning at the date of this decree with interest thereon at the rate of per cent a year until payment.
*(d) by the	to the	of £	of expenses;	

\* (4) finding the liable to the in expenses as the same may be subsequently incurred.

This extract is warrant for all lawful execution hereon.

Date                      Sheriff clerk (signature)

\* Delete as appropriate.

**FORM 11**  
**Form of extract decree of separation and aliment**  
**EXTRACT DECREE OF SEPARATION AND ALIMENT**

Sheriff Court	Court ref. no.
Date of decree	* In absence
Pursuer	Defender

The sheriff found and declared that the pursuer is entitled to live separately from the defender from the date of decree and for all time thereafter.

The sheriff awarded custody to the \* pursuer / defender of the following child(ren):

Full name(s)	Date(s) of birth
--------------	------------------

and found the \* pursuer / defender entitled to access to the following child(ren):

as follows:

\*The sheriff ordered payment by the to the of £ per as aliment for the said sum payable in advance and beginning at the date of this decree with interest thereon at per cent a year until payment.

\*The sheriff ordered payment by the to the of £ per as aliment for each child until that child attains years of age, said sum payable in advance and beginning at the date of this decree with interest thereon at per cent a year until payment.

and granted decree against the for payment of expenses of £

This extract is warrant for all lawful execution hereon.

Date                      Sheriff clerk (signature)

\* Delete as appropriate.

**FORM 12**  
**Form of extract decree of custody and aliment**  
**EXTRACT DECREE OF CUSTODY AND ALIMENT**

Sheriff Court	Court ref. no.
Date of decree	* In absence
Pursuer	Defender

The sheriff granted decree against the \* pursuer / defender.

The sheriff awarded custody to the \* pursuer / defender of the following child(ren):

Full name(s)	Date(s) of birth
--------------	------------------

and found the \* pursuer / defender entitled to access to the following child(ren):

as follows:

The sheriff ordered payment by the to the of £ per as aliment for each child, until that child attains years of age, said sum payable in advance and beginning at the date of this decree with interest thereon at per cent a year until payment.

and granted decree against the for payment of expenses of £

This extract is warrant for all lawful execution hereon.

Date                      Sheriff clerk (signature)

\* Delete as appropriate.

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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
Petitioner	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) undermentioned.

Full name of child	Place of birth
Date of birth	Birth entry no.
Registration district	
Aliment of £	commencing on
per	per cent a year from
Indebted expenses of £	Interest at
until payment and expenses, against the	of £

This extract is warrant for all lawful execution hereon.

Date: \_\_\_\_\_ Sheriff clerk (depute)

\* Delete as appropriate.

## INTRODUCTION

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.

- 2 (1) Subject to paragraph (2) of this rule, a party to any proceedings arising solely under the provisions of the Debtors (Scotland) Act <sup>M96</sup>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.

## INITIAL PROCEDURE

### COMMENCEMENT OF CAUSE

- 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.

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- (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.
- (4) An article of condescendence shall be included in the initial writ stating the ground of jurisdiction of the court.
- (5) In an action of divorce or of separation . . . <sup>F421</sup> the initial writ shall contain an article of 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 <sup>M97</sup>Domicile and Matrimonial Proceedings Act 1973 (sisting of consistorial actions).
- (6) For the purposes of paragraph (5), proceedings shall be treated as continuing 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.
- (7) The information required by paragraph (5) shall, in all actions of divorce or of separation . . . <sup>F421</sup>, 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.
- (8) Any application made by any party in an action of divorce or separation . . . <sup>F421</sup> 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 <sup>M98</sup>Domicile and Matrimonial Proceedings Act 1973, shall be made by written motion.
- (9) Unless the sheriff on cause shown otherwise directs, in an action of divorce 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 register of marriages; and
  - (b) where appropriate, an extract of the relevant entry in the register of births.
- (10) In an action relating to the custody of a child by a person by virtue of section 47 of the <sup>M99</sup>Children Act 1975—
  - (a) the parents of the child shall be named and designed in the initial writ as defenders in the cause; and

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(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.

- (11) In an action for custody of a child in which consent of the parent tutor, curator or guardian of the child is required by 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.

.....

- 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.

.....

- 5        (1) The warrant of citation in any ordinary cause other than an action of divorce and of separation or an action in which a time to pay direction under the <sup>M100</sup>Debtors (Scotland) Act 1987 may be applied for by the defender . . . <sup>F429</sup> shall be framed as nearly as may be in accordance with Form B as set out in the Appendix to this Schedule.
- (2) In an action of divorce or of separation . . . <sup>F429</sup> 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.
- (3) 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.
- (4) In a summary application in which a time to pay direction under the <sup>M101</sup> 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.

.....

- 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

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

## CITATION AND SERVICE

- .....
- 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.

- .....
- 9 Subject to rule 11:—
- (1) Citation in any ordinary cause other than an action of divorce or of separation or an action in which a time to pay direction under the <sup>M102</sup>Debtors (Scotland) Act 1987 may be applied for by the defender . . . <sup>F439</sup> 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.
  - (2) In an action of divorce or of separation . . . <sup>F439</sup> 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.
  - (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.

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- (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.
- (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.
- (4) When citation is by an officer of court, one witness shall be sufficient for the execution of citation.
- (5) The certificate of citation shall be signed by the officer and the witness 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.
- (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.

.....

- 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—
- (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) 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.

.....

- 11 (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.

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- (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) 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.
- (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.

11A

—In an action of divorce or an action of separation . . . <sup>F451</sup>, where the defender's address is unknown or the defender is a person suffering from a mental disorder within the meaning of the <sup>M103</sup>Mental Health (Scotland) Act 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.
- (3) Intimation to a person mentioned in sub-paragraphs (a) to (c) of paragraph (1) shall 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.

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- (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.
- (6) A person receiving intimation under paragraph (1) may apply within the period of notice by minute craving to be sisted as a party and for leave to lodge defences or answers as the case may be.
- .....
- 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 <sup>M104</sup>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.

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- (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).
- (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.

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

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- 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.

- .....
- 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).

- .....
- 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.

- (2) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882 <sup>F459</sup>, 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.
- .....

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- 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 endorsement 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.

- 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.

- 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

- 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.
- (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.



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- (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.

- 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.

- 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.

#### UNDEFENDED CAUSES

- 21 (1) Subject to paragraph (2) of this rule and rule 21A, if the defender does not lodge a notice of intention to defend or a minute under rule 34 or an application for a time to pay direction under the <sup>M105</sup> 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 : provided that the sheriff shall not grant decree in the cause unless it appears *ex facie* of the initial writ that a ground of jurisdiction exists under the <sup>M106</sup> Civil Jurisdiction and Judgments Act 1982.
- (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;

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- (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.

(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.

.....

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.

.....

21B      (1) This rule applies to ordinary causes in which a time to pay direction may be applied for under the <sup>M107</sup>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.

.....

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.

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- (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;
  - (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.
- .....
- 22 (1) If no notice of intention to defend has been lodged in an action . . . 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.
- ...
- (2) In any such action decree may be granted after such inquiry as the sheriff thinks necessary.
- .....
- 23 (1) This rule—
- (a) applies to all actions of divorce actions of separation and actions for declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy . . . <sup>F476</sup> in which no notice of intention to defend has been lodged;
  - (b) may apply to any such action . . . <sup>F476</sup> 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 endorsation 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.
- (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.
- .....
- 24 At the same time as granting a decree in absence or thereafter the sheriff may grant a decree for expenses.

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- .....
- 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.
- .....

- 26     Subject to section 9(7) of the 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.
- .....

- 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 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

- .....
- 28     In any action other than an action of divorce or of separation . . . <sup>F478</sup>, 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.
- .....

- 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 consignment 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.

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

.....  
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.

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

## DEFENDED CAUSES TO PROOF

### INTENTION TO DEFEND

.....  
33        If a defender intends 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 and shall at the same time intimate the lodging of that notice to the pursuer. The lodging of such notice of intention to defend shall not imply acceptance of the jurisdiction of the court.

.....  
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)—

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- (a) 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
  - (b) 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.

- .....
- 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.

- .....
- 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

- .....
- 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,

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and the sheriff clerk shall endorse on all documents lodged in process the date of lodging.

.....

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

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

.....

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.

.....

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.

.....

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.

.....

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

.....

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.

.....

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.

.....

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.

.....

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.

.....

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.

.....

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.

.....

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

.....

- 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.

#### PARTY MINUTER PROCEDURE

.....

- 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.

#### COUNTER-CLAIM PROCEDURE

.....

- 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.

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.....

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.

- .....
- 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.

- .....
- 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.

- .....
- 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.
- (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.

- .....
- 56        (1) In any cause in which custody of, access to, or maintenance for, a child is sought or could competently be sought the defender may make 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.

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- (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.

#### INCIDENTAL PROCEDURE

.....

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

.....

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.

- .....
- 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.

- .....
- 59 (1) In a defended cause other than an action of divorce or of separation . . . <sup>F491</sup> 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.
- (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.

- .....
- 59A (1) This rule applies to any cause other than—
- (a) a consistorial action;
  - (b) an action of multiplepoinding; or

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- (c) an action under the Presumption of Death (Scotland) Act 1977 <sup>F494</sup>.
- (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—
    - (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.

.....  
<sup>F496</sup>59B(1) The sheriff may make an order, with or without conditions, allowing a defender in an 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.

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- .....
- 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.

- .....
- 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

- .....
- 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.

- .....
- 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.

- .....
- 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;
- (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



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- 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 ; provided that in any case in which a time to pay direction under the Debtors (Scotland) Act<sup>M109</sup> 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.

.....

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 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.

.....

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

.....

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.

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- (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.

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 consignation as he shall direct.

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

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.

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 *liein retentis*.

72 (1) The provisions of this rule—

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- (a) apply to all parts of actions of 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 <sup>M110</sup>Matrimonial Homes (Family Protection) (Scotland) Act 1981;
  - (b) do not apply to any action of divorce, of separation or of declarator of parentage, non-parentage, legitimacy, legitimation or illegitimacy where it appears to the sheriff that a defender is a person who is suffering from a mental disorder within the meaning of the <sup>M111</sup>Mental Health (Scotland) Act 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 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) .....

- .....
- 72A (1) Any written statement (including an affidavit) or report, admissible under section 2(1)(b) of the <sup>M112</sup>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;

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- (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 <sup>M113</sup>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.

- .....
- 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 HAYERS

.....

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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.

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.

(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.

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 decreed for against the witness or haver.

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 decreed for against the witness or haver.

#### PRODUCTIONS

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.

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- (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.

.....

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.

.....

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.

- .....
- 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.

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- (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.

- 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.

- 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.

- 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.



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- (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.
- (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.

- .....
- 84A (1) An application for an order under section 1(1A) of the <sup>M114</sup>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.

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- (4) An application for an order under section 1(1A) of the <sup>M115</sup>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.
- (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.

#### PROCEDURE AT PROOF

.....

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

.....

- 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—

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- (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.

- .....
- 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 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.

- .....
- 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

- .....
- 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 : 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.

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## 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.
- .....

- 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.

## 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.
- .....

- 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.
- (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.
- (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.
- .....

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- 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.

- 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.

- 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.

- 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

- 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

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

- .....
- 98 (1) Where an account of expenses 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.

## PARTICULAR PROCEDURES

### SEQUESTRATION FOR RENT

- .....
- 99 (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.
- (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.
- .....
- 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.
- .....

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- 101 (1) The sheriff may order the sequestrated 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.

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

#### REMOVING

.....

- 103 (1) Subject to section 24 of the 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 of 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 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.

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104 Notices under sections 34, 35 and 36 of the 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.

.....

105 Notices under section 37 of the 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.

.....

106 Removal notices under sections 34, 35, 36, 37 and 38 of the 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.

.....

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.

.....

107A (1) An application or counter-application to the sheriff under Part II of the <sup>M118</sup>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.



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## SUMMARY SUSPENSION

.....

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.

.....

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.

.....

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.

## 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.

.....

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.

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## 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*.

.....

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.

.....

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

.....

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

.....

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.

.....

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.

.....

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.

.....

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

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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.

- .....
- 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.

- .....
- 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.

- .....
- 123 (1) At any time after the condescendence of the fund *in 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 consignment or deposit, it shall be competent for the holder of the fund *in medio* to apply for his exoneration and discharge.

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

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

- .....
- 126 (1) After disposal of any defences, and after approval on the condescendence of the fund *in 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.

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- .....
- 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

- .....
- 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 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 Trustee Investments Act 1961, and no such sum shall be invested otherwise than in accordance with this rule.

#### MISCELLANEOUS

.....

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- 129 (1) 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;
  - (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 <sup>M120</sup>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.

- .....
- 130 (1) 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.

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- (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 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 <sup>M121</sup>Matrimonial Proceedings (Children) Act 1958 or section 11(1)(a) of the <sup>M122</sup>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 <sup>M123</sup>Matrimonial Proceedings (Children) Act 1958 or section 11(1)(b) of the <sup>M124</sup>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 section 47 of the <sup>M125</sup>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 <sup>M126</sup>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 <sup>M127</sup>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 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.

- .....
- 131 (1) Where the facts set out in section 1(2)(d) (two years' non-cohabitation and the defender's consent to decree) of the Divorce (Scotland) Act, 1976, are relied on in an action of separation . . . , 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.
- (2) Where the facts set out in section 1(2)(d) of the <sup>M129</sup>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 . . . <sup>F523</sup>, 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.

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- (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.

.....

- 132 (1) Where in an action of divorce or an action of separation . . . in which the facts set out in section 1(2)(d) of the 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 divorce or an action of separation . . . 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.
- (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 sist, 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.

.....

- 132A (1) 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 <sup>M131</sup>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



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either in the initial writ or by separate minute in the process or, if appropriate, by way of counter-claim.

- .....
- 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 <sup>M132</sup>1985 for declarator that the removal of the child from the United Kingdom was unlawful, he shall make such application in the initial writ or counter-claim, or by separate minute in the process, as the case may be.

#### FAMILY LAW ACT 1986

- .....
- 132C      A party to any cause which includes an application for a custody order (as defined by section 1(1)(b) of the 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.

- .....
- 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.

- .....
- 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.

- .....
- 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) 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.

- .....
- 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.

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#### APPOINTMENT OF CURATORAD LITEM

- .....
- 133 (1) In an action of divorce or an action of separation . . . where it appears to the sheriff that the defender is suffering from mental disorder within the meaning of the Mental Health (Scotland) Act, 1984, the sheriff shall:—
- (a) appoint a curatorad litem to the defender; and
  - (b) in an action of divorce or an action of separation . . . under section 1(2)(d) of the 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.

#### EUROPEAN COURT

- .....
- 134 (1) Interpretation:

#### SIMPLIFIED DIVORCE 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 Divorce (Scotland) Act 1976.
- (2) This rule applies to an application for divorce by a party to a marriage if, but only if—

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- (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 Mental Health (Scotland) Act 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.

- .....
- 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.

- .....
- 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.

- .....
- 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 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.

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- (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*).”
- (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—
- (a) 21 days when the defender is resident or has a place of business within Europe
  - (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.
- (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 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.

- .....
- 139 (1) 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 United Kingdom does not have a convention providing for service of writs in that country—

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- (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.
- .....
- 140 (1) Any person who has been cited or to whom intimation has been made in connection with a simplified divorce application may 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.
- (4) The lodging of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.
- .....
- 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 :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.
- .....
- 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 court giving reasons for his appeal.
- .....
- 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.

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- (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.

## DAMAGES

### 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.

- .....
- 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.

- .....
- 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

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death, that person shall not, except on cause shown, be awarded the expenses of the subsequent action.

## 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 21 days.
- (3) If after hearing the parties on the motion the sheriff is satisfied either—
- (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.



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- .....
- 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.

## PROVISIONAL DAMAGES

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

## CHILD SUPPORT ACT 1991

- .....
- 150      In this Part of the Rules—
- “the Act of 1991” means the Child Support Act 1991 ;
  - “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.

- .....
- 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;

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- (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.

.....

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.

.....

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.

.....

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- 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*).”.

## 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.)	

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[<sup>1</sup>]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 appo-  
ints 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 [<sup>1</sup>]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,

<sup>113A</sup> ... [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)].

[<sup>1</sup>]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 serv-  
ing 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].

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

Form B4 Rule 5(5)  
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.]]

Form B5 Rule 5(6)  
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

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#### 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 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, 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 state. 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.

#### 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

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

IN AN ACTION RAISED BY

PURSUER

#### 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

**Status:** Point in time view as at 20/08/2004. This version of this Act contains provisions that are not valid for this point in time.

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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  
"a. to make a "time to pay direction".  
"Delete what does not apply"  
"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**

COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)  
Under the Debtors (Scotland) Act 1987  
The Act gives you the 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 sum 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. You may apply for a "time to pay direction" (and where appropriate for recall or restriction of an arrestment) by either  
(a) appearing at the hearing—the date of which is given above and asking the court to make a "time to pay direction" (and where appropriate to recall or restrict an arrestment). If you prefer you may ask a solicitor or someone else to appear for you.  
**OR**  
(b) Completing and returning to the court at least seven days before the hearing, the application form at pages 3 and 4 of this notice. The address of the court 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, Citizens Advice Bureau or a Solicitor.

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If the court makes a "time to pay direction" 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.

If the court does not make a "time to pay direction" and makes an order for payment against you an order to pay (called a charge) may be served on you.

**PART A\***

By \_\_\_\_\_

**DEFENDER**

**IN A SUMMARY APPLICATION 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
My outgoings are:			
Rent/Mortgage	£		
Heating	£		
Food	£		
HP	£		
Other	£		
Total	£		

  

	Weekly	Fortnightly	Monthly
My income is:			
Wages/Pensions	£		
Social Security	£		
Other	£		
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:	

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

"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:—

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COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)  
FORM C rule 9  
CITATION  
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, and required to answer thereto, conform to the  
said warrant.  
IF YOU WISH TO DEFEND THIS ACTION you must lodge a notice  
of intention to defend with the Sheriff Clerk at within  
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) P.Q., Sheriff Officer,  
or  
X.Y. (add designation and business  
address)  
Solicitor for Pursuer  
[1]Form CC Rule 145(2)  
INTIMATION TO PERSONS HAVING A TITLE TO SUE

(Place, date)  
TAKE NOTICE that an action has been raised in  
Sheriff Court (address) by (name and design) against (name and design).  
It is believed that you may have a title or interest to sue the said (name)  
in an action based upon [(the injuries from which the late (name and  
design) died) or (the death of the late (name and design))]. You may  
therefore be entitled to enter this action as an additional pursuer. If you  
wish to do so, you may apply to the Sheriff at the above-mentioned  
Sheriff Court to be sisted as an additional pursuer within [12] days  
after the expiry of days from the date of service hereof. In the event  
of your making such an application you are required to serve notice of  
it on all of the parties to the action.  
The date of service hereof is reckoned as commencing on the day of  
posting.

Solicitor for Pursuer]

COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)  
[1]Form 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 [12] 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.)  
[1]Form 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:--]



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[<sup>118A</sup> FORM C3 Rule 9(2B)]

Citation where time to pay direction may be applied for  
in  
Summary Application

[A.B.], Applicant against [C.D.], Respondent Court Ref No.

(Place and date) [C.D.], respondent. You are hereby served with this copy writ and warrant, together with Form 9B and required to reply conform to the warrant. Form 9B is served on you because it is considered that you may be entitled to apply for a "time to pay direction" (and for the removal or restriction of an arrestment used on the dependence of the application or in security of the debt referred to in the copy writ).

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

FORM C4 Rule 9(2B)

Citation for summary application

[A.B.], Applicant against [C.D.], Respondent Court Ref No.

(Place and date) [C.D.], respondent. You are hereby served with this copy writ and warrant, and required to answer thereto, conform to the warrant.

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

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 [<sup>119</sup>in actions [<sup>120</sup>in 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 121]).

(To be signed)

P.O., Sheriff Officer,  
L.M., Witness,  
or  
X.Y. (add designation and business address),  
Solicitor for Pursuer

FORM E rule 11

ADVERTISEMENT  
[<sup>120A</sup> Notice to [C.D.]]  
Court Ref No

An action has been raised in Sheriff Court by A.B. pursuer calling as a defender C.D. whose last known address was

If the said C.D. wishes to defend the action [<sup>121</sup>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.  
X.Y. (add designation and business address)  
Solicitor for Pursuer  
or  
P.O., Sheriff Officer

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

[<sup>122</sup> 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

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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)

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

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COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)  
[<sup>10</sup>Form H1] 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 [<sup>10</sup>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 [<sup>10</sup>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 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 [<sup>10</sup>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 [<sup>10</sup>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 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 [1<sup>st</sup>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 [1<sup>st</sup>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 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 [1<sup>st</sup>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.]

**Status:** Point in time view as at 20/08/2004. This version of this Act contains provisions that are not valid for this point in time.  
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COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.) Rule 99(2)  
[<sup>1</sup>]FORM H8  
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).]

COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.) rule 75(1)  
FORM I  
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;  
or  
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)

**Status:** Point in time view as at 20/08/2004. This version of this Act contains provisions that are not valid for this point in time.

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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)

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 [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).

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**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

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

FORM O 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

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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.**<sup>[1]</sup>

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.

<sup>[2]</sup>(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 <sup>[1]</sup>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 or his Agent)

COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)  
<sup>[1]</sup>Form S1 rule 131

**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 <sup>[1]</sup>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).



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COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)  
FORM S2 rule 131

Form of Notice to defender in an action of separation ...<sup>130</sup> 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.)  
FORM S3 rule 131

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.]

COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)  
FORM T rule 131

Form of Notice of Consent in actions [130]of divorce and] of separation ...<sup>131</sup> 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 [130](of divorce or of separation, ...<sup>132</sup>) 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 [130](of divorce or of separation, ...<sup>133</sup>) in this action.

(Dated) (Signed) ...<sup>133</sup>  
Defender ...<sup>133</sup>

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COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)  
[<sup>10</sup>Form T1] rule 3(8)

Form of consent of parent [<sup>10</sup> tutor, curator] or guardian in proceedings for custody of children under section 47 of the Children Act 1975

IN

..... PURSUER(S)  
..... DEFENDER(S)

1. (name and address) .....

confirm that I am the mother/father/guardian [<sup>10</sup> tutor-curator]<sup>2</sup> 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 .....

<sup>2</sup>Delete whichever is inappropriate.

COURTS, SCOTLAND: 3  
Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)  
FORM T2 [<sup>10</sup>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—I, 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 . . .<sup>19</sup> 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)  
[1]FORM V1 Rule 11A(3)  
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 [1] 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 V2 Rule 11A(3)  
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 [1] 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 W rule 11A  
**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.)  
FORM X rule 72(5)  
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.)  
[Form SDA1] rule 136(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"

Application  
(Part 1)  
Consent of  
Husband/Wife  
(Part 2)  
Affidavit  
(Part 3)  
Returning  
completed  
Application Form  
to Court

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.

**Status:** Point in time view as at 20/08/2004. This version of this Act contains provisions that are not valid for this point in time.

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

COURTS, SCOTLAND: 3 Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)		PART 1
WRITE IN INK USING BLOCK CAPITALS		
1. <b>NAME AND ADDRESS OF APPLICANT</b>		
Surname .....	Other name(s) in full .....	
Present .....		
Address .....	Daytime Telephone Number if any .....	
2. <b>NAME AND ADDRESS OF HUSBAND/WIFE*</b>		
Surname .....	Other name(s) in full .....	
Present .....		
Address .....	Daytime Telephone Number if any .....	
3. <b>JURISDICTION</b> 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		
4. <b>DETAILS OF PRESENT MARRIAGE</b>		
Place of Marriage ..... (Registration District)		
Date of Marriage: Day ..... Month ..... Year .....		
5. <b>PERIOD OF SEPARATION</b>		
(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. <b>RECONCILIATION</b>		
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. <b>CONSENT</b>		
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
<input type="checkbox"/>	<input type="checkbox"/>
If yes, give details	

9.  
**CHILDREN**  
Are there any children of the marriage under the age of 16? (Tick ( ) box which applies)

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

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
<input type="checkbox"/>	<input type="checkbox"/>
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

I, (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

Signature .....

Sworn at (Place) .....  
this ..... day of ..... 19 ...  
before me (full name) .....  
(full address) .....  
.....  
.....  
"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)  
Affidavit (Part 2)  
Returning completed Application Form to Court
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 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.
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 .....  
Address ..... Daytime .....  
..... 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 .....

Sworn at (Place) .....

this ..... day of ..... 19...

before me (full name) .....

(full address) .....

To be completed by  
Justice  
of the Peace, Notary  
Public  
or Commissioner for  
Oaths

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]

[<sup>(1)</sup>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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Rule 2 substituted by S.I. 1980/1978, para. 3.  
 Rule 3 renumbered rule S.I. 1980/1978, para. 3(2).  
 Rule 3(2)-(4) added.  
 Rule 3(4) substituted by S.I. 1980/1978, para. 4(1).  
 Paragraphs added by S.I. 1980/255, para. 3(2).  
 Paragraph renumbered by S.I. 1980/255, para. 3(2)(a).  
 Words repeated by S.I. 1980/1230, para. 3(2)(a).  
 Words substituted by S.I. 1980/1978, para. 3(2)(a).  
 Paragraph substituted by S.I. 1980/1230, para. 3(2)(b).  
 Paragraph inserted by S.I. 1980/1978, para. 3(2)(b).  
 Words inserted by S.I. 1980/1966, para. 2(2)(a).  
 Words substituted by S.I. 1980/1966, para. 2(2)(b).  
 Words inserted by S.I. 1980/1966, para. 2(2)(b).  
 Words inserted by S.I. 1980/1966, para. 3(1).  
 Words repeated by S.I. 1980/1966, para. 3(1).  
 Rule 3(2) inserted by S.I. 1984/255, para. 3(3)(c).  
 Paragraph inserted by S.I. 1984/255, para. 3(3)(b).  
 Words substituted by S.I. 1984/255, para. 3(3)(c).  
 Rule 5(4)-(6) inserted by S.I. 1980/1978, para. 5(3).  
 Words inserted by S.I. 1980/1978, para. 5(3).  
 Sub-paragraph relettered as sub-paragraph (b) by S.I. 1980/1978, para. 6.  
 Words inserted by S.I. 1980/1230, para. 3(4)(a).  
 Words inserted by S.I. 1980/1230, para. 3(4)(b).  
 Words inserted by S.I. 1980/1978, para. 7(1).  
 Words repeated by S.I. 1980/1978, para. 7(1).  
 Rule 9(2) inserted by S.I. 1984/255, para. 3(4)(c).  
 Rule 9(2A) inserted by S.I. 1980/1978, para. 7(2).  
 Paragraph renumbered by S.I. 1980/1978, para. 7(2).  
 Words inserted by S.I. 1980/1230, para. 3(4)(c).  
 Words inserted by S.I. 1980/1230, para. 3(4)(c).  
 Words inserted by S.I. 1980/1230, para. 3(4)(c).

\*Word substituted by S.I. 1986/1230, para. 3(5)(b)  
 \*Rule 11(5) inserted by S.I. 1986/1230, para. 3(5)(b)  
 \*Rule 1A inserted by S.I. 1986/1230, para. 3(5)(b)  
 \*Word substituted by S.I. 1986/1230, para. 3(6)(a)  
 \*Words repealed by S.I. 1986/1230, para. 3(6)(b)  
 —1984 substituted for "1967" para. 3(6)(b)  
 \*Word substituted by S.I. 1986/1230, para. 3(6)(c)  
 \*Rule 1A(13) substituted by S.I. 1986/1230, para. 3(6)(d)  
 \*Rule 1A(6) inserted by S.I. 1986/1230, para. 3(6)(e)  
 \*Rule 12 substituted by S.I. 1986/1046, para. 2(1)  
 \*Rule 13 substituted by S.I. 1986/1046, para. 2(2)  
 \*Rule 13A inserted (9.4.1990) by S.I. 1990/661, para. 2(2)  
 \*Rule 20A inserted (S.I. 1986/1966, para. 2(3))  
 \*Word inserted by S.I. 1986/1966, para. 2(3)(a)  
 \*Words inserted by S.I. 1986/1966, para. 2(3)(b)  
 \*Words inserted by S.I. 1986/1966, para. 2(3)(c)  
 \*Words inserted by S.I. 1986/1966, para. 2(4)(b)  
 \*Words inserted by S.I. 1986/1966, para. 2(4)(c)  
 \*Rule 2(2) substituted by S.I. 1986/1966, para. 2(4)  
 \*Rule 21A inserted by S.I. 1986/1966, para. 2(5)  
 \*Rule 21B, 21C inserted by S.I. 1986/1966, para. 2(5)  
 \*Words inserted by S.I. 1986/1230, para. 3(8)  
 \*Word substituted by S.I. 1986/1230, para. 3(8)  
 \*Rule 2(2) repealed by S.I. 1986/1230, para. 3(8)(c)  
 \*Paragraph renumbered paragraph (7) by S.I. 1986/1230, para. 3(8)(c)  
 \*Rule 2 substituted by S.I. 1986/1230, para. 3(8)(d)  
 \*Heading substituted by S.I. 1986/1966, para. 2(6)(a)  
 \*Words substituted by S.I. 1986/1966, para. 2(6)(b)  
 \*Words inserted by S.I. 1986/1230, para. 3(9)  
 \*Words inserted by S.I. 1986/1230, para. 3(9)  
 \*Words inserted by S.I. 1986/1230, para. 3(10)  
 \*Words inserted by S.I. 1986/1966, para. 2(6)  
 \*Rule 4 substituted by S.I. 1986/1966, para. 2(6)  
 \*Words repealed by S.I. 1986/1966, para. 3(12)(a)  
 \*Words repealed by S.I. 1986/1966, para. 3(12)(b)  
 \*Words inserted by S.I. 1986/1966, para. 3(12)(b)  
 \*Words substituted by S.I. 1986/1230, para. 3(12)(b)  
 \*Rule 5(2)(3) inserted by S.I. 1986/1230, para. 3(12)(g)  
 \*Rule 57A inserted by S.I. 1986/1978, para. 11  
 \*Rule 59(1) substituted by S.I. 1986/1978, para. 13(b)  
 \*Words inserted by S.I. 1986/1230, para. 3(13)  
 \*Rule 59(2) inserted by S.I. 1986/1978, para. 3(13)(b)  
 \*Rule 59A inserted (S.I. 1986/1978, para. 3(13)(b))  
 \*Rule 59A substituted by S.I. 1986/1230, para. 3(13)(b)  
 \*Words inserted by S.I. 1986/1978, para. 12  
 \*Rule 7(1) substituted by S.I. 1986/1966, para. 3(15)(e)  
 \*Words substituted by virtue of S.I. 1986/1230, para. 3(15)(e) and S.I. 1986/1966, para. 2(7)  
 \*Word substituted by S.I. 1986/1966, para. 2(7)(b)(v)  
 \*Word substituted by S.I. 1986/1966, para. 2(7)(b)(vi)  
 \*Words inserted by S.I. 1986/1966, para. 2(7)(b)(vii)  
 \*Words inserted by S.I. 1986/1966, para. 2(7)(b)(viii)  
 \*Rule 7(2) repealed by S.I. 1986/1966, para. 2(7)  
 \*Rule 72A inserted by S.I. 1986/1966, para. 2  
 \*Rule 8A inserted by S.I. 1986/1966, para. 2(8)  
 \*Words inserted by S.I. 1986/1966, para. 2(8)  
 \*Rule WA inserted by S.I. 1986/1966, para. 3(17)  
 \*Rule 10(2) inserted by S.I. 1986/1966, para. 3(17)  
 \*"(1)" inserted by S.I. 1986/1978, para. 14(a)  
 \*Rule 10(3) inserted by S.I. 1986/1978, para. 14(a)  
 \*Word substituted by S.I. 1986/1966, para. 2(8)  
 \*Words substituted by S.I. 1986/1966, para. 2(8)  
 \*Rule 107A inserted (9.4.1990) by S.I. 1990/661, para. 2(3)

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COURTS, SCOTLAND: 3  
**Sheriff Courts (Scotland) Act 1907 (c.51) (contd.)**  
“Word substituted by S.I. 1983/546, para. 3(1)  
“Rule 129 substituted by S.I. 1986/1230, para. 3(16)  
“Rule 130 inserted by S.I. 1986/1230, para. 3(17)  
“Words substituted by S.I. 1986/1966, para. 2(9)  
“21” substituted by S.I. 1988/1978, para. 15  
“Words inserted by S.I. 1984/255, para. 3(20)(a)  
“Words repealed by S.I. 1986/1230, para. 3(18)  
““(1)” inserted by S.I. 1984/255, para. 3(20)(b)  
“Rule 131(2)-(4) inserted by S.I. 1984/255, para. 3(20)(c)  
“Words inserted by S.I. 1984/255, para. 3(21)  
“Words repealed by S.I. 1986/1230, para. 3(19)  
“Rule 132A inserted by S.I. 1986/1230, para. 3(20)  
“Rule 132B inserted by S.I. 1986/1966, para. 2(10)  
“Rules 132C–132E inserted by S.I. 1986/604, para. 2  
“Rule 132F inserted (3.12.1990) by S.I. 1990/2238, para. 6  
“Rule 132F inserted (9.4.1990) by S.I. 1990/661, para. 2(4)  
“Words repealed by S.I. 1986/1230, para. 3(21)(a)  
“1984” substituted by S.I. 1986/1230, para. 3(21)(b)  
“Words inserted by S.I. 1986/1946, para. 2(7)  
“Rules 135–143 inserted by S.I. 1984/255, para. 3(22)  
“1984” substituted by S.I. 1986/1230, para. 3(22)  
“Words inserted by S.I. 1986/1946, para. 2(8)  
“Rule 138(6)(a) substituted for rule 138(6)(a)(b) by S.I. 1988/1978, para. 16  
“Sub-paragraph relettered sub-paragraph (b) by S.I. 1988/1978, para. 16  
“Rule 138(9)-(11) substituted for rule 138(9)(10) by S.I. 1986/1230, para. 3(23)  
“21” substituted by S.I. 1988/1978, para. 16(2)  
“Rule 139 substituted by S.I. 1988/1946, para. 2(9)  
“Words inserted by S.I. 1986/1946, para. 3(10)(a)  
“Rule 140(a) inserted by S.I. 1986/1946, para. 2(10)(b)  
“Words inserted by S.I. 1986/1946, para. 2(11)  
“Words substituted by S.I. 1986/1230, para. 3(24)  
“Rules 144–146 inserted (error: as to rules 147–149) by S.I. 1984/921 paras. 3, 4(2)  
“21” substituted by S.I. 1988/1978, para. 17  
“Words substituted by 1984/255, para. 3(23)(a)  
“Form B1 inserted by S.I. 1984/255, para. 3(23)(b), Sch.  
“Words substituted by S.I. 1984/255, para. 3(23)(c)  
“Form B3–B6 inserted by S.I. 1988/1978, para. 18(4), Sch. 1  
“21” substituted by S.I. 1988/1978, para. 18(2)  
“Form C1 substituted by S.I. 1984/255, para. 3(23)(d), Sch.  
“Form C2 inserted by S.I. 1988/1978, para. 18(4), Sch.  
“Words inserted by S.I. 1986/1230, para. 4(1)(a)  
“Words inserted by S.I. 1988/1978, para. 18(3)  
“Words substituted by S.I. 1986/1230, para. 4(1)(b)  
“Form E1 inserted by S.I. 1986/1230, para. 4(2)(a), Sch.  
“Form H1 inserted by S.I. 1988/1978, para. 18(4), Sch. 1  
“Forms H1–417 inserted by S.I. 1986/1230, para. 4(2)(b), Sch.  
“Form H8 inserted by S.I. 1988/1978, para. 18(4), Sch. 1  
“1987” substituted by S.I. 1983/546, para. 2(6)  
“Words substituted by S.I. 1986/1230, para. 4(1)(c)  
“Words inserted by S.I. 1984/255, para. 3(23)(e) and repealed by S.I. 1986/1230, para. 4(1)(d)  
“Form S para. (3) substituted by S.I. 1984/255, para. 3(23)(e)(i)  
“Form S1–S3 inserted by S.I. 1984/255, para. 3(23)(e), Sch.  
“Words repealed by S.I. 1986/1230, para. 4(1)(e)  
“Words inserted by S.I. 1984/255, para. 3(23)(e)  
“Words inserted by S.I. 1984/255, para. 3(23)(e) and repealed by S.I. 1986/1230, para. 4(1)(a)  
“Word repealed by S.I. 1986/1230, para. 4(1)(f)(b)  
“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.)**  
“Word inserted by S.I. 1986/1966, para. 2(11)  
“Word inserted by S.I. 1986/1230, para. 4(1)(a)  
“Form V, W, X and Z inserted by S.I. 1984/255, para. 3(23)(b), Sch.  
“Word repealed by S.I. 1986/1230, para. 4(1)(b)  
“Form V1 and V2 inserted by S.I. 1986/1230, para. 4(2)(c), Sch.  
“Form SDA1–SDA5 inserted by S.I. 1984/255, para. 3(23)(e), Sch.  
“Form SDA6–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 an 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

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## 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 Advocate by order.

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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.
- Expenses in small claim.
- 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 37-3), 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 [tutory, 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 Diverse Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1985 (c.12, SIF 36-3), s. 4(3), Sch. 1 para. 12
- 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 1985 (c.73, SIF 36-1), s. 18(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 3 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(4)(c) 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 1986 (c.42, SIF 76(2), s. 4(2)(3), Sch. 2  
 s. 26 ... repealed by Legal Aid (Scotland) Act 1986 (c.47, SIF 77(2), ss. 43, 45, Sch. 4 para. 3(1), Sch. 5

#### 4. DISTRICT COURTS

**District Courts (Scotland) Act 1975 (c.20)**  
 after s. 1 there is inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 36(1), 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 39(1), 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 39(1), s. 12(2), Sch. 1 para. 2  
 S. 3(3) the repeal of s. 3(3) by Criminal Law Act 1977 (c.45, SIF 39(1), 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 36(1), 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 36(1), 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 36(1), s. 39, Sch. 4  
 S. 27(1) repeal of words by Criminal Law Act 1977 (c.45, SIF 39(1), 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 77(2), ss. 43, 45(3), Sch. 4 para. 3(1), Sch. 5  
 Sch. 1  
 para. 6 ... repealed by Wages Act 1986 (c.48, SIF 43(2), 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 45(2), s. 108, Sch. 7 para. 5, 9(1), Sch. 8

#### 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 45(2), s. 108, Sch. 7 paras. 5, 9(1), Sch. 8  
**Lyon King of Arms Act 1669 (c.95)**  
 The words from “the fourthent” to “Together also with” repealed by Debtors (Scotland) Act 1987 (c.18, SIF 45(2), 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 45(2), 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 45(2), s. 108, Sch. 6 para. 5, Sch. 7 para. 5, 9(1)  
 S. 10 from “Provided also” to the end of the section repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73, SIF 36(1), s. 59, Sch. 2 para. 3, Sch. 4  
 S. 11 from “and after the death” onwards repealed by Statute Law (Repeals) Act 1986 (c.12), s. 1(1), Sch. 1 Pt. 1 Grp. 4  
 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		
Article 2		
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



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<sup>128</sup> Word substituted by S.I. 1983/1546, para. 2(c)  
<sup>129</sup> Rule 129 substituted by S.I. 1986/1230, para. 3(16)  
<sup>130</sup> Rule 130 inserted by S.I. 1986/1230, para. 3(17)  
<sup>131</sup> Words substituted by S.I. 1986/1966, para. 2(19)  
<sup>132</sup> "21" substituted by S.I. 1988/1978, para. 15  
<sup>133</sup> Words inserted by S.I. 1984/255, para. 3(20)(a)  
<sup>134</sup> Words repealed by S.I. 1986/1230, para. 3(18)  
<sup>135</sup> —(1)" inserted by S.I. 1984/255, para. 3(20)(b)  
<sup>136</sup> Rule 131(2)-(4) inserted by S.I. 1984/255, para. 3(20)(c)  
<sup>137</sup> Words inserted by S.I. 1984/255, para. 3(21)  
<sup>138</sup> Words repealed by S.I. 1986/1230, para. 3(19)  
<sup>139</sup> Rule 132A inserted by S.I. 1986/1230, para. 3(20)  
<sup>140</sup> Rule 132B inserted by S.I. 1986/1966, para. 2(10)  
<sup>141</sup> Rules 132C-132E inserted by S.I. 1988/614, para. 2  
<sup>142</sup> Rule 132F inserted (3.12.1990) by S.I. 1990/2238, para. 6  
<sup>143</sup> Rule 132F inserted (9.4.1990) by S.I. 1990/661, para. 2(4)  
<sup>144</sup> Words repealed by S.I. 1986/1230, para. 3(21)(a)  
<sup>145</sup> "1984" substituted by S.I. 1986/1230, para. 3(21)(b)  
<sup>146</sup> Words inserted by S.I. 1986/1946, para. 2(7)  
<sup>147</sup> Rules 135-143 inserted by S.I. 1984/255, para. 3(22)  
<sup>148</sup> "1984" substituted by S.I. 1986/1230, para. 3(22)  
<sup>149</sup> Words inserted by S.I. 1986/1946, para. 2(8)  
<sup>150</sup> Rule 138(6)(a) substituted for rule 138(6)(a)(b) by S.I. 1988/1978, para. 16  
<sup>151</sup> Sub-paragraph relettered sub-paragraph (b) by S.I. 1988/1978, para. 16  
<sup>152</sup> Rule 138(9)-(11) substituted for rule 138(9)(10) by S.I. 1986/1230, para. 3(23)  
<sup>153</sup> "21" substituted by S.I. 1988/1978, para. 16(2)  
<sup>154</sup> Rule 139 substituted by S.I. 1986/1946, para. 2(9)  
<sup>155</sup> Words inserted by S.I. 1986/1946, para. 3(10)(a)  
<sup>156</sup> Rule 140(4) inserted by S.I. 1986/1946, para. 2(10)(b)  
<sup>157</sup> Words inserted by S.I. 1986/1946, para. 2(11)  
<sup>158</sup> Words substituted by S.I. 1986/1230, para. 3(24)  
<sup>159</sup> Rules 144-149 inserted (*retrosp* as to rules 147-149) by S.I. 1984/921 paras. 3, 4(2)  
<sup>160</sup> "21" substituted by S.I. 1988/1978, para. 17  
<sup>161</sup> Words substituted by 1984/255, para. 3(23)(a)  
<sup>162</sup> Form B1 inserted by S.I. 1984/255, para. 3(23)(b), Sch.  
<sup>163</sup> Words substituted by S.I. 1984/255, para. 3(23)(c)  
<sup>164</sup> Words repealed (4.5.1992) by S.I. 1992/249, rule 2(11)(a)  
<sup>165</sup> Forms B3-B6 inserted by S.I. 1988/1978, para. 18(4), Sch. 1  
<sup>166</sup> Form CC inserted by S.I. 1984/921, para. 5, Sch.  
<sup>167</sup> "21" substituted by S.I. 1988/1978, para. 18(2)  
<sup>168</sup> Form C1 substituted by S.I. 1984/255, para. 3(23)(d), Sch.  
<sup>169</sup> Form C2 inserted by S.I. 1988/1978, para. 18(4), Sch.  
<sup>170</sup> Forms C3 and C4 inserted (4.5.1992) by S.I. 1992/249, rule 2(11)(b)  
<sup>171</sup> Words inserted by S.I. 1986/1230, para. 4(1)(a)  
<sup>172</sup> Words inserted by S.I. 1988/1978, para. 18(3)  
<sup>173</sup> Words inserted (4.5.1992) by virtue of S.I. 1992/249, rule 2(11)  
<sup>174</sup> Words substituted by S.I. 1986/1230, para. 4(1)(b)  
<sup>175</sup> Form E1 inserted by S.I. 1986/1230, para. 4(2)(a), Sch.  
<sup>176</sup> Form H1 inserted by S.I. 1986/1978, para. 18(4), Sch. 1  
<sup>177</sup> Forms H1-H7 inserted by S.I. 1986/1230, para. 4(2)(b), Sch.  
<sup>178</sup> Form H8 inserted by S.I. 1988/1978, para. 18(4), Sch. 1  
<sup>179</sup> "1977" substituted by S.I. 1983/1546, para. 2(d)  
<sup>180</sup> Words substituted by S.I. 1986/1230, para. 4(1)(c)  
<sup>181</sup> Words inserted by S.I. 1984/255 para. 3(23)(e)(i) and repealed by S.I. 1986/1230, para. 4(1)(d)  
<sup>182</sup> Form S para. (3) substituted by S.I. 1984/255, para. 3(23)(e)(ii)  
<sup>183</sup> Forms S1-S3 inserted by S.I. 1984/255 para. 3(23)(f), Sch.  
<sup>184</sup> Words repealed by S.I. 1986/1230, para. 4(1)(e)  
<sup>185</sup> Words inserted by S.I. 1984/255, para. 3(23)(g)  
<sup>186</sup> Words inserted by S.I. 1984/255 para. 3(23)(g) and repealed by S.I. 1986/1230, para. 4(1)(e)  
<sup>187</sup> Word repealed by S.I. 1986/1230, para. 4(1)(f)(b)  
<sup>188</sup> Forms T1 and T2 inserted by S.I. 1986/513, para. 2(4), Sch.

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

<sup>189</sup> Words inserted by S.I. 1986/1966, para. 2(11)  
<sup>190</sup> Words inserted by S.I. 1986/1230, para. 4(1)(g)  
<sup>191</sup> Forms V, W, X and Z inserted by S.I. 1984/255, para. 3(23)(h), Sch.  
<sup>192</sup> Word repealed by S.I. 1986/1230, para. 4(1)(h)  
<sup>193</sup> Forms V1 and V2 inserted by S.I. 1986/1230, para. 4(2)(c), Sch.  
<sup>194</sup> Forms SDA1-SDA5 inserted by S.I. 1984/255 para. 3(23)(i), Sch.  
<sup>195</sup> Forms SDA6-SDA7 inserted by S.I. 1986/1230, para. 4(2)(d), Sch.

**FORM CSA 1 RULE 153**

**CERTIFICATE RELATING TO THE MAKING OF A MAINTENANCE  
ASSESSMENT UNDER THE CHILD SUPPORT ACT 1991**

**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**

**F560F560** SECOND SCHEDULE

**Textual Amendments**  
**F560** Sch. 2 repealed by Statute Law Revision Act 1927 (c. 42), Sch. Pt. I

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