

Status: Point in time view as at 02/10/2000.

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)

SCHEDULES

^{F1}FIRST SCHEDULE

ORDINARY CAUSE RULES 1993

Textual Amendments

- F1** 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\(5\)](#)

[^{F1}INITIATION AND PROGRESS OF CAUSES]

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.

^{F1}29.3.

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Textual Amendments

F1 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) [^{F2}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

F2 Words in rule 29.6(1) substituted (1.11.1996) by S.I. 1996/2445, para. 3(39)

Citation of witnesses

- 29.7. (1) A witness shall be cited for a proof—
- (a) by registered post or the first class recorded delivery service by the solicitor for the party on whose behalf he is cited; or
 - (b) by a sheriff officer—
 - (i) personally;
 - (ii) by a citation being left with a resident at the person's dwelling place or an employee at his place of business;
 - (iii) by depositing it in that person's dwelling place or place of business;
 - (iv) by affixing it to the door of that person's dwelling place or place of business; or
 - (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

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he thinks it most likely that the person may be found, a letter containing a copy of the citation.

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

Citation of witnesses by party litigants

- 29.8. (1) Where a party to a cause is a party litigant, he shall—
- (a) not later than 4 weeks before the diet of proof, apply to the sheriff by motion to fix caution in such sum as the sheriff considers reasonable having regard to the number of witnesses he proposes to cite and the period for which they may be required to attend court; and
 - (b) before instructing a sheriff officer to cite a witness, find caution for such expenses as can reasonably be anticipated to be incurred by the witness in answering the citation.
- (2) A party litigant who does not intend to cite all the witnesses referred to in his application under paragraph (1)(a), may apply by motion for variation of the amount of caution.

Second diligence against a witness

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

Failure of witness to attend

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

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Lodging productions

- 29.11. (1) Where a proof has been allowed, all productions [^{F3}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

F3 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 [^{F4}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

F4 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 [^{F5}the record has closed], a party may intimate to any other party a notice or notices calling on him to admit for the purposes of that cause only—
- (a) such facts relating to an issue averred in the pleadings as may be specified in the notice;
 - (b) that a particular document lodged in process and specified in the notice is—
 - (i) an original and properly authenticated document; or
 - (ii) a true copy of an original and properly authenticated document.
- (2) Where a party on whom a notice is intimated under paragraph (1)—
- (a) does not admit a fact specified in the notice, or
 - (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.

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- (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).
- [^{F6}(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.
- ^{F6}(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

- F5** Words in *Sch. 1 rule 29.14(1)* substituted (2.10.2000) by *S.S.I. 2000/239, para. 3(1)(14)(a)*
F6 *Sch. 1 rule 29.14(7)(8)* inserted (2.10.2000) by *S.S.I. 2000/239, para. 3(1)(14)(b)*

Instruction of shorthand writer

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

Administration of oath or affirmation to witnesses

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

Proof to be taken continuously

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

Recording of evidence

29. [8(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,

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- 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 [^{F8}solicitors] for the parties in equal proportions.
 - (7) The transcript of the record of the evidence provided for the use of the court shall be certified as a faithful record of the evidence by—
 - (a) the shorthand writer who recorded the evidence; or
 - (b) where the evidence was recorded by tape recording or other mechanical means, by the persons who transcribed the record.
 - (8) The sheriff may make such alterations to the transcript of the record of the evidence as appear to him to be necessary after hearing the parties; and, where such alterations are made, the sheriff shall authenticate the alterations.
 - (9) Where a transcript of the record of the evidence has been made for the use of the sheriff, copies of it may be obtained by any party from the person who transcribed the record on payment of his fee.
 - (10) Except with leave of the sheriff, the transcript of the record of the evidence may be borrowed from process only for the purpose of enabling a party to consider whether to appeal against the interlocutor of the sheriff on the proof.
 - (11) Where a transcript of the record of the evidence is required for the purpose of an appeal but has not been directed to be transcribed under paragraph (6), the appellant—
 - (a) may request such a transcript from the shorthand writer or as the case may be, the cost of the transcript being borne by the solicitor for the appellant in the first instance; and
 - (b) shall lodge the transcript in process;
 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

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- (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

- F7** Rule 29.18: “-(1)” inserted after “29.18” (1.11.1996) by S.I. 1996/2445, para. 3(40)(a)
F8 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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