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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 5

CITATION, SERVICE AND INTIMATION

Signature of warrants

- 5.1. (1) Subject to paragraph (2), a warrant for citation, intimation or arrestment on the dependence may be signed by the sheriff or sheriff clerk.
- (2) The following warrants shall be signed by the sheriff:—
- (a) a warrant containing an order shortening or extending the period of notice or any other order other than a warrant which the sheriff clerk may sign;
 - (b) a warrant for arrestment on the dependence in a family action within the meaning of rule 33.1(1) in respect of a claim to which section 19 of the ^{M1}Family Law (Scotland) Act 1985 (arrestment in action for aliment or claim for financial provision) applies; and
 - (c) a warrant for intimation ordered under rule 33.8 (intimation where improper association).
- (3) Where the sheriff clerk refuses to sign a warrant which he may sign, the party presenting the initial writ may apply to the sheriff for the warrant.

Marginal Citations

- M1** [1985 c.37](#).

Form of citation and certificate

- 5.2. (1) Subject to rule 5.6 (service where address of person is not known), in any cause other than—

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- (a) a family action within the meaning of rule 33.1(1),
- (b) an action of multiplepounding, ^{F1} . . .
- (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, ^{F2}or]
- ^{F3}(d) an action to which rule 3.2(3) applies,]

^{F4}citation of] any person shall be in Form O4 which shall be attached to a copy of the ^{F5}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.
- ^{F6}(2A) In an action to which rule 3.2(3) applies, citation shall be in Form O5A which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.]
- (3) The certificate of citation in any cause other than a family action within the meaning of rule 33.1(1) or an action of multiplepounding shall be in Form O6 which shall be attached to the initial writ.
- (4) Where citation is by a sheriff officer, one witness shall be sufficient for the execution of citation.
- (5) Where citation is by a sheriff officer, the certificate of citation shall be signed by the sheriff officer and the witness and shall state—
 - (a) the method of citation; and
 - (b) where the method of citation was other than personal or postal citation, the full name and designation of any person to whom the citation was delivered.
- (6) Where citation is executed under paragraph 3 of rule 5.4 (depositing or affixing by sheriff officer), the certificate shall include a statement—
 - (a) of the method of service previously attempted;
 - (b) of the circumstances which prevented such service being executed; and
 - (c) that a copy was sent in accordance with the provisions of paragraph (4) of that rule.

Textual Amendments

- F1** 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)}
- F2** 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)}
- F3** [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)}
- F4** Words in [rule 5.2\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(5\)\(a\)](#)
- F5** Word in [rule 5.2\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2445](#), [para. 3\(5\)\(b\)](#)

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F6 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 ^{M2}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

M2 1882 c.77.

Service within Scotland by sheriff officer

- 5.4. (1) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served by a sheriff officer on any person shall be served—
- personally; or
 - by being left in the hands of a resident at the person’s dwelling place or an employee at his place of business.
- (2) Where service is executed under paragraph (1)(b), the certificate of citation or service shall contain the full name and designation of any person in whose hands the initial writ, decree, charge, warrant or other order or writ, as the case may be, was left.
- (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—
- by depositing it in that person’s dwelling place or place of business; or
 - 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.
- [^{F7}(5) Where the firm which employs the sheriff officer has in its possession—
- 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

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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

F7 Sch. 1 rule 5.4(5) inserted (24.1.2003) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2003 (S.I. 2003/26), para. 2(3)

Service on persons furth of Scotland

- 5.5. (1) Subject to the following provisions of this rule, an initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served on a person furth of Scotland shall be served—
- (a) at a known residence or place of business in England, Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—
- (i) in accordance with the rules for personal service under the domestic law of the place in which service is to be executed; or
- (ii) by posting in Scotland a copy of the document in question in a registered letter addressed to the person at his residence or place of business;
- (b) in a country which is a party to the ^{M3}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 ^{M4}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 [^{F8}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 [^{F8}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; ^{F9} . . .

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- (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.
[^{F10} ; or
 - (d) in a country to which Council Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ^{F11} applies, service may be effected by the methods prescribed in paragraphs (1)(b)(ii) and (iii) only in exceptional circumstances]
- (2) Any document which requires to be posted in Scotland for the purposes of this rule shall be posted by a solicitor or a sheriff officer; and on the face of the envelope there shall be written or printed the notice set out in rule 5.3(3).
- (3) In the case of service by a method referred to in paragraph (1)(b)(ii) and (iii), the pursuer shall—
- (a) send a copy of the writ and warrant of service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and
 - (b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.
- (4) In the case of service by a method referred to in paragraph (1)(b)(v), the pursuer or the sheriff officer, shall—
- (a) send a copy of the writ and warrant for service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the official in the country in which service is to be executed; and
 - (b) lodge in process a certificate of the official who executed service stating that it has been, and the manner in which it was, served.
- (5) Where service is executed in accordance with paragraph (1)(a)(i) or (1)(b)(i) other than on another party in the United Kingdom, the Isle of Man or the Channel Islands, the party executing service shall lodge a certificate by a person who is conversant with the law of the country concerned and who practises or has practised law in that country or is a duly accredited representative of the Government of that country, stating that the method of service employed is in accordance with the law of the place where service was executed.
- (6) Every writ, document, citation or notice on the face of the envelope mentioned in rule 5.3(3) shall be accompanied by a translation in an official language of the country in which service is to be executed unless English is an official language of that country.
- (7) A translation referred to in paragraph (6) shall be certified as correct by the person making it; and the certificate shall—
- (a) include his full name, address and qualifications; and
 - (b) be lodged with the execution of citation or service.

Textual Amendments

F8 Words in rule 5.5(1)(b)(ii)(iii) substituted (1.11.1996) by S.I. 1996/2445, para. 3(6)

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- F9** 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)**
- F10** 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)**
- F11** O.J. No. L 160, 30.06.00, p.37.

Marginal Citations

- M3** Cmnd. 3986 (1969).
- M4** 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
 - (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^{F12} . . . ,
- [^{F13}against such person under such trading or descriptive name shall be a valid] warrant for diligence against such person.

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- (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

- F12** Words in rule 5.7(1)(b) omitted (1.11.1996) by S.I. 1996/2445, para. 3(7)(a)
F13 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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