

1984 No. 255 (S. 27)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Consistorial Causes) 1984

Made - - - - 29th February 1984
Coming into Operation 1st May 1984

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers enabling them in that behalf do hereby, after consultation with the Sheriff Court Rules Council, enact and declare:—

Citation and commencement

1.— (1) This Act of Sederunt may be cited as the Act of Sederunt (Consistorial Causes) 1984 and shall come into operation on 1st May 1984.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Interpretation

2. In this Act of Sederunt, unless the context otherwise requires—

“Ordinary Cause Rules” means the First Schedule to the Sheriff Courts (Scotland) Act 1907(b) and a reference to a rule, paragraph or form is a reference to the rule, paragraph or form in the First Schedule to that Act.

Amendment of Ordinary Cause Rules

3.— (1) The Ordinary Cause Rules shall be amended as follows.

(2) Rule 3 (initial writ) shall be renumbered rule 3(1) and there shall be added to that rule the following paragraphs—

“(2) In an action of divorce or of separation and aliment 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;

(a) 1971 c. 58.

(b) 1907 c. 51 (First Schedule substituted by S.I. 1983/747).

- (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 Domicile and Matrimonial Proceedings Act 1973(a) (sisting of consistorial actions).

(3) For the purposes of paragraph (2), 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.

(4) The information required by paragraph (2) shall, in all actions of divorce or of separation and aliment, 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.

(5) Any application made by any party in an action of divorce or separation and aliment 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 Domicile and Matrimonial Proceedings Act 1973, shall be made by written motion.

(6) In an action of divorce, a warrant for citation shall not be granted unless there are produced with the initial writ—

- (a) an extract or certified copy of the marriage certificate; and
- (b) an extract or certified copy of any birth certificate.”

(3) In rule 5 (warrant of citation)—

- (a) in paragraph (1), after the word “citation” there shall be inserted the words “in any ordinary cause other than an action of divorce and of separation and aliment”;
- (b) paragraph (2) shall be renumbered “(3)”; and
- (c) after paragraph (1) there shall be inserted the following paragraph—

“(2) In an action of divorce or of separation and aliment 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.”.

(4) In rule 9 (form of citation)—

- (a) in paragraph (1), there shall be inserted after the word “citation” where it first occurs the words “in any ordinary cause other than an action of divorce or of separation and aliment”;
- (b) paragraphs (2), (3), (4) and (5) shall be renumbered (3), (4), (5) and (6) respectively; and

(a) 1973 c. 45.

(c) after paragraph (1) there shall be inserted the following paragraph—

“(2) In an action of divorce or of separation and aliment 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.”

(5) In rule 11(1) (citation where defender’s address unknown) there shall be inserted at the beginning the words “In an action other than an action referred to in rule 11A,”.

(6) After rule 11 there shall be inserted the following rule—

“Citation of persons in actions of divorce or of separation and aliment where defender is suffering from mental disorder or his whereabouts are unknown

11A.— In an action of divorce or an action of separation and aliment, where the defender’s address is unknown or the defender is a person suffering from a mental disorder within the meaning of the Mental Health (Scotland) Act 1960(a), 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 subparagraphs (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) Without prejudice to the terms of paragraph (1), in every action to which this rule applies, where the address of a defender is unknown, a copy of the instance and crave of the initial writ shall be displayed on the walls of court and the pursuer shall provide to the sheriff clerk a certified copy thereof for that purpose.

(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,

(a) 1960 c. 61.

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

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

(7) In rule 12(1) (citation of persons resident outwith Scotland) there shall be inserted after the word "Subject" the words "to rule 11A and".

(8) In rule 21(2) (application of minute for decree without attendance) there shall be inserted after the word "actions" where it first occurs the words "of divorce and".

(9) For rule 23 there shall be substituted the following rule—

"Procedure in undefended actions of divorce and of separation and aliment

23.— (1) This rule—

- (a) applies to all actions of divorce and of separation and aliment in which no notice of intention to defend has been lodged;
- (b) may apply to any action of divorce and of separation and aliment 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 endorsement 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."

(10) In rule 28 (reponing) there shall be inserted at the beginning the words "In any action other than an action of divorce or of separation and aliment,".

(11) Rule 34 shall be amended as follows—

- (a) for the headnote there shall be substituted the headnote "*Minute relating to amount of aliment or of periodical allowance or of capital payment*";

- (b) in paragraph (1) there shall be inserted after the word “aliment” the words “or of periodical allowance or of capital payment”;
- (c) for paragraph (2) there shall be substituted the following paragraph—
“(2) In an action of divorce or of separation and aliment a defender may, without lodging a notice of intention to defend, apply to the court by minute for an award of aliment, periodical allowance or capital payment and such minute shall specify the nature of the order which he claims the sheriff should make.”; and
- (d) in paragraph (3)
- (i) for the words “paragraph (1)” substitute the words “the foregoing paragraphs”; and
- (ii) in sub-paragraph (a), the word “available” shall be inserted between the words “first” and “court”.
- (12) Rule 56 (counter-claim) shall be amended as follows—
- (a) in the headnote the words “in action” shall be omitted; and
- (b) there shall be inserted after the word “sought” the words “or could competently be sought”.
- (13) In rule 59 (decree by default)—
- (a) for paragraph (1) there shall be substituted the following paragraph—
“(1) In a defended cause other than an action of divorce or of separation and aliment, 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.”; and
- (b) there shall be inserted at the end the following paragraph—
“(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.”
- (14) After rule 59 there shall be inserted the following rule—

“Late appearance by defender in actions of divorce and of separation and aliment

59A— (1) A defender in an action of divorce or of separation and aliment, who has not lodged a notice of intention to defend, may, at any time before decree is pronounced, with leave of the sheriff and subject to such conditions as the sheriff may deem appropriate, lodge defences and appear and be heard at a proof.

(2) If the sheriff grants leave in terms of paragraph (1) after the pursuer has led evidence, the pursuer shall be entitled to lead such further evidence and recall such witnesses as he may consider necessary whether or not the pursuer has closed his proof before leave was granted.

(3) A defender who appears or is heard at a proof in terms of paragraph (1) may not lead evidence without the consent of the pursuer.

(4) A defender, who was not present or represented at the proof or where inquiry was by affidavit, may appeal against the interlocutor granting decree within 14 days of its date.”

(15) In rule 72 (affidavit evidence)—

(a) for paragraph (1) there shall be substituted the following paragraph—

“(1) The provisions of this rule—

(a) apply to all parts of actions of separation and aliment and of divorce which proceed as undefended and to opposed interim orders under the Matrimonial Homes (Family Protection) (Scotland) Act 1981(a);

(b) do not apply to any action of separation and aliment or of divorce where it appears to the sheriff that the defender is a person who is suffering from a mental disorder within the meaning of the Mental Health (Scotland) Act 1960 except where the curator *ad litem* for the defender has lodged a minute intimating that he does not intend to defend the action.”

(b) in paragraph (5) between the words “minute” and “on” there shall be inserted the words “in accordance with Form X”; and

(c) paragraph (6) shall be omitted.

(16) In rule 89(1) (judgment) there shall be inserted at the end the following words—

“: Provided always that this paragraph shall not apply to decrees in actions of divorce and of separation and aliment which have proceeded as undefended.”.

(17) There shall be inserted after rule 90 (extract) the following rule—

“Extract decree of divorce

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.”

(18) In rule 129(1) after the word “aliment” there shall be inserted the words “or periodical allowance”.

(19) Rule 130 (intimation following certain allegations) shall be amended as follows—

(a) in the headnote the words “following certain allegations” shall be omitted;

(b) in paragraph (1) for the words “as a ground of action or defence” there shall be substituted “by the pursuer or defender” and for the word “proof” there shall be substituted the word “inquiry.”; and

(c) there shall be inserted at the end the following paragraphs—

“(5) In any action in which the sheriff may make an order—

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

intimation of the action shall be made to the local authority or third party concerned.

(6) In an action relating to a marriage which was entered into under a law which permits polygamy and in which a decree of separation and aliment 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.

(7) In an action in which the sheriff may make an order in respect of the custody of a child who is in *de facto* custody of a third party, intimation of the action shall be made to the third party concerned.

(8) 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 Matrimonial Proceedings (Children) Act 1958(a); or
- (b) has made an order placing a child under the supervision of a local authority under section 12 of the Matrimonial Proceedings (Children) Act 1958,

intimation shall be made to the individual or the local authority concerned of the matters specified in the order.”.

(20) Rule 131 (notices) shall be amended as follows—

- (a) in the headnote the words “divorce and” shall be inserted between the words “of” and “separation”;
- (b) after “131.” insert “— (1)”; and
- (c) after paragraph (1) there shall be inserted the following paragraphs—

“(2) Where the facts set out in section 1(2)(d) of the Divorce (Scotland) Act 1976(b) (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 and aliment, a notice as nearly as may be in terms

(a) 1958 c. 40.
(b) 1976 c. 39.

of Form S2 as set out in the Appendix to this Schedule shall be sent with the copy of the initial writ served on the defender.

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

(21) In paragraphs (1) and (3) of rule 132 (consent to decree) and in paragraph (1) of rule 133 (application for appointment of curator *ad litem*) after the words “action of” wherever they occur, there shall be inserted the words “divorce or an action of”.

(22) After rule 134 there shall be inserted the following rules—

“SIMPLIFIED DIVORCE PROCEDURE

Simplified procedure

135.— (1) The provisions of this rule and of the following rules of this section shall have effect in relation to applications for divorce other than by initial writ which are hereinafter referred to as “simplified divorce applications”, and—

- (a) the following rules of this section shall apply to simplified divorce applications;
- (b) “the Act of 1976” means the Divorce (Scotland) Act 1976.

(2) This rule applies to an application for divorce by a party to a marriage if, but only if—

- (a) that party applies for divorce in reliance on the facts set out in section 1(2)(d) (two years non-cohabitation and the defender’s consent to decree), or section 1(2)(e) (five years non-cohabitation) of the Act of 1976;
- (b) in an application for divorce under section 1(2)(d) of the Act of 1976, the other party consents to decree of divorce being granted;
- (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
- (d) there are no children of the marriage under the age of sixteen years;
- (e) neither party applies for an order for financial provision on divorce; and
- (f) neither party suffers from mental disorder within the meaning of the Mental Health (Scotland) Act 1960.

(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.

Form of application

136.— (1) A simplified divorce application relying on the facts set out in section 1(2)(d) of the Act of 1976 shall be made in accordance with Form SDA1 as set out in the Appendix to this Schedule.

(2) A simplified divorce application relying on the facts set out in section 1(2)(e) of the Act of 1976 shall be made in accordance with Form SDA2 as set out in the Appendix to this Schedule.

(3) An application made under paragraph (1) or (2) shall be signed by the applicant, and the form of consent in accordance with Form SDA3 as set out in the Appendix to this Schedule in an application under paragraph (1) shall be signed by the party giving consent, failing which the application shall not have effect.

Lodging applications

137. The applicant shall deliver the application or cause it to be delivered (by post or by hand) duly completed and signed to the sheriff clerk together with—

- (a) an extract or certified copy of his marriage certificate; and
- (b) the fee specified in respect of a simplified divorce application.

Citation

138.— (1) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application. The form of citation in an application under rule 136(2) shall be in accordance with Form SDA4 as set out in the Appendix to this Schedule.

(2) The sheriff clerk may arrange for citation or intimation required in paragraph (1) to be made by registered or recorded delivery post or, on payment to the sheriff clerk of the specified additional fee, by sheriff officer.

(3) Any citation of or intimation to a person by sheriff officer in terms of this rule shall be effected either by personal service or by being left in the hands of an inmate of, or employee at, the dwelling place or place of business of that person.

(4) On the face of the envelope used for postal service under this rule there shall be written or printed a notice as nearly as may be in the following form—

“This letter contains a citation to or intimation from the Sheriff Court (*specify court*). If delivery of the letter cannot be made within 7 days of the date of posting it is to be returned immediately thereafter to the sheriff clerk (*specify court and address*).”

(5) Notwithstanding the provisions of section 4(2) of the Citation Amendment (Scotland) Act 1882(a), in all cases of postal service the period of notice shall start to run on the day of posting.

(a) 1882 c. 77.

(6) The following periods of notice shall apply to any citation or intimation under this rule—

- (a) 14 days when the addressee is resident or has a place of business within the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland;
- (b) 28 days when the addressee is resident or has a place of business outwith the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland but is resident or has a place of business elsewhere in Europe; and
- (c) 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 2 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, intimation shall be made to—

- (a) every child of the marriage between the parties; and
- (b) one of the next-of-kin of the other party who has reached the age of twelve years in the case of a girl and fourteen years in the case of a boy.

(10) If the address of any person referred to in sub-paragraph (a) or (b) of paragraph (9) is unknown to the applicant, intimation shall be effected by displaying a copy of the application on the walls of court.

Citation of or service on persons resident outwith Scotland

139.— (1) Subject to the following provisions of this rule, any simplified divorce application may be served on any person resident outwith Scotland—

- (a) whose known residence or place of business is outwith Scotland but within the United Kingdom, the Isle of Man, the Channel Islands or Republic of Ireland, either personally, or by posting a copy of the document in question in a registered or recorded delivery letter to the person at his residence or place of business; or
- (b) whose residence or place of business is outwith the United Kingdom, the Isle of Man, the Channel Islands, and the Republic of Ireland, either personally or 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 place of business; but where the person resides or has a place of business outwith Europe the document posted in Scotland shall be posted by air mail.

(2) For the purposes of this rule personal service includes—

- (a) service in accordance with the rules for personal service under the domestic law of that part of the United Kingdom in which service is to be effected;
- (b) service by the British Consul or his duly authorised depute or assistant in the country of residence or place of business of the person; and
- (c) service in accordance with any Convention on service abroad of judicial documents in civil matters to which the United Kingdom and the country of residence or place of business of the person are signatories.

(3) The form of citation referred to in rule 138 shall apply to citations under this rule as they apply to citations under that rule.

(4) On the face of the envelope used for postal service under this rule to a person resident or having a place of business outwith the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland there shall be written or printed a notice in the same or similar terms as that required in the case of service under rule 138.

Opposition to applications

140.— (1) Any person who has been cited or to whom intimation has been made in connection with a simplified divorce application may 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.

Decree

141.— (1) The sheriff may grant decree in terms of the simplified divorce application on the expiry of the period of notice if such application has been properly served.

(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.

Appeal

142. A respondent may, within 14 days of the date of an interlocutor granting decree of divorce, appeal against that interlocutor by addressing a letter to the sheriff giving reasons for his appeal.

Subsequent applications

143.— (1) After the granting of decree of divorce, a party to a simplified divorce application may, in the event of a material change in the circumstances of one or other or both of the parties, make a subsequent application to the sheriff in respect of any matter.

(2) A subsequent application shall be made by minute in the original process of the simplified divorce application and such minute shall specify that there has been a material change in the circumstances of one or other or both of the parties since the granting of decree of divorce and shall specify the nature of such change of circumstances.”

(23) The Appendix to the Ordinary Cause Rules (Forms) shall be amended as follows—

- (a) in Form B, for the words “under certification of being held as confessed” there shall be substituted the words “(and Grants Warrant to arrest on the dependence)”.
- (b) after Form B there shall be inserted Form B1 in the Schedule to this Act of Sederunt;
- (c) in Form B2 for the words “rule 5(2)” there shall be substituted the words “rule 5(3)”;
- (d) after Form C there shall be inserted Form C1 in the Schedule to this Act of Sederunt;
- (e) in Form S—
 - (i) in the heading the words “and aliment” shall be inserted at the end;
 - (ii) for paragraph (3) there shall be substituted the following paragraph—

“(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.”;
- (f) after Form S there shall be inserted Form S1, S2 and S3 in the Schedule to this Act of Sederunt;
- (g) in Form T—
 - (i) in the heading, after the word “actions” there shall be inserted the words “of divorce and”, and after the word “separation” there shall be inserted the words “and aliment”; and
 - (ii) after the word “decree” wherever it occurs there shall be inserted the words “(of divorce or of separation and aliment)”;
- (h) after Form U there shall be inserted Forms V, W, X and Z in the Schedule to this Act of Sederunt; and
- (i) after Form Z there shall be inserted Forms SDA1, SDA2, SDA3, SDA4 and SDA5 in the Schedule to this Act of Sederunt.

Amendment of Act of Sederunt (Applications under the Matrimonial Homes (Family Protection) (Scotland) Act 1981) 1982

4. In the Act of Sederunt (Applications under the Matrimonial Homes

(Family Protection) (Scotland) Act 1981 1982(a), after rule 8 there shall be inserted the following rule—

“9. Where a matrimonial interdict, to which there is attached a power of arrest, is varied or recalled or the power to arrest ceases to have effect by reason of decree of divorce being granted, the spouse who applied for variation or recall, or in whose favour decree of divorce has been granted, shall ensure that there is delivered as soon as possible—

(a) to the chief constable of the police area in which the matrimonial home is situated; and

(b) if the spouse who applied for the interdict resides in another police area, to the chief constable of that other police area,

a copy of the application for variation or recall and of the interlocutor granting variation or recall or, as the case may be, a copy of the interlocutor granting decree of divorce and shall immediately thereafter lodge with the sheriff clerk a certificate of delivery.”

Revocation

5. The Act of Sederunt (Domicile and Matrimonial Proceedings Act 1973) 1973(b) is revoked.

Edinburgh,
29th February 1984.

Emslie,
Lord President
IPD

(a) S.I. 1982/1432.
(b) S.I. 1973/2117.

SCHEDULE

FORM B1

(WARRANT OF CITATION)

rule 5(2)

CONSISTORIAL ACTION

19

Grants Warrant to cite the defender by serving
a copy of the Writ and Warrant upon a period of notice of
days, and appoints 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 C1

CONSISTORIAL ACTION

rule 9

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 14 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

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 14 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).

Form of Notice to defender in an action of separation and aliment where it is stated there has been 5 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.

Form of Notice to defender in an action of divorce where it is stated there has been 5 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 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.

FORM V

rule 11A

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 and aliment 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)

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)

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)

FORM Z

rule 90A

Extract
Decree of
Divorce

SHERIFF COURT

AT _____, 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 _____ to the _____ 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 _____ to the _____ of £ _____ of expenses:

(4) finding the Defender liable to the Pursuer in expenses as the same may be subsequently taxed and decerned 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

FORM SDA1

rule 136(1)

**Under the Divorce (Scotland) Act 1976, Section 1(2)(d)
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 application. 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. Applica
(Part 1)
 2. When you have filled in Part 1 of the form, attach the (blue) Instruction Sheet SP3 to it and send both documents to your husband/wife for completion of the consent at part 2 (page 9). Consent
Hus-
band/W
(Part 2)
- 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. Affid:
(Part
 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: Retur
comp
Appli
tion F
to Co
 - (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.

PART 1

WRITE IN INK USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname Other name(s)
in full
Present
Address Daytime Telephone Number if any

2. NAME AND ADDRESS OF HUSBAND/WIFE*

Surname Other name(s)
in full
Present
Address Daytime Telephone Number if any

3. JURISDICTION

Please indicate with a tick () in the appropriate box or boxes which of the following apply

PART A

- (i) I consider myself to be domiciled in Scotland
(ii) I have lived in Scotland for a period of at least 12 months immediately before the date of signing this application.
(iii) My husband/wife considers himself/herself to be domiciled in Scotland
(iv) My husband/wife has lived in Scotland for a period of at least 12 months immediately before the date of signing this application.

PART B

- (v) I have lived at the address shown in Section 1 for at least 40 days immediately before the date I signed this application

(vi) My husband/wife has lived at the address shown in Section 2 for at least 40 days immediately before the date I signed this application

4.

DETAILS OF PRESENT MARRIAGE

Place of Marriage..... (Registration District)

Date of Marriage: Day Month Year

5.

PERIOD OF SEPARATION

(i) Please state the date on which you ceased to live with your husband/wife. (If more than 2½ years, just give the month and year)

Day..... month..... Year.....

(ii) Have you lived with your husband/wife since that date (Tick () box which applies)

YES

NO

(iii) If yes, for how long in total did you live together before finally separating again?

..... months

6.

RECONCILIATION

Is there any reasonable prospect of reconciliation with your husband/wife? (Tick () box which applies)

YES

NO

Do you consider that the marriage has broken down irretrievably? (Tick () box which applies)

YES

NO

7.

CONSENT

Does your husband/wife consent to a divorce being granted? (Tick () box which applies)

YES

NO

8.

MENTAL DISABILITY

As far as you are aware is your husband/wife incapable of managing his/her affairs because of a mental disorder (whether illness or deficiency)? (Tick () box

which applies)

YES NO

(if yes, give details)

9.

CHILDREN

Are there any children of the marriage under the age of 16? (Tick () box which applies)

YES NO

10.

OTHER COURT ACTIONS

Are you aware of any Court actions currently proceeding in any country (including Scotland) which may affect your marriage? (Tick () box which applies)

YES NO

If yes, give details

11.

REQUEST FOR DIVORCE AND DISCLAIMER OF FINANCIAL PROVISION

I confirm that the facts stated in Sections 1-10 above apply to my marriage.

I do NOT ask the Court to make any financial awards in connection with this application.

I request the Court to grant decree of divorce from my husband/wife.

.....
(Date)

.....
(Signature)

IMPORTANT — Part 1 **MUST** be completed, signed and dated before sending the application form to your husband/wife.

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)

PART 5

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

FORM SDA2

rule 136(2)

**Under the Divorce (Scotland) Act 1976, Section 1(2)(e)
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 application. 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

1. Complete and sign Part 1 of the form (pages 3–7), paying particular attention to the notes opposite each section. Applica
(Part 1)
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. Affidavi
(Part 2)
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: Returni
complet
Applica
Form to
Court
 - (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.

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 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

NameAddress

Relationship
to your
husband/wife

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

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)

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)

PART 2

APPLICANT'S AFFIDAVIT

(To be completed only after Part 1 has 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 the facts stated in Part 1 of this Application are true.

Signature of Applicant

To be completed by Justice of the Peace, Notary Public or Commissioner for Oaths

{ Sworn at (Place).....

this day of..... 19

before me (full name)

(full address).....

.....

.....

Signature.....

*Justice of the Peace/*Notary Public/*Commissioner for Oaths

*Delete as appropriate

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

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.

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

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt amends the Ordinary Cause Rules of the Sheriff Court to make provision for the raising of, and procedure in, divorce proceedings in the Sheriff Court. The procedure is applied to actions of separation and aliment. Provision is also made for a simplified divorce procedure in certain circumstances. An amendment is made to the Act of Sederunt (Applications under the Matrimonial Homes (Family Protection) (Scotland) Act 1981) 1982 to provide for service, of an application for variation or recall of an interlocutor varying or recalling a matrimonial interdict, on a chief constable. The Act of Sederunt (Domicile and Matrimonial Proceedings Act 1973) 1973 is revoked.

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