
STATUTORY INSTRUMENTS

1993 No. 3240 (S.314)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Sheriff Court
Summary Application Rules) 1993

Made - - - - 14th December 1993

Coming into force - - 1st January 1994

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⁽¹⁾ and of all other powers enabling them in that behalf, having approved, with modifications, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Summary Application Rules) 1993 and shall come into force on 1st January 1994.

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

Summary application rules

2. The provisions of Schedule 1 to this Act of Sederunt shall have effect for the purpose of providing rules for summary applications within the meaning of section 3(*p*) of the Sheriff Courts (Scotland) Act 1907⁽²⁾.

Revocations

3. The Acts of Sederunt specified in column 1 of Schedule 2 to this Act of Sederunt are revoked to the extent specified in column 3 of that Schedule.

Savings for summary applications already commenced

4. Nothing in this Act of Sederunt shall affect any summary application commenced before the date of the coming into force of this Act of Sederunt and any such summary application shall proceed according to the law and practice in force immediately before that date.

(1) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12 and the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4).

(2) 1907 c. 51.

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Edinburgh,
14th December 1993

J.A.D. Hope
Lord President, IPD

SCHEDULE 1

Paragraph 2

SHERIFF COURT SUMMARY APPLICATION RULES 1993

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Explanatory Note

Citation and application

- 1.—(1) These Rules may be cited as the Sheriff Court Summary Application Rules 1993.
- (2) These Rules apply to a summary application within the meaning of section 3(p) of the Sheriff Courts (Scotland) Act 1907.

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Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

“decree” includes any judgment, deliverance, interlocutor, act, order, finding or authority which may be extracted;

“defender” means any person other than the pursuer who is a party to a summary application;

“pursuer” means any person making a summary application;

“sheriff clerk” includes a sheriff clerk depute;

“summary application” has the meaning given by section 3 of the Sheriff Courts (Scotland) Act 1907.

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

Relief from failure to comply with rules

3.—(1) The sheriff may relieve a party from the consequences of failure to comply with a provision in these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as he thinks fit.

(2) Where the sheriff relieves a party from the consequences of a failure to comply with a provision in these Rules under paragraph (1), he may make such order as he thinks fit to enable the summary application to proceed as if the failure to comply with the provision had not occurred.

The initial writ

4.—(1) Unless otherwise prescribed by any other enactment, a summary application shall be commenced by initial writ in Form 1.

(2) The initial writ shall be written, typed or printed on A4 size paper of durable quality and shall not be backed or folded.

(3) Where the pursuer has reason to believe that an agreement exists prorogating jurisdiction over the subject-matter of the summary application to another court, the initial writ shall contain details of that agreement.

(4) Where the pursuer has reason to believe that proceedings are pending before another court involving the same cause of action and between the same parties as those named in the instance of the initial writ, the initial writ shall contain details of those proceedings.

(5) An article of condescendence shall be included in the initial writ averring—

(a) the ground of jurisdiction; and

(b) the facts upon which the ground of jurisdiction is based.

(6) Where the residence, registered office or place of business, as the case may be, of the defender is not known and cannot reasonably be ascertained, the pursuer shall set out in the instance that the whereabouts of the defender are not known and aver in the condescendence what steps have been taken to ascertain his present whereabouts.

(7) The initial writ shall be signed by the pursuer or his solicitor (if any) and the name and address of that solicitor shall be stated on the back of every service copy of that writ.

(8) The initial writ shall include averments about those persons who appear to the pursuer to have an interest in the application and in respect of whom a warrant for citation is sought.

Order for intimation to interested persons by sheriff

5. The sheriff may make an order for intimation to any person who appears to him to have an interest in the summary application.

Time limits

6.—(1) This rule applies to a summary application where the time within which the application may be made is not otherwise prescribed by the enactment under which it is made.

(2) An application to which this rule applies shall be lodged with the sheriff clerk within 21 days after the date on which the decision, order, scheme, determination, refusal or other act complained of was intimated to the pursuer.

(3) On special cause shown, the sheriff may hear an application to which this rule applies notwithstanding that it was not lodged within the period prescribed in paragraph (2).

Warrants, forms and certificate of citation

7.—(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) A warrant containing a period of notice shorter than the period of notice to be given to a defender under rule 3.6(1)(a) or (b), as the case may be, of the Ordinary Cause Rules 1993(3) or any other warrant which the sheriff clerk may not sign shall be signed by the sheriff.

(3) Where the sheriff clerk refuses to sign a warrant which he may sign, the party presenting the summary application may apply to the sheriff for the warrant.

(4) Where citation is necessary—

(a) the warrant of citation shall, subject to paragraph (5) of this rule, be in Form 2; and

(b) citation shall, subject to paragraph (7) of this rule and rule 13 (service where address of person is not known), be in Form 3.

(5) Where a time to pay direction under the Debtors (Scotland) Act 1987(4) may be applied for by the defender, the warrant of citation shall be in Form 4.

(6) Where a warrant of citation in accordance with Form 4 is appropriate, there shall be served on the defender (with the initial writ and warrant) a notice in Form 5.

(7) Where a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be in Form 6 which shall be attached to a copy of the initial writ and warrant of citation.

(8) Where citation is necessary, the certificate of citation shall be in Form 7 which shall be attached to the initial writ.

(9) Where citation is by a sheriff officer, one witness shall be sufficient for the execution of citation.

(10) 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.

(3) The Ordinary Cause Rules 1993 are contained in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c. 51) as substituted by S.I. 1993/1956.

(4) 1987 c. 18.

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(11) Where citation is executed under paragraph (3) of rule 11 (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.

Orders against which caveats may be lodged

8. A person may lodge a caveat against an interim order (other than an order under section 1 of the Administration of Justice (Scotland) Act 1972⁽⁵⁾ (orders for inspection of documents and other property, etc.)) sought before service of the initial writ.

Form, lodging and renewal of caveats

9.—(1) A caveat shall be in Form 8 and shall be lodged with the sheriff clerk.

(2) A caveat shall remain in force for a period of one year from the date on which it was lodged and may be renewed on its expiry for a further period of one year and yearly thereafter.

(3) Where a caveat has been lodged and has not expired, no order in respect of which the caveat was lodged may be pronounced unless the sheriff is satisfied that all reasonable steps have been taken to afford the person lodging the caveat an opportunity of being heard; and the sheriff may continue the hearing on such an order until he is satisfied that such steps have been taken.

Postal service or intimation

10.—(1) In any summary application 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 Citation Amendment (Scotland) Act 1882⁽⁶⁾ (time from which period of notice reckoned), where service or intimation is by post, any period of notice contained in the warrant of citation 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*).”.

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

Service within Scotland by sheriff officer

11.—(1) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served by a sheriff officer on any person shall be served—

- (a) personally; or
- (b) by being left in the hands of a resident at the person’s dwelling place or an employee at his place of business.

(5) 1972 c. 59.

(6) 1882 c. 77.

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(2) Where service is executed under paragraph (1)(b), the certificate of citation or service shall contain the full name and designation of any person in whose hands the initial writ, decree, charge, warrant or other order or writ, as the case may be, was left.

(3) Where a sheriff officer has been unsuccessful in executing service in accordance with paragraph (1), he may, after making diligent enquiries, serve the document in question—

- (a) by depositing it in that person's dwelling place or place of business; or
- (b) by affixing it to the door of that person's dwelling place or place of business.

(4) Subject to rule 18 (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.

Service on persons furth of Scotland

12.—(1) Subject to the following provisions of this rule, an initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree served on a person furth of Scotland shall be served—

- (a) at a known residence or place of business in England, Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—
 - (i) in accordance with the rules for personal service under the domestic law of the place in which service is to be executed; or
 - (ii) by posting in Scotland a copy of the document in question in a registered letter addressed to the person at his residence or place of business;
- (b) in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965⁽⁷⁾ or the Convention in Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982⁽⁸⁾—
 - (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 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 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; or
- (c) in a country with which the United Kingdom has a convention on the service of writs in that country other than the conventions mentioned in sub-paragraph (b), by one of the methods approved in the relevant convention.

⁽⁷⁾ Cmnd. 3986 (1969).

⁽⁸⁾ 1982 c. 27; Schedule 1 was substituted by S.I. 1990/2591; Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1(3).

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(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 10(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 10(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.

Service where address of person is not known

13.—(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 of service upon that person—

- (a) by the publication of an advertisement in Form 9 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 10;

and any period of notice contained in the warrant of citation 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 summary application 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 summary application 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

14.—(1) A person carrying on a business under a trading or descriptive name may be designed in the instance of the initial writ by such trading or descriptive name alone; and an extract—

- (a) of a decree pronounced in the sheriff court, or
- (b) of a decree proceeding upon any deed, decree arbitral, bond, protest of a bill, promissory note or banker's note or upon any other obligation or document on which execution may proceed, recorded in the sheriff court books,

against such person under such trading or descriptive name, shall be a valid warrant for diligence against such person.

(2) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree in a summary application in which a person carrying on business under a trading or descriptive name is designed in the instance of the initial writ by that name shall be served—

- (a) at any place of business or office at which such business is carried on within the sheriffdom of the sheriff court in which the cause is brought; or
- (b) where there is no place of business within that sheriffdom, at any place where such business is carried on (including the place of business or office of the clerk or secretary of any company, corporation or association or firm).

Endorsation unnecessary

15. 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

16. 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 the sheriff thinks fit.

No objection to regularity of citation, service or intimation

17.—(1) A person who appears in a summary application 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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Service of schedule of arrestment

18. If a schedule of arrestment has not been personally served on an arrestee, the arrestment shall have effect only if a copy of the schedule is also sent by registered post or the first class recorded delivery service to—

- (a) the last known place of residence of the arrestee, or
- (b) if such a place of residence is not known, or if the arrestee is a firm or corporation, to the arrestee's principal place of business if known, or, if not known, to any known place of business of the arrestee;

and the sheriff officer shall, on the certificate of execution, certify that this has been done and specify the address to which the copy of the schedule was sent.

Arrestment on dependence before service

19.—(1) An arrestment on the dependence of a summary application used before service shall cease to have effect if the initial writ is not served within 20 days from the date of arrestment and either—

- (a) in the case where the pursuer is entitled to minute for decree in absence on the expiry of a period of notice contained in the warrant of citation, decree in absence has not been pronounced within 20 days after the expiry of the period of notice; or
- (b) in the case where the pursuer is not entitled to minute for decree in absence prior to the first hearing of the summary application, there is no appearance by the pursuer at the first hearing and the summary application drops from the roll.

(2) After such an arrestment has been executed, the party who executed it shall forthwith report the execution to the sheriff clerk.

Movement of arrested property

20.—(1) Any person having an interest may apply by motion for a warrant authorising the movement of a vessel or cargo which is the subject of an arrestment to found jurisdiction or on the dependence of a summary application.

(2) Where the court grants a warrant sought under paragraph (1), it may make such further order as it thinks fit to give effect to that warrant.

Transfer to another sheriff court

21.—(1) The sheriff may, on cause shown, remit a summary application to another sheriff court.

(2) Subject to paragraph (4), where a summary application in which there are two or more defenders has been brought in the sheriff court of the residence or place of business of one of them, the sheriff may transfer the summary application to any other sheriff court which has jurisdiction over any of the defenders.

(3) Subject to paragraph (4), where a plea of no jurisdiction is sustained, the sheriff may transfer the summary application to the sheriff court before which it appears to him the summary application ought to have been brought.

(4) The sheriff shall not transfer a summary application to another sheriff court under paragraph (2) or (3) except—

- (a) on the motion of a party; and
- (b) where he considers it expedient to do so having regard to the convenience of the parties and their witnesses.

- (5) On making an order under paragraph (1), (2) or (3), the sheriff—
 - (a) shall state his reasons for doing so in the interlocutor; and
 - (b) may make the order on such conditions as to expenses or otherwise as he thinks fit.
- (6) The court to which a summary application is transferred under paragraph (1), (2) or (3) shall accept the summary application.
- (7) A transferred summary application shall proceed in all respects as if it had been originally brought in the court to which it is transferred.
- (8) An interlocutor transferring a summary application may, with leave of the sheriff, be appealed to the sheriff principal but shall not be subject to appeal to the Court of Session.

Applications for time to pay directions

22.—(1) This rule applies to a summary application in which a time to pay direction may be applied for under the Debtors (Scotland) Act 1987⁽⁹⁾.

(2) A defender may apply for a time to pay direction and, where appropriate, for recall or restriction of an arrestment—

- (a) by appearing and making the appropriate motion at a diet fixed for hearing of the summary application;
- (b) except where the warrant of citation contains a shorter period of notice than the period of notice to be given to a defender under rule 3.6(1)(a) or (b), as the case may be, of the Ordinary Cause Rules 1993 by completing and returning the appropriate portion of Form 5 to the sheriff clerk at least seven days before the first diet fixed for hearing of the summary application or the expiry of the period of notice or otherwise, as the case may be in the warrant of citation; or
- (c) by application to the court at any stage before final decree.

(3) The sheriff may determine an application under paragraph (2)(b) or (c) without the defender having to appear.

Remuneration of assessors

23. Where an assessor is appointed by the sheriff to assist him in determining the summary application, the remuneration to be paid to such assessor shall be part of the expenses of the application.

Deposits for expenses

24. Where, under any enactment, the sheriff requires the pursuer to deposit a sum of money to cover the expenses of an appeal under the enactment, such sum shall, subject to the provisions of that enactment, not exceed an amount which is twenty-five times the amount of the fee payable at that time in respect of lodging the initial writ.

When decrees extractable

25.—(1) Subject to the following paragraphs—

- (a) subject to sub-paragraph (c), a decree in absence may be extracted after the expiry of 14 days from the date of decree;
- (b) subject to sub-paragraph (c), any decree pronounced in a defended summary application may be extracted at any time after whichever is the later of the following:—

(9) 1987 c. 18.

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

Form of extract decree

26. The extract of a decree shall be in Form 11.

Form of warrant for execution

27. An extract of a decree on which execution may proceed shall include a warrant for execution in the following terms:— “This extract is warrant for all lawful execution hereon.”.

Date of decree in extract

28.—(1) Where the sheriff principal has adhered to the decision of the sheriff following an appeal, the date to be inserted in the extract decree as the date of decree shall be the date of the decision of the sheriff principal.

(2) Where a decree has more than one date it shall not be necessary to specify in an extract what was done on each date.

Decrees in absence where defender furth of United Kingdom

29.—(1) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the initial writ in sufficient time to arrange for his defence or that all necessary steps have been taken to that end; and for the purposes of this paragraph—

- (a) the question whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982(10);

(10) 1982 c. 27; sections 41 and 42 were amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2.

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- (b) the question whether a person is domiciled in another Contracting State shall be determined in accordance with Article 52 of the Convention in Schedule 1 or 3C to that Act, as the case may be; and
- (c) the term “Contracting State” has the meaning assigned in section 1 of that Act.

(2) Where an initial writ has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965⁽¹¹⁾ applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of Article 15 of the Convention have been complied with.

Applications under the Administration of Justice (Scotland) Act 1972

30.—(1) An application for an order under section 1(1) of the Administration of Justice (Scotland) Act 1972 (orders for inspection of documents and other property, etc.) shall be made by summary application where the proceedings in respect of which the application is made have not been commenced.

(2) An application for an order under section 1(1A) of the Administration of Justice (Scotland) Act 1972⁽¹²⁾ (order on person to disclose information as to the identity of any person who might be a witness or defender in any civil proceedings which are likely to be brought) shall be made by summary application.

Motion Roll procedure

31. Except where the sheriff otherwise directs, any motion relating to a summary application shall be made in accordance with, and regulated by, Chapter 15 of the Ordinary Cause Rules 1993⁽¹³⁾.

Power of sheriff to make orders

32. The sheriff may make such order as he thinks fit for the progress of a summary application in so far as it is not inconsistent with section 50 of the Sheriff Courts (Scotland) Act 1907.

⁽¹¹⁾ Cmnd. 3986 (1969).

⁽¹²⁾ 1972 c. 59; section 1(1A) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 19).

⁽¹³⁾ Sheriff Courts (Scotland) Act 1907 (c. 51), Schedule 1, substituted by S.I. 1993/1956.

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Rule 4(1)

APPENDIX

Form 1

Form of initial writ

APPENDIX

Form 1

Rule 4(1)

Form of initial writ

SUMMARY APPLICATION UNDER (title & section of statute or statutory instrument)

INITIAL WRIT

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

[A.B.] *(design and state any special capacity in which the pursuer is suing)*. Pursuer.

Against

[C.D.] *(design and state any special capacity in which the defender is being sued)*. Defender.

The Pursuer craves the court *(here state the specific decree, warrant or order sought)*

CONDESCENDENCE

(State in numbered paragraphs the facts which form the ground of action)

PLEAS-IN-LAW

(State in numbered sentences)

Signed

[A.B.], Pursuer

or [X.Y.], Solicitor for the pursuer *(state designation and business address)*

Rule 7(4)(a)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 2

Form of warrant of citation

Rule 7(4)(a)

Form 2

Form of warrant of citation

(Insert place and date) Grants warrant to cite the defender *(insert name and address)* by serving upon him *[or her]* a copy of the writ and warrant [on a period of notice of *(insert period of notice)* days], [and ordains him *[or her]* to answer within the Sheriff Court House *(insert place of sheriff court)* [in Room No., or in Chambers, *or otherwise, as the case may be*], on the day of at o'clock noon] *[or otherwise, as the case may be]* [and grants warrant to arrest on the dependence].

Signed
Sheriff [or sheriff clerk]

Rule 7(4)(b)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 3

Form of citation for summary application

Form 3

Rule 7(4)(b)

Form of citation for summary application

CITATION FOR SUMMARY APPLICATION

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

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

Court ref. no.

(Insert place and date). You [C.D.], are hereby served with this copy writ and warrant, and are required to answer it.

IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens' Advice Bureau or other advice agency.

PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed
[P.Q.], Sheriff officer,

or [X.Y.] *(add designation and business address)*
Solicitor for the pursuer

Rule 7(5)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 4

Form of warrant of citation where time to pay direction may be applied for

Rule 7(5)

Form 4

Form of warrant of citation where time to pay direction may be applied for

(Insert place and date) Grants warrant to cite the defender *(insert name and address)* by serving a copy of the writ and warrant, together with Form 5, [on a period of notice of *(insert period of notice)* days] and ordains him [or her] if he [or she]—

- (a) intends to defend the action or make any claim [to answer within the Sheriff Court House *(insert place and address of sheriff court)* [in Room No., or in Chambers, or otherwise, as the case may be], on the day of at
o'clock noon] [or otherwise, as the case may be] or
- (b) admits the claim and intends to apply for a time to pay direction (and where appropriate apply for recall or restriction of an arrestment) [either to appear at that diet and make such application or] to lodge the appropriate part of Form 5 duly completed with the sheriff clerk at *(insert place of sheriff court)* at least seven days before [the diet or the expiry of the period of notice or otherwise, as the case may be] [and grants warrant to arrest on the dependence].

Signed
Sheriff [or sheriff clerk]

Rules 7(6) and 22(2)(b)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 5

Form of notice to be served on defender in summary application where time to pay direction may be applied for

Form 5

Rules 7(6) and 22(2)(b)

Form of notice to be served on defender in summary application where time to pay direction may be applied for

ACTION IN SUMMARY APPLICATION BY

PURSUER

DEFENDER

AT

SHERIFF COURT

(Including address)

COURT REF. NO.

[DATE OF FIRST HEARING]
[EXPIRY OF PERIOD OF NOTICE]

THIS SECTION MUST BE COMPLETED BY THE PURSUER BEFORE SERVICE

The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a “time to pay direction” which is an order permitting you to pay any sum of money you are ordered to pay to the pursuer (which may include interest and court expenses) either by way of instalments or deferred lump sum. A deferred lump sum means that you must pay all the amount at one time within a period specified by the court.

When making a time to pay direction the court may recall or restrict an arrestment made on your property by the pursuer in connection with the action or debt (for example your bank account may have been frozen).

HOW TO APPLY FOR A TIME TO PAY DIRECTION WHERE YOU ADMIT THE CLAIM AND YOU DO NOT WANT TO DEFEND THE ACTION

1. Attached to this notice at pages 3 and 4 is an application for a time to pay direction, and for recall or restriction of an arrestment, if appropriate. If you want to make an application you should lodge the completed application with the sheriff clerk at the above address at least seven days before the date of the first hearing or expiry of the period of notice or otherwise, as the case may be, in the warrant of citation given above. No court fee is payable when lodging the application.

2. Before completing the application please read carefully the notes overleaf on page 2. In the event of difficulty you may contact the court’s civil department at the address above or any sheriff clerk’s office, solicitor, Citizens’ Advice Bureau or other advice agency.

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HOW TO COMPLETE THE APPLICATION

PLEASE WRITE IN INK USING BLOCK CAPITALS

PART A of the application will have been completed in advance by the pursuer and gives details of the pursuer and you as the defender.

PART B – If you wish to apply to pay by instalments enter the amount and tick the appropriate box at B3(1). If you wish to apply to pay the full sum due in one deferred payment enter the period of deferment you propose at B3(2).

PART C – Give full details of your financial position in the space provided.

PART D – If you wish the court, when making the time to pay direction to recall or restrict an arrestment made in connection with the action, enter the appropriate details about what has been arrested and the place and date of the arrestment at D5, and attach the schedule of arrestment or copy.

Sign the application where indicated and detach pages 3 and 4. Retain the copy initial writ and pages 1 and 2 of this form as you may need them at a later stage. You should ensure that your application arrives at the court at least seven days before the date of the first hearing or expiry of the period of notice or otherwise, as the case may be, in the warrant of citation.

WHAT WILL HAPPEN NEXT

If the pursuer objects to your application the court will advise you in writing and you will be required to attend the first hearing given in the warrant of citation or other hearing fixed for that purpose.

If the pursuer does not object to your application, a copy of the court order for payment (called an extract decree) will be served on you by the pursuer’s solicitor advising when instalment payments should commence or deferred payment be made.

Court ref. no.

APPLICATION FOR A TIME TO PAY DIRECTION

UNDER THE DEBTORS (SCOTLAND) ACT 1987

***PART A**

BY

DEFENDER

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

In an action raised by

PURSUER

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PART B

1. The applicant is a defender in the action brought by the above named pursuer.
2. The defender admits the claim and applies to the court for a time to pay direction.
3. The defender applies (1) To pay by instalments of £

(Tick one box only) EACH WEEK FORTNIGHT MONTH

OR

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

PART C

4. Defender's financial position

My weekly fortnightly monthly My weekly fortnight monthly
 outgoings are: income is:

Rent/mortgage £	Wages/pensions £
Heating £	Social security £
Food £	Other £
HP £	
Other £	
<hr/>	
Total £	Total £
<hr/>	

Dependants: Children – how many Dependant relatives – how many

Here list all capital (if any) e.g. value of house; amounts in bank or building society accounts; shares or other investments:

Here list any outstanding debts:

PART D

5. The defender seeks to recall or restrict an arrestment of which the details are as follows (*please state, and attach the schedule of arrestment or copy*):-

6. This application is made under sections 1(1) and 2(3) of the Debtors (Scotland) Act 1987.

Therefore the defender asks the court-

- *a. to make a time to pay direction.
- *b. to recall the above arrestment.
- *c. to restrict the above arrestment (*in which case state restriction wanted*):-

*** Delete what does not apply**

Date (*insert date*)

Signed
Defender

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Rule 7(7)

Form 6

Form of citation where time to pay direction
may be applied for in summary application

Rule 7(7)

Form 6

Form of citation where time to pay direction may be applied for in summary application

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

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

Court ref. no.

(Insert place and date). You [C.D.], are hereby served with this copy writ and warrant, together with
Form 5 (application for time to pay direction in summary application).

Form 5 is served on you because it is considered that you may be entitled to apply for a time to pay direction [and for the recall or restriction of an arrestment used on the dependence of the action or in security of the debt referred to in the copy writ]. See Form 5 for further details.

IF YOU ADMIT THE CLAIM AND WISH TO APPLY FOR A TIME TO PAY DIRECTION, you must complete Form 5 and return it to the sheriff clerk at the above address at least 7 days before the hearing or the expiry of the period of notice or otherwise, as the case may be, in the warrant of citation.

IF YOU ADMIT THE CLAIM AND WISH TO AVOID A COURT ORDER BEING MADE AGAINST YOU, the whole sum claimed including interest and any expenses due should be paid to the pursuer or his solicitor by the court date.

IF YOU ARE UNCERTAIN AS TO WHAT ACTION TO TAKE you should consult a solicitor. You may be eligible for legal aid depending on your income, and you can get information about legal aid from a solicitor. You may also obtain advice from any Citizens' Advice Bureau, or other advice agency.

PLEASE NOTE THAT IF YOU DO NOTHING IN ANSWER TO THIS DOCUMENT the court may regard you as admitting the claim made against you and the pursuer may obtain decree against you in your absence.

Signed
[P.Q.], Sheriff officer,

or [X.Y.] *(add designation and business address)*
Solicitor for the pursuer

Rule 7(8)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 7

Form of certification of citation

Form 7

Rule 7(8)

Form of certificate of citation

CERTIFICATE OF CITATION

(Insert place and date), I, _____ hereby certify that upon the day of _____ I duly cited [C.D.], Defender, to answer to the foregoing writ. This I did by (state method of service; if by officer and not by post, add: in presence of [L.M.], (insert designation), witness hereto with me subscribing; and where service executed by post state whether by registered post or the first class recorded delivery service).

(In actions in which a time to pay direction may be applied for, state whether Form 4 and Form 5 were sent in accordance with rule 7(5) and (6).)

Signed
[P.Q.], Sheriff officer,
[L.M.], witness
or [X.Y.] (add designation and business address)
Solicitor for the pursuer

Rule 9(1)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 8
Form of caveat

Rule 9(1)

Form 8
Form of caveat

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

CAVEAT for [A.B.] *(insert designation and address*)*

Should any application be made for *(here specify the nature of the application(s) to which this caveat is to apply)* prior to service of the initial writ, it is requested that intimation be made to the caveator before any order is pronounced.

Date *(insert date)*

Signed
[A.B.]

or [X.Y.] Solicitor for [A.B.] *(add designation and business address)*

Caveator's telephone and fax number *(insert where caveat is not lodged by solicitor)*

Solicitor *(insert name and address, telephone and fax number and reference)*

Out of hours contacts:

1. *(insert name and telephone number)*
2. *(insert name and telephone number)*

*State whether the caveat is lodged in an individual capacity, or a specified representative capacity (e.g. as trustee of a named trust) or both. Where appropriate, state also the nature of the caveator's interest (e.g. shareholder, debenture holder).

Rule 13(1)(a)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 9
Form of advertisement

Form 9

Rule 13(1)(a)

Form of advertisement

NOTICE TO [C.D.] Court ref. no.
An action has been raised in Sheriff Court by [A.B.], Pursuer calling as a Defender
[C.D.], whose last known address was *(insert last known address of defender)*.

If [C.D.] wishes to defend the action he *[or she]* should immediately contact the sheriff clerk *(insert address)* from whom the service copy initial writ may be obtained. If he *[or she]* fails to do so decree may pass against him *[or her]* [when the case calls in court on *(date)* or on the expiry of the period of notice or otherwise, as the case may be in the warrant of citation].

Signed
[X.Y.], *(add designation and business address)*
Solicitor for the pursuer

or [P.Q.], *(add business address)*

Rule 13(1)(b)

Form 10
Form of notice for walls of court

Rule 13(1)(b)

Form 10

Form of notice for walls of court

NOTICE TO [C.D.] Court ref. no.
An action has been raised in Sheriff Court by [A.B.], Pursuer calling as a Defender
[C.D.], whose last known address was *(insert last known address of defender)*.

If [C.D.] wishes to defend the action he *[or she]* should immediately contact the sheriff clerk at *(insert address)* from whom the service copy initial writ may be obtained. If he *[or she]* fails to do so decree may pass against him *[or her]* [when the case calls in court on *(date)* or on the expiry of the period of notice or otherwise, as the case may be, in the warrant of citation].

Date *(insert date)*

Signed
Sheriff clerk (depute)
Telephone no. *(insert telephone number of sheriff clerk's office)*

Rule 26

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Form 1

Form of extract decree

Form 11

Rule 26

Form of extract decree

EXTRACT DECREE

Sheriff court
Date of decree
Pursuer(s)

Court Ref. No.
* In absence
Defender(s)

The sheriff

and granted decree against the _____ for payment of expenses of £ _____

This extract is warrant for all lawful execution hereon.

Date _____ Sheriff clerk (depute) _____

* Delete as appropriate

SCHEDULE 2

Paragraph 3

REVOCATIONS

Column 1 References	Column 2 Acts of Sederunt	Column 3 Extent of Revocation
S.R. & O. 1937/1016	Act of Sederunt Regulating Appeals to the Sheriff under the Methylated Spirits (Sale by Retail) (Scotland) Act, 1937	The whole Act of Sederunt

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Column 1 References	Column 2 Acts of Sederunt	Column 3 Extent of Revocation
S.I. 1961/1018	Act of Sederunt (Caravan Sites Appeals) 1961	The whole Act of Sederunt
S.I. 1964/817	Act of Sederunt (Building Appeals) 1964	The whole Act of Sederunt
S.I. 1970/1984	Act of Sederunt (Firearms Appeals) 1970	The whole Act of Sederunt
S.I. 1983/747	Act of Sederunt (Statutory Appeals) 1981	The whole Act of Sederunt
S.I. 1983/747	Act of Sederunt (Ordinary Cause Rules, Sheriff Court) 1983	Paragraph 5
S.I. 1988/1978	Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, and Summary Cause, Rules) 1988	Paragraph 36

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt provides for new rules in the sheriff court in relation to summary applications commencing on or after 1st January 1994.

A summary application is defined in section 3(p) of the Sheriff Courts (Scotland) Act 1907. Section 50 of the Act makes provision for certain procedures to be followed in summary applications. This Act of Sederunt supplements that provision. It replaces the existing -Ordinary Cause Rules which apply to summary applications by virtue of paragraph 5 of the Act of Sederunt (Ordinary Cause Rules, Sheriff Court) 1983 as amended by paragraph 36 of the Act of Sederunt (Amendment of the Sheriff Court Ordinary Cause and Summary Cause Rules) 1988, which is revoked by this Act of Sederunt, for causes commencing on or after 1st January.

This Act of Sederunt revokes other Acts of Sederunt the provisions of which are un-necessary in consequence of the rules in Schedule 2 to this Act of Sederunt.