
STATUTORY INSTRUMENTS

1993 No. 1956 (S.223)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993

Made - - - - - *29th July 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 13 of the Sheriff Courts (Scotland) Extracts Act 1892(1), section 32 of the Sheriff Courts (Scotland) Act 1971(2), section 1(3) of the Administration of Justice (Scotland) Act 1972(3), paragraph 5 of Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973(4), section 66(7) of the Sex Discrimination Act 1975(5), section 11 of the Divorce (Scotland) Act 1976(6), section 15 of the Presumption of Death (Scotland) Act 1977(7), section 59(1) of the Adoption (Scotland) Act 1978(8), sections 97 and 102 of the Debtors (Scotland) Act 1987(9), 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 of 1971, do hereby enact and declare:

Citation and commencement

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

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

Ordinary Cause Rules

2. For Schedule 1 to the Sheriff Courts (Scotland) Act 1907(10) there shall be substituted the Schedule in Schedule 1 to this Act of Sederunt.

(1) 1892 c. 17.
(2) 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).
(3) 1972 c. 59.
(4) 1973 c. 45.
(5) 1975 c. 65.
(6) 1976 c. 39.
(7) 1977 c. 27.
(8) 1978 c. 28.
(9) 1987 c. 18.
(10) 1907 c. 51; Schedule 1 was substituted by S.I. 1983/747.

Extension of Ordinary Cause Rules to summary causes

3. In the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976(11), for paragraph 3(2) there shall be substituted the following paragraph:—

“(2) The following provisions of the Ordinary Cause Rules 1993 shall apply to a summary cause insofar as not inconsistent with those Rules:—

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|----------------------|---|
| rule 5.7 | (persons carrying on business under trading or descriptive name), |
| rule 6.1 | (service of schedule of arrestment), |
| rule 7.6 | (amendment of initial writ), |
| rule 12.2(2) | (correction of clerical errors in interlocutors), |
| rule 25.1 | (minutes of sist), |
| rule 25.2 | (minutes of transference), |
| rule 26.3 | (remit from Court of Session), |
| rule 28.2 | (applications for commission and diligence for recovery of documents or for orders under section 1 of the Act of 1972), |
| rule 28.14 | (letters of request), |
| rule 29.3 | (evidence generally), |
| rule 29.17 | (proof to be taken continuously), |
| rule 29.19 | (incidental appeal against rulings on confidentiality of evidence and production of documents), |
| rule 30.2 | (taxes on money under control of the court), |
| rule 30.9 | (service of charge where address of defender not known), |
| rule 33.7 | (warrants and forms for intimation in family actions), |
| rules 34.5 to 34.9 | (removing), |
| rules 36.14 to 36.17 | (management of damages payable to persons under legal disability), |
| Chapter 38 | (European Court).”. |

Extension of Ordinary Cause Rules to small claims

4. In the Act of Sederunt (Small Claims Rules) 1988(12), for Appendix 2 there shall be substituted the following appendix:—

(11) S.I. 1976/476; paragraph 3(2) was substituted by S.I. 1983/747 and amended by S.I. 1986/1966, 1989/436 and 1990/661.

(12) S.I. 1988/1976; Appendix 2 was amended by S.I. 1990/661.

“APPENDIX 2

| | |
|----------------------|--|
| rule 5.7 | (persons carrying on business under trading or descriptive name), |
| rule 6.1 | (service of schedule of arrestment), |
| rule 12.2(2) | (correction of clerical errors in interlocutors), |
| rule 25.1 | (minutes of sist), |
| rule 25.2 | (minutes of transference), |
| rule 28.14 | (letters of request), |
| rule 30.2 | (taxes on money under control of the court), |
| rule 30.9 | (service of charge where address of defender not known), |
| rules 36.14 to 36.17 | (management of damages payable to persons under legal disability), |
| Chapter 38 | (European Court).” |

Revocations and repeal

5. The enactments specified in column 2 of Schedule 2 to this Act of Sederunt shall be revoked or repealed, as the case may be, to the extent specified in column 3 of that Schedule.

Savings for causes already commenced

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

Edinburgh,
29th July 1993

J.A.D. Hope
Lord President, IPD

SCHEDULE 1

Paragraph 2

“FIRST SCHEDULE

ORDINARY CAUSE RULES 1993

Initiation and progress of causes

CHAPTER 1

CITATION, INTERPRETATION, REPRESENTATION AND FORMS

Citation

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

Interpretation

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

“document” has the meaning assigned to it in section 9 of the Civil Evidence (Scotland) Act 1988(13);

“period of notice” means the period determined under rule 3.6 (period of notice after citation).

(2) For the purposes of these Rules—

(a) “affidavit” includes an affirmation and a statutory or other declaration; and

(b) an affidavit shall be sworn or affirmed before a notary public or any other competent authority.

(3) Where a provision in these Rules requires a party to intimate or send a document to another party, it shall be sufficient compliance with that provision if the document is intimated or sent to the solicitor acting in the cause for that party.

(4) Unless the context otherwise requires, anything done or required to be done under a provision in these Rules by a party may be done by the agent for that party acting on his behalf.

(5) Unless the context otherwise requires, a reference to a specified Chapter, Part, rule or form, is a reference to the Chapter, Part, rule or form in Appendix 1, so specified in these Rules; and a reference to a specified paragraph, sub-paragraph or head is a reference to that paragraph of the rule or form, that sub-paragraph of that paragraph or that head of that sub-paragraph, in which the reference occurs.

Representation

1.3.—(1) Subject to paragraph (2), a party to any proceedings arising solely under the provisions of the Debtors (Scotland) Act 1987(14) shall be entitled to be represented by a person other than a solicitor or an advocate provided that the sheriff is satisfied that such person is a suitable representative and is duly authorised to represent that party.

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

(13) 1988 c. 32.
(14) 1987 c. 18.

Forms

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

CHAPTER 2

RELIEF FROM COMPLIANCE WITH RULES

Relief from failure to comply with rules

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

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

CHAPTER 3

COMMENCEMENT OF CAUSES

Form of initial writ

3.1.—(1) An ordinary cause shall be commenced by initial writ in Form G1.

(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 cause 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 condescence 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 condescence 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.

Actions relating to heritable property

3.2.—(1) In an action relating to heritable property, it shall not be necessary to call as a defender any person by reason only of any interest he may have as the holder of a heritable security over the heritable property.

(2) Intimation of such an action shall be made to the holder of the heritable security referred to in paragraph (1)—

- (a) where the action relates to any heritable right or title; and
- (b) in any other case, where the sheriff so orders.

Warrants of citation

3.3.—(1) The warrant of citation in any cause other than—

- (a) a family action within the meaning of rule 33.1(1),
- (b) an action of multiplepounding,
- (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender,

shall be in Form 01.

(2) In a cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for the defender, the warrant of citation shall be in Form 02.

(3) In a cause in which a warrant of citation in accordance with Form 02 is appropriate, there shall be served on the defender (with the initial writ and warrant) a notice in Form 03.

Warrants for arrestment to found jurisdiction

3.4.—(1) Where an application for a warrant for arrestment to found jurisdiction may be made, it shall be made in the crave of the initial writ.

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

Warrants and precepts for arrestment on dependence

3.5.—(1) A copy of—

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

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

(2) A precept of arrestment may be issued by the sheriff clerk on production to him of—

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

Period of notice after citation

3.6.—(1) Subject to rule 5.6(1) (service where address of person is not known) and to paragraph (2) of this rule, a cause shall proceed after one of the following periods of notice has been given to the defender:—

- (a) where the defender is resident or has a place of business within Europe, 21 days after the date of execution of service; or

- (b) where the defender is resident or has a place of business outside Europe, 42 days after the date of execution of service.
- (2) Subject to paragraph (3), the sheriff may, on cause shown, shorten or extend the period of notice on such conditions as to the method or manner of service as he thinks fit.
- (3) A period of notice may not be reduced to a period of less than 2 days.
- (4) Where a period of notice expires on a Saturday, Sunday, or public or court holiday, the period of notice shall be deemed to expire on the next day on which the sheriff clerk's office is open for civil court business.

CHAPTER 4

CAVEATS

Orders against which caveats may be lodged

- 4.1. A person may lodge a caveat against—
 - (a) an interim interdict sought in an action before he has lodged a notice of intention to defend; or
 - (b) an interim order (other than an order under section 1 of the Administration of Justice (Scotland) Act 1972(15) (orders for inspection of documents and other property, etc.)) sought before the expiry of the period within which he could lodge a notice of intention to defend.

Form lodging and renewal of caveats

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

CHAPTER 5

CITATION, SERVICE AND INTIMATION

Signature of warrants

- 5.1.—(1) Subject to paragraph (2), a warrant for citation, intimation or arrestment on the dependence may be signed by the sheriff or sheriff clerk.
- (2) The following warrants shall be signed by the sheriff:—
 - (a) a warrant containing an order shortening or extending the period of notice or any other order other than a warrant which the sheriff clerk may sign;

- (b) a warrant for arrestment on the dependence in a family action within the meaning of rule 33.1(1) in respect of a claim to which section 19 of the Family Law (Scotland) Act 1985(16) (arrestment in action for aliment or claim for financial provision) applies; and
- (c) a warrant for intimation ordered under rule 33.8 (intimation where improper association).

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

Form of citation and certificate

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

- (a) a family action within the meaning of rule 33.1(1),
- (b) an action of multiplepinding, or
- (c) an action in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender,

citation by any person shall be in Form O4 which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.

(2) In a cause in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the defender, citation shall be in Form O5 which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of intention to defend in Form O7.

(3) The certificate of citation in any cause other than a family action within the meaning of rule 33.1(1) or an action of multiplepinding shall be in Form O6 which shall be attached to the initial writ.

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

(5) Where citation is by a sheriff officer, the certificate of citation shall be signed by the sheriff officer and the witness and shall state—

- (a) the method of citation; and
- (b) where the method of citation was other than personal or postal citation, the full name and designation of any person to whom the citation was delivered.

(6) Where citation is executed under paragraph 3 of rule 5.4 (depositing or affixing by sheriff officer), the certificate shall include a statement—

- (a) of the method of service previously attempted;
- (b) of the circumstances which prevented such service being executed; and
- (c) that a copy was sent in accordance with the provisions of paragraph (4) of that rule.

Postal service or intimation

5.3.—(1) In any cause in which service or intimation of any document or citation of any person may be by recorded delivery, such service, intimation or citation shall be by the first class recorded delivery service.

(2) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882(17) (time from which period of notice reckoned), where service or intimation is by post, the period of notice shall run from the beginning of the day after the date of posting.

(3) On the face of the envelope used for postal service or intimation under this rule there shall be written or printed the following notice:—

“This envelope contains a citation to or intimation from (specify the court). If delivery cannot be made at the address shown it is to be returned immediately to :— The Sheriff Clerk (insert address of sheriff clerk’s office).”.

(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

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

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

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

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

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

(4) Subject to rule 6.1 (service of schedule of arrestment), where service is executed under paragraph (3), the sheriff officer shall, as soon as possible after such service, send a letter containing a copy of the document by ordinary first class post to the address at which he thinks it most likely that the person on whom service has been executed may be found.

Service on persons furth of Scotland

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

- (a) at a known residence or place of business in England, Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—
 - (i) in accordance with the rules for personal service under the domestic law of the place in which service is to be executed; or
 - (ii) by posting in Scotland a copy of the document in question in a registered letter addressed to the person at his residence or place of business;
- (b) in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965(18) or the Convention in Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982(19)—

- (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 Foreign Office;
 - (iii) by or through a British Consular Office in the country where service is to be executed at the request of the Foreign Office;
 - (iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered 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.
- (2) Any document which requires to be posted in Scotland for the purposes of this rule shall be posted by a solicitor or a sheriff officer; and on the face of the envelope there shall be written or printed the notice set out in rule 5.3(3).
- (3) In the case of service by a method referred to in paragraph (1)(b)(ii) and (iii), the pursuer shall—
- (a) send a copy of the writ and warrant of service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and
 - (b) lodge in process a certificate signed by the authority which executed service stating that it has been, and the manner in which it was, served.
- (4) In the case of service by a method referred to in paragraph (1)(b)(v), the pursuer or the sheriff officer, shall—
- (a) send a copy of the writ and warrant for service with citation attached, or other document, as the case may be, with a request for service by the method indicated in the request to the official in the country in which service is to be executed; and
 - (b) lodge in process a certificate of the official who executed service stating that it has been, and the manner in which it was, served.
- (5) Where service is executed in accordance with paragraph (1)(a)(i) or (1)(b)(i) other than on another party in the United Kingdom, the Isle of Man or the Channel Islands, the party executing service shall lodge a certificate by a person who is conversant with the law of the country concerned and who practises or has practised law in that country or is a duly accredited representative of the Government of that country, stating that the method of service employed is in accordance with the law of the place where service was executed.
- (6) Every writ, document, citation or notice on the face of the envelope mentioned in rule 5.3(3) shall be accompanied by a translation in an official language of the country in which service is to be executed unless English is an official language of that country.
- (7) A translation referred to in paragraph (6) shall be certified as correct by the person making it; and the certificate shall—

(18) Cmnd. 3986 (1969).

(19) 1982 c. 27; Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1(3).

- (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

5.6.—(1) Where the address of a person to be cited or served with a document is not known and cannot reasonably be ascertained, the sheriff shall grant warrant for citation or service upon that person—

- (a) by the publication of an advertisement in Form G3 in a specified newspaper circulating in the area of the last known address of that person, or
- (b) by displaying on the walls of court a copy of the instance and crave of the initial writ, the warrant of citation and a notice in Form G4;

and the period of notice fixed by the sheriff shall run from the date of publication of the advertisement or display on the walls of court, as the case may be.

(2) Where service requires to be executed under paragraph (1), the pursuer shall lodge a service copy of the initial writ and a copy of any warrant of citation with the sheriff clerk from whom they may be uplifted by the person for whom they are intended.

(3) Where a person has been cited or served in accordance with paragraph (1) and, after the cause has commenced, his address becomes known, the sheriff may allow the initial writ to be amended subject to such conditions as to re-service, intimation, expenses or transfer of the cause as he thinks fit.

(4) Where advertisement in a newspaper is required for the purpose of citation or service under this rule, a copy of the newspaper containing the advertisement shall be lodged with the sheriff clerk by the pursuer.

(5) Where display on the walls of court is required under paragraph (1)(b), the pursuer shall supply to the sheriff clerk for that purpose a certified copy of the instance and crave of the initial writ and any warrant of citation.

Persons carrying on business under trading or descriptive name

5.7.—(1) A person carrying on a business under a trading or descriptive name may sue or be sued in such trading or descriptive name alone; and an extract—

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

shall be a valid warrant for diligence against such person.

(2) An initial writ, decree, charge, warrant or any other order or writ following upon such initial writ or decree in a cause in which a person carrying on business under a trading or descriptive name sues or is sued in that name shall be served—

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

Endorsation unnecessary

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

Re-service

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

No objection to regularity of citation, service or intimation

5.10.—(1) A person who appears in a cause shall not be entitled to state any objection to the regularity of the execution of citation, service or intimation on him; and his appearance shall remedy any defect in such citation, service or intimation.

(2) Nothing in paragraph (1) shall preclude a party from pleading that the court has no jurisdiction.

CHAPTER 6 ARRESTMENT

Service of schedule of arrestment

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

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

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

Arrestment on dependence before service

6.2.—(1) An arrestment on the dependence of a cause used before service shall cease to have effect unless—

- (a) the initial writ is served within 20 days from the date of arrestment; and
- (b) in the case of an undefended cause, decree in absence has been pronounced within 20 days after the expiry of the period of notice.

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

Movement of arrested property

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

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

CHAPTER 7

UNDEFENDED CAUSES

Application of this Chapter

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

Minute for granting of decree without attendance

7.2.—(1) Subject to the following paragraphs, where the defender—

- (a) does not lodge a notice of intention to defend,
- (b) does not lodge an application for a time to pay direction under the Debtors (Scotland) Act 1987⁽²⁰⁾,
- (c) has lodged such an application for a time to pay direction and the pursuer does not object to the application or to any recall or restriction of an arrestment sought in the application,

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

(2) The sheriff shall not grant decree under paragraph (1)—

- (a) unless it appears *ex facie* of the initial writ that a ground of jurisdiction exists under the Civil Jurisdiction and Judgments Act 1982⁽²¹⁾ where that Act applies; and
- (b) the cause is not a cause—
 - (i) in which decree may not be granted without evidence;
 - (ii) to which paragraph (4) applies; or
 - (iii) to which rule 33.31 (procedure in undefended family action for parental rights) applies.

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

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

(20) 1987 c. 18.
(21) 1982 c. 27.

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

(4) Where an initial writ has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Exta-Judicial Documents in Civil and Commercial Matters dated 15th November 1965⁽²²⁾ applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of Article 15 of that Convention have been complied with.

Applications for time to pay directions in undefended causes

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

(2) A defender in a cause which is otherwise undefended, who wishes to apply for a time to pay direction, and where appropriate, to have an arrestment recalled or restricted, shall complete and lodge with the sheriff clerk the appropriate part of Form O3 before the expiry of the period of notice.

(3) Where the pursuer does not object to the application of the defender made in accordance with paragraph (2), he shall minute for decree in accordance with rule 7.2; and the sheriff may grant decree or other order in terms of the application and minute.

(4) Where the pursuer objects to the application of the defender made in accordance with paragraph (2), he shall minute for decree in accordance with rule 7.2; and the sheriff clerk shall thereafter fix a hearing on the application of the defender and intimate the hearing to the pursuer and defender.

(5) The sheriff may determine an application in which a hearing has been fixed under paragraph (4) whether or not any of the parties appear.

Decree for expenses

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

Finality of decree in absence

7.5. Subject to section 9(7) of the Land Tenure Reform (Scotland) Act 1974⁽²³⁾ (decree in action of removing for breach of condition of long lease to be final when extract recorded in Register of Sasines), a decree in absence which has not been recalled or brought under review by suspension or by reduction shall become final and shall have effect as a decree in foro contentioso—

- (a) on the expiry of six months from the date of the decree or from the date of a charge made under it, where the service of the initial writ or of the charge has been personal; and
- (b) in any event, on the expiry of 20 years from the date of the decree.

Amendment of initial writ

7.6.—(1) In an undefended cause, the sheriff may—

- (a) allow the pursuer to amend the initial writ in any way permitted by rule 18.2 (powers of sheriff to allow amendment); and

(22) Cmnd. 3986 (1969).
(23) 1974 c. 38.

- (b) order the amended initial writ to be re-served on the defender on such period of notice as he thinks fit.
- (2) The defender shall not be liable for the expense occasioned by any such amendment unless the sheriff so orders.
- (3) Where an amendment has been allowed under paragraph (1), the amendment—
 - (a) shall not validate diligence used on the dependence of a cause so as to prejudice the rights of creditors, of the party against whom the diligence has been executed, who are interested in defeating such diligence; and
 - (b) shall preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.

CHAPTER 8

REPONING

Reponing

8.1.—(1) In any cause other than—

- (a) a cause mentioned in rule 33.1(1)(a) to (h) (certain family actions), or
- (b) a cause to which Chapter 37 (causes under the Presumption of death (Scotland) Act 1977) applies,

the defender may apply to be reponed by lodging with the sheriff clerk, before implement in full of a decree in absence, a reponing note setting out his proposed defence and explaining his failure to appear.

(2) A copy of the note lodged under paragraph (1) shall be served on the pursuer.

(3) The sheriff may, on considering the reponing note, recall the decree so far as not implemented subject to such order as to expenses as he thinks fit; and the cause shall thereafter proceed as if the defender had lodged a notice of intention to defend and the period of notice had expired on the date on which the decree in absence was recalled.

(4) A reponing note, when duly lodged with the sheriff clerk and served upon the pursuer, shall have effect to sist diligence.

(5) Any interlocutor or order recalling, or incidental to the recall of, a decree in absence shall be final and not subject to appeal.

CHAPTER 9

STANDARD PROCEDURE IN DEFENDED CAUSES

Notice of intention to defend

9.1.—(1) Subject to rules 33.34 (notice of intention to defend and defences in family action) and 35.8 (lodging of notice of appearance in action of multiplepinding), where the defender intends to—

- (a) challenge the jurisdiction of the court,
- (b) state a defence, or

- (c) make a counterclaim,

he shall, before the expiry of the period of notice, lodge with the sheriff clerk a notice of intention to defend in Form O7.

(2) The lodging of a notice of intention to defend shall not imply acceptance of the jurisdiction of the court.

Fixing date for Options Hearing

9.2.—(1) On the lodging of a notice of intention to defend, the sheriff clerk shall fix a date and time for an Options Hearing which date shall be on the first suitable court day occurring not sooner than 10 weeks after the expiry of the period of notice.

(2) On fixing the date for the Options Hearing, the sheriff clerk shall—

- (a) forthwith intimate to the parties in Form G5—

- (i) the last date for lodging defences;
- (ii) the last date for adjustment; and
- (iii) the date of the Options hearing; and

- (b) prepare and sign an interlocutor recording those dates.

(3) The fixing of the date for the Options Hearing shall not affect the right of parties to make any incidental application to the court.

Return of initial writ

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

Lodging of pleadings before Options Hearing

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

Process folder

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

- (a) interlocutor sheets;
- (b) duplicate interlocutor sheets;
- (c) a production file;
- (d) a motion file; and
- (e) an inventory of process.

(2) Any production or part of process lodged in a cause shall be placed in the process folder.

Defences

9.6.—(1) Where a notice of intention to defend has been lodged, the defender shall lodge defences within 14 days after the expiry of the period of notice.

(2) Subject to rule 19.1(3) (form of defences where counterclaim included), defences shall be in the form of answers in numbered paragraphs corresponding to the articles of the condescence and shall have appended a note of the pleas-in-law of the defender.

Implied admissions

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

Adjustment of pleadings

9.8.—(1) Parties may adjust their pleadings until 14 days before the date of the Options Hearing or any continuation of it.

(2) Any adjustments shall be exchanged between parties and not lodged in process.

(3) Parties shall be responsible for maintaining a record of adjustments made during the period for adjustment.

(4) No adjustments shall be permitted after the period mentioned in paragraph (1) except with leave of the sheriff.

Effect of sist on adjustment

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

(2) On recall of the sist of a cause, the sheriff clerk shall—

- (a) fix a new date for the Options Hearing;
- (b) prepare and sign an interlocutor recording that date; and
- (c) intimate that date to each party.

Open record

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

Record for Options Hearing

9.11.—(1) The pursuer shall, at the end of the period for adjustment referred to in rule 9.8(1) and before the Options Hearing, make a copy of the pleadings and any adjustments and amendments in the form of a record.

(2) Not later than 2 days before the Options Hearing, the pursuer shall lodge a certified copy of the record in process.

Options Hearing

9.12.—(1) At the Options Hearing the sheriff shall seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).

(2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.

(3) At the Options Hearing the sheriff shall, except where the cause is ordered to proceed under the procedure in Chapter 10 (additional procedure), close the record and—

- (a) appoint the cause to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit;
- (b) after having heard parties and considered any note lodged under rule 22.1 (note of basis of preliminary plea), appoint the cause to a proof before answer and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit; or
- (c) after having heard parties and considered any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of law which justifies a debate.

(4) At the Options Hearing the sheriff may, having heard parties—

- (a) of his own motion or on the motion of any party, and
- (b) on being satisfied that the difficulty or complexity of the cause makes it unsuitable for the procedure under this Chapter,

order that the cause proceed under the procedure in Chapter 10 (additional procedure).

(5) The sheriff may, on cause shown, of his motion or on the motion of any party, allow a continuation of the Options Hearing on one occasion only for a period not exceeding 28 days or to the first suitable court day thereafter.

(6) On closing the record—

- (a) where there are no adjustments made since the lodging of the record under rule 9.11. (2), that record shall become the closed record; and
- (b) where there are such adjustments, the sheriff may order that a closed record including such adjustments be lodged within 7 days after the date of the interlocutor closing the record.

(7) For the purposes of rules 16.2 (decrees where party in default) and 33.37 (decree by default in family action), an Options Hearing shall be a diet in accordance with those rules.

Inspection and recovery of documents

9.13.—(1) Each party shall, within 14 days after the date of the interlocutor allowing proof or proof before answer, intimate to every other party a list of the documents, which are or have been in his possession or control which he intends to use or put in evidence at the proof, including the whereabouts of those documents.

(2) A party who has received a list of documents from another party under paragraph (1) may inspect those documents which are in the possession or control of the party intimating the list at a time and place fixed by that party which is reasonable to both parties.

(3) A party who seeks to use or put in evidence at a proof a document not on his list intimated under paragraph (1) shall, if any other party objects to such document being used or put in evidence, seek leave of the sheriff to do so; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(4) Nothing in this rule shall affect—

- (a) the law relating, or the right of a party to object, to the inspection of a document on the ground of privilege or confidentiality; or

- (b) the right of a party to apply under rule 28.2 for a commission and diligence for recovery of documents or an order under section 1 of the Administration of Justice (Scotland) Act 1972⁽²⁴⁾

Exchange of lists of witnesses

9.14.—(1) Within 14 days after the date of the interlocutor allowing a proof or proof before answer, each party shall intimate to every other party a list of witnesses, including any skilled witnesses, whom he intends to call to give evidence.

(2) A party who seeks to call as a witness a person not on his list intimated under paragraph (1) shall, if any other party objects to such a witness being called, seek leave of the sheriff to call that person as a witness; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.

(3) The list of witnesses intimated under paragraph (1) shall include the name, occupation (where known) and address of each intended witness.

Applications for time to pay directions

9.15. An application for a time to pay direction under section 1(1) of the Debtors (Scotland) Act 1987⁽²⁵⁾ or for the recall or restriction of an arrestment under section 2(3) or 3(1) of that Act in a cause which is defended shall be made by motion lodged before the sheriff grants decree.

CHAPTER 10

ADDITIONAL PROCEDURE

Additional period for adjustment

10.1.—(1) Where, under rule 9.12(4) (order at Options Hearing to proceed under Chapter 10), the sheriff orders that a cause shall proceed in accordance with the procedure in this Chapter, he shall continue the cause for adjustment for a period of 8 weeks.

(2) Paragraphs (2) and (3) of rule 9.8 (exchange and record of adjustments) shall apply to a cause in which a period for adjustment under paragraph (1) of this rule has been allowed as they apply to the period for adjustment under that rule.

Effect of sist on adjustment period

10.2. Where a cause has been sisted, any period for adjustment before the sist shall be reckoned as part of the period for adjustment.

Variation of adjustment period

10.3.—(1) At any time before the expiry of the period for adjustment the sheriff may close the record if parties, of consent or jointly, lodge a motion seeking such an order.

(2) The sheriff may, if satisfied that there is sufficient reason for doing so, extend the period for adjustment for such period as he thinks fit, if any party—

(24) 1972 c. 59; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73); section 19 and Schedule 2, paragraph 15.

(25) 1987 c. 18.

- (a) lodges a motion seeking such an order; and
 - (b) lodges a copy of the record adjusted to the date of lodging of the motion.
- (3) A motion lodged under paragraph (2) shall set out—
- (a) the reasons for seeking an extension of the period for adjustment; and
 - (b) the period for adjustment sought.

Order for open record

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

Closing record

10.5.—(1) On the expiry of the period for adjustment, the record shall be closed and, without the attendance of parties, the sheriff clerk shall forthwith—

- (a) prepare and sign an interlocutor recording the closing of the record and fixing the date of the Procedural Hearing under rule 10.6, which date shall be on the first suitable court day occurring not sooner than 21 days after the closing of the record; and
 - (b) intimate the date of the hearing to each party.
- (2) The pursuer shall, within 14 days after the date of the interlocutor closing the record, lodge a certified copy of the closed record in process.
- (3) The closed record shall contain only the pleadings of the parties.

Procedural Hearing

10.6.—(1) At the Procedural Hearing, the sheriff shall seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).

(2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.

- (3) At the Procedural Hearing the sheriff shall—
- (a) appoint the cause to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit;
 - (b) after having heard the parties and considered any note lodged under rule 22.1 (note of basis of preliminary plea), appoint the cause to a proof before answer and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit; or
 - (c) after having heard the parties and considered any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of law which justifies a debate.
- (4) For the purposes of rule 33.37 (decree by default in family action), a Procedural Hearing shall be a diet in accordance with that rule.

CHAPTER 11

THE PROCESS

Form and lodging of parts of process

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

Custody of process

11.2.—(1) The initial writ, and all other parts of process lodged in a cause, shall be placed by the sheriff clerk in the process folder.

(2) The initial writ, interlocutor sheets, borrowing receipts and the process folder shall remain in the custody of the sheriff clerk.

(3) The sheriff clerk, may on cause shown, authorise the initial writ to be borrowed by the pursuer, his solicitor or the solicitor's authorised clerk.

Borrowing and returning of process

11.3.—(1) Subject to paragraph (3), a process, or any part of a process which may be borrowed, may be borrowed only by a solicitor or by his authorised clerk.

(2) All remedies competent to enforce the return of a borrowed process may proceed on the warrant of the court from the custody of which the process was obtained.

(3) A party litigant—

(a) may borrow a process only—

(i) with leave of the sheriff; and

(ii) subject to such conditions as the sheriff may impose; or

(b) may inspect a process and obtain copies, where practicable, from the sheriff clerk.

(4) The sheriff may, on the motion of any party, ordain any other party who has borrowed a part of process to return it within such time as the sheriff thinks fit.

Failure to return parts of process

11.4.—(1) Where a solicitor or party litigant has borrowed any part of process and fails to return it for any diet or hearing at which it is required, the sheriff may impose on such solicitor or party litigant a fine not exceeding £50, which shall be payable to the sheriff clerk; but an order imposing a fine may, on cause shown, be recalled by the sheriff.

(2) An order made under this rule shall not be subject to appeal.

Replacement of lost documents

11.5. Where any part of process is lost or destroyed, a copy of it, authenticated in such manner as the sheriff thinks fit, may be substituted for and shall, for the purposes of the cause to which the process relates, be treated as having the same force and effect as the original.

Intimation of parts of process and adjustments

11.6.—(1) After a notice of intention to defend has been lodged, any party lodging a part of process or making an adjustment to his pleadings shall intimate such lodging or adjustment

to every other party who has entered the process by delivering to every other party a copy of each part of process or adjustment, including, where practicable, copies of any documentary production.

(2) Unless otherwise provided in these Rules, the party required to give intimation under paragraph (1) shall deliver to every other party who has entered the process a copy of the part of process or adjustment or other document, as the case may be, by—

- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
- (b) where intimation is to a party represented by a solicitor—
 - (i) personal delivery,
 - (ii) facsimile transmission,
 - (iii) first class ordinary post,
 - (iv) delivery to a document exchange,
 to that solicitor.

(3) Subject to paragraph (4), where intimation is given under—

- (a) paragraph (2)(b)(i) or (ii), it shall be deemed to have been given—
 - (i) on the day of transmission or delivery where it is given before 5.00 pm on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 pm on any day; or
- (b) paragraph (2)(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.

(4) Where intimation is given on a Saturday, Sunday or public or court holiday, it shall be deemed to have been given on the next day on which the sheriff clerk's office is open for civil court business.

Retention and disposal of parts of process by sheriff clerk

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

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

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

Uplifting of productions from process

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

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

uplift the productions from process.

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

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

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

CHAPTER 12

INTERLOCUTORS

Signature of interlocutors by sheriff clerk

12.1. In accordance with any directions given by the sheriff principal, any interlocutor other than a final interlocutor may be written and signed by the sheriff clerk and—

- (a) any interlocutor written and signed by a sheriff clerk shall be treated for all purposes as if it had been written and signed by the sheriff; and
- (b) any extract of such an interlocutor shall not be invalid by reason only of its being written and signed by a sheriff clerk.

Further provisions in relation to interlocutors

12.2.—(1) The sheriff may sign an interlocutor when furth of his sheriffdom.

(2) At any time before extract, the sheriff may correct any clerical or incidental error in an interlocutor or note attached to it.

(3) In any cause other than a family action within the meaning of rule 33.1(1) which has proceeded as undefended, the sheriff shall—

- (a) in the final interlocutor on the merits, include findings in fact and law; and
- (b) append to that interlocutor a note setting out the reasons for his decision.

(4) In any interlocutor other than an interlocutor disposing of the merits, the sheriff may, and shall when requested by a party, append a note setting out the reasons for his decision.

(5) Where the sheriff reserves his decision and gives his decision at a date later than the date of the hearing outwith the presence of the parties—

- (a) the date of the interlocutor of the sheriff shall be the date on which it is received by the sheriff clerk; and
- (b) the sheriff clerk shall—
 - (i) enter that date in the interlocutor; and

- (ii) forthwith send a copy of the interlocutor and any note attached to it free of charge to each party.

CHAPTER 13

PARTY MINUTER PROCEDURE

Person claiming title and interest to enter process as defender

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

(2) A minute under paragraph (1) shall specify—

- (a) the applicant's title and interest to enter the process; and
- (b) the grounds of the defence he proposes to state.

(3) Subject to paragraph (4), after hearing the applicant and any party, the sheriff may—

- (a) if he is satisfied that the applicant has shown title and interest to enter the process, grant the applicant leave to enter the process as a party minuter and to lodge defences; and
- (b) make such order as to expenses or otherwise as he thinks fit.

(4) Where an application under paragraph (1) is made after the closing of the record, the sheriff shall only grant leave under paragraph (3) if he is satisfied as to the reason why earlier application was not made.

Procedure following leave to enter process

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

(2) At the Options Hearing, or at any time thereafter, the sheriff may grant such decree or other order as he thinks fit.

(3) A decree or other order against the party minuter shall have effect and be extractable in the same way as a decree or other order against a defender.

CHAPTER 14

APPLICATIONS BY MINUTE

Application of this Chapter

14.1.—(1) Where an application may be made by minute, the form of the minute and the procedure to be adopted shall, unless otherwise provided in these Rules, be in accordance with this Chapter.

(2) This Chapter shall not apply to—

- (a) a minute of amendment; or
- (b) a minute of abandonment.

Form of minute

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

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

Procedure in minutes

14.3.—(1) Where the minute includes a crave seeking leave—

- (a) for a person—
 - (i) to be sisted as a party to the action,
 - (ii) to appear in the proceedings, or
- (b) for the cause to be transferred against the representatives of a party who has died or is under a legal incapacity,

the minuter may also seek leave for a date for a hearing under rule 9.12 (Options Hearing) to be fixed.

(2) Where leave is granted under paragraph (1), the sheriff clerk shall fix a date and time for a hearing under rule 9.12.

(3) For the purpose of fixing the date for the Options Hearing referred to in paragraph (1), the date of granting the minute shall be deemed to be the date of expiry of the period of notice.

(4) Where the minute includes a crave for any order including the variation or recall of an existing order or makes any application by minute, as provided in these Rules, the minuter may also seek leave for the lodging of answers within a period specified in the minute.

(5) Rules 15.2 (intimation of motions), 15.3 (opposition to motions) and 15.4 (hearing of motions) shall, with the necessary modifications, apply to the intimation of, opposition to, or hearing of, a minute as they apply to a motion.

CHAPTER 15

MOTIONS

Lodging of motions

15.1.—(1) A motion may be made—

- (a) orally with leave of the court during any hearing of a cause; or
- (b) by lodging a written motion in Form G6.

(2) Any document referred to in the motion and not already lodged in process shall, so far as practicable, be lodged with the written motion.

(3) On the lodging of a motion in accordance with paragraph (1)(b), the sheriff clerk shall fix a hearing of the motion and shall advise the party lodging the motion of the date, time and place of the hearing.

Intimation of motions

15.2.—(1) Subject to paragraph (7), the party lodging a motion in accordance with rule 15.1(1)(b) shall intimate the motion in Form G7, and a copy of any document referred to in the motion, to every other party.

(2) Unless a period of intimation of a motion is otherwise specified in these Rules, intimation under paragraph (1) shall be made not less than 7 days before the date fixed for the hearing of the motion.

(3) Subject to paragraph (4), intimation of a motion may be given by—

- (a) any of the methods of service provided for in Chapter 5 (citation, service and intimation); or
- (b) where intimation is to a party represented by a solicitor, by—
 - (i) personal delivery,
 - (ii) facsimile transmission,
 - (iii) first class ordinary post, or
 - (iv) delivery to a document exchange, to that solicitor.

(4) Subject to paragraph (5), where intimation is given—

- (a) under paragraph (3)(b)(i) or (ii), it shall be deemed to have been given—
 - (i) on the day of transmission or delivery where it is given before 5.00 pm on any day; or
 - (ii) on the day after transmission or delivery where it is given after 5.00 pm on any day; or
- (b) under paragraph 3(b)(iii) or (iv), it shall be deemed to have been given on the day after posting or delivery.

(5) Where intimation is given on a Saturday, Sunday or public or court holiday, it shall be deemed to have been given on the next day on which the sheriff clerk's office is open for civil court business.

(6) Where intimation has been given, a certificate of intimation of the motion in Form G8 shall be returned to the sheriff clerk not later than 2 days, or such other period as the sheriff has determined, before the date fixed for the hearing of that motion.

(7) The sheriff may, on cause shown, dispense with or reduce the period of intimation specified in paragraph (2) or the period specified in paragraph (6).

Opposition to motions

15.3.—(1) Where a party seeks to oppose a motion lodged under rule 15.1(1)(b), he shall—

- (a) complete a notice of opposition in Form G9;
- (b) forthwith intimate a copy of that notice to every other party; and
- (c) lodge the notice with the sheriff clerk not later than 2 days before the date fixed for the hearing of the motion.

(2) Paragraphs (3), (4) and (5) of rule 15.2 (methods and time of intimation of motions) shall apply to the intimation of opposition to a motion under paragraph (1)(b) of this rule as they apply to intimation under that rule.

(3) The sheriff may, on cause shown, dispense with or reduce the period for lodging the notice mentioned in paragraph (1)(c).

Hearing of motions

15.4.—(1) Subject to paragraph (2), where no notice $\frac{2}{3}$ of opposition is lodged, the motion shall be determined by the sheriff in chambers without the attendance of parties, unless the sheriff otherwise directs.

(2) In accordance with any directions given by the sheriff principal, the sheriff clerk may determine any motion other than a motion which seeks a final interlocutor.

(3) Where the sheriff clerk considers that a motion dealt with by him under paragraph (2) should not be granted, he shall refer that motion to the sheriff who shall deal with it in accordance with paragraph (1).

(4) Where the sheriff requires to hear a party on a motion, the sheriff clerk shall inform that party that the motion will be heard on the date fixed under rule 15.1(3).

(5) Where a notice of opposition is intimated and lodged, the motion shall be heard by the sheriff on the date fixed under rule 15.1(3).

CHAPTER 16

DECREES BY DEFAULT

Application of this Chapter

16.1. This rule applies to any cause other than—

- (a) an action to which rule 33.37 (decree by default in family action) applies;
- (b) an action of multiplepinding; or
- (c) a cause under the Presumption of Death (Scotland) Act 1977(26).

Decrees where party in default

16.2.—(1) In a cause to which this Chapter applies, where a party fails—

- (a) to lodge, or intimate the lodging of, any production or part of process within the period required under a provision in these Rules or an order of the sheriff,
- (b) to implement an order of the sheriff within a specified period, or
- (c) to appear or be represented at any diet,

that party shall be in default.

(2) Where a party is in default, the sheriff may grant decree as craved, decree of absolvitor or dismiss the cause, as the case may be, with expenses.

(3) Where no party appears at a diet, the sheriff may dismiss the cause.

(4) In this rule, “diet” includes—

- (a) a hearing under rule 9.12 (Options Hearing);
- (b) a hearing under rule 10.6 (Procedural Hearing);
- (c) a proof or proof before answer; and
- (d) a debate.

Prorogation of time where party in default

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

CHAPTER 17

SUMMARY DECREES

Application of this Chapter

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

Applications for summary decree

17.2.—(1) Subject to paragraphs (2) to (5) of this rule, a pursuer may, at any time after a defender has lodged defences, apply by motion for summary decree against that defender on the ground that there is no defence to the action, or part of it, disclosed in the defences.

- (2) In applying for summary decree, the pursuer may move the sheriff—
- (a) to grant decree in terms of all or any of the craves of the initial writ;
 - (b) to pronounce an interlocutor sustaining or repelling a plea-in-law; or
 - (c) to dispose of the whole or part of the subject-matter of the cause.

(3) The pursuer shall intimate a motion under paragraph (1) by registered post or the first class recorded delivery service to every other party not less than 14 days before the date fixed for the hearing of the motion

- (4) On a motion under paragraph (1), the sheriff may—
- (a) if satisfied that there is no defence to the action or to any part of it to which the motion relates, grant the motion for summary decree in whole or in part, as the case may be; or
 - (b) ordain any party, or a partner, director, officer or office-bearer of, any party—
 - (i) to produce any relevant document or article; or
 - (ii) to lodge an affidavit in support of any assertion of fact made in the pleadings or at the hearing of the motion.

(5) Notwithstanding the refusal of all or part of a motion for summary decree, a subsequent motion may be made where there has been a change of circumstances.

Application of summary decree to counterclaims, etc.

- 17.3.—(1)** Where a defender has lodged a counterclaim—
- (a) he may apply by motion for summary decree against the pursuer on that counterclaim on the ground that there is no defence to the counterclaim, or a part of it, disclosed in the answers to it; and

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

CHAPTER 18

AMENDMENT OF PLEADINGS

Alteration of sum sued for

18.1.—(1) In a cause in which all other parties have lodged defences or answers, the pursuer may, before the closing of the record, alter any sum sued for by amending the crave of the initial writ, the certified copy of the initial writ and any record.

(2) The pursuer shall forthwith intimate any such amendment in writing to every other party.

Powers of sheriff to allow amendment

18.2.—(1) The sheriff may, at any time before final judgment, allow an amendment mentioned in paragraph (2).

(2) Paragraph (1) applies to the following amendments:—

- (a) an amendment of the initial writ which may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that in consequence of such amendment—
 - (i) the sum sued for is increased or restricted after the closing of the record; or
 - (ii) a different remedy from that originally craved is sought;
- (b) an amendment which may be necessary—
 - (i) to correct or supplement the designation of a party to the cause;
 - (ii) to enable a party who has sued or has been sued in his own right to sue or be sued in a representative capacity;
 - (iii) to enable a party who has sued or has been sued in a representative capacity to sue or be sued in his own right or in a different representative capacity;
 - (iv) to add the name of an additional pursuer or person whose concurrence is necessary;
 - (v) where the cause has been commenced or presented in the name of the wrong person, or it is doubtful whether it has been commenced or presented in the name of the right person, to allow any other person to be sisted in substitution for, or in addition to, the original person; or
 - (vi) to direct a crave against a third party brought into an action under Chapter 20 (third party procedure);

- (c) an amendment of a condescence, defences, answers, pleas-in-law or other pleadings which may be necessary for determining the real question in controversy between the parties; and
- (d) where it appears that all parties having an interest have not been called or that the cause has been directed against the wrong person, an amendment inserting in the initial writ an additional or substitute party and directing existing or additional craves, averments and pleas-in-law against that party.

Applications to amend

18.3.—(1) A party seeking to amend shall lodge a minute of amendment in process setting out his proposed amendment and, at the same time, lodge a motion—

- (a) to allow the minute of amendment to be received; and
- (b) to allow—
 - (i) amendment in terms of the minute of amendment and, where appropriate, to grant an order under rule 18.5(1)(a) (service of amendment for additional or substitute party); or
 - (ii) where the minute of amendment may require to be answered, any other person to lodge answers within a specified period.

(2) Where the sheriff has pronounced an interlocutor allowing a minute of amendment to be received and answered, he may allow a period for adjustment of the minute of amendment and answers and, on so doing, shall fix a date for parties to be heard on the minute of amendment and answers as adjusted.

Applications for diligence on amendment

18.4.—(1) Where a minute of amendment is lodged by a pursuer under rule 18.2(2)(d) (all parties not, or wrong person, called), he may apply by motion for warrant to use any form of diligence which could be used on the dependence of a separate action.

(2) A copy certified by the sheriff clerk of the interlocutor granting warrant for diligence on the dependence applied for under paragraph (1) shall be sufficient authority for the execution of that diligence.

Service of amended pleadings

18.5.—(1) Where an amendment under rule 18.2(2)(d) (all parties not, or wrong person, called) has been made—

- (a) the sheriff shall order that a copy of the initial writ or record, as the case may be, as so amended be served by the party who made the amendment on that additional or substitute party with—
 - (i) in a cause in which a time to pay direction under the Debtors (Scotland) Act 1987(27) may be applied for, a notice in Form O8 specifying the date by which a notice of intention to defend must be lodged in process, a notice in Form O3 and a notice of intention to defend in Form O7; or
 - (ii) in any other cause, a notice in Form O9 specifying the date by which a notice of intention to defend must be lodged in process and a notice of intention to defend in Form O7; and
- (b) the party who made the amendment shall lodge in process—

- (i) a copy of the initial writ or record as amended;
- (ii) a copy of the notice sent in Form O8 or Form O9; and
- (iii) a certificate of service.

(2) When paragraph (1) has been complied with, the cause as so amended shall proceed in every respect as if that party had originally been made a party to the cause.

(3) Where a notice of intention to defend is lodged by virtue of paragraph (1)(a), the sheriff clerk shall fix a date and time for a hearing under rule 9.12 (Options Hearing).

Expenses and conditions of amendment

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

Effect of amendment on diligence

18.7. Where an amendment has been allowed, the amendment—

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

Preliminary pleas inserted on amendment

18.8.—(1) Where a party seeks to add a preliminary plea by amendment or answers to an amendment, or by adjustment thereto, a note of the basis for the plea shall be lodged at the same time as the minute, answers or adjustment, as the case may be.

(2) If a party fails to comply with paragraph (1), that party shall be deemed to be no longer insisting on the preliminary plea and the plea shall be repelled by the sheriff.

CHAPTER 19

COUNTERCLAIMS

Counterclaims

19.1.—(1) In any action other than a family action within the meaning of rule 33.1(1) or an action of multiplepinding, a defender may counterclaim against a pursuer—

- (a) where the counterclaim might have been made in a separate action in which it would not have been necessary to call as defender any person other than the pursuer; and
- (b) in respect of any matter—
 - (i) forming part, or arising out of the grounds, of the action by the pursuer;
 - (ii) the decision of which is necessary for the determination of the question in controversy between the parties; or

- (iii) which, if the pursuer had been a person not otherwise subject to the jurisdiction of the court, might have been the subject-matter of an action against that pursuer in which jurisdiction would have arisen by reconvention.
- (2) A counterclaim shall be made in the defences—
 - (a) when the defences are lodged or during the period for adjustment;
 - (b) by amendment at any other stage, with the leave of the sheriff and subject to such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.
- (3) Defences which include a counterclaim shall commence with a crave setting out the counterclaim in such form as, if the counterclaim had been made in a separate action, would have been appropriate in the initial writ in that separate action and shall include—
 - (a) answers to the condescendence of the initial writ as required by rule 9.6(2) (form of defences);
 - (b) a statement of facts in numbered paragraphs setting out the facts on which the counterclaim is founded, incorporating by reference, if necessary, any matter contained in the defences; and
 - (c) appropriate pleas-in-law.

Warrants for diligence on counterclaims

- 19.2.**—(1) A defender who makes a counterclaim may apply for a warrant for arrestment on the dependence which would have been permitted had the warrant been sought in an initial writ in a separate action.
- (2) An application for a warrant under paragraph (1) shall be made—
 - (a) at the time of making the counterclaim, by inserting before the crave of the counterclaim the words “Warrant for arrestment on the dependence applied for.”; or
 - (b) after the counterclaim has been made, for a precept of arrestment.
 - (3) An application for a warrant under paragraph (2)(a) may be granted by the sheriff clerk writing on the defences, defences as adjusted or minute of amendment, as the case may be, the words “Warrant granted as craved.” after the warrant sought, and adding his signature and the date below those words.
 - (4) A warrant granted under paragraph (3) shall have the same effect as if the warrant had been in an initial writ.

Effect of abandonment of cause

- 19.3.**—(1) The right of a pursuer to abandon a cause under rule 23.1 shall not be affected by a counterclaim; and any expenses for which the pursuer is found liable as a condition of, or in consequence of, such abandonment shall not include the expenses of the counterclaim.
- (2) Notwithstanding abandonment by the pursuer, a defender may insist in his counterclaim; and the proceedings in the counterclaim shall continue in dependence as if the counterclaim were a separate action.

Disposal of counterclaims

- 19.4.** The sheriff may—
- (a) deal with a counterclaim as if it had been stated in a separate action;
 - (b) regulate the procedure in relation to the counterclaim as he thinks fit; and

- (c) grant decree for the counterclaim in whole or in part or for the difference between it and the sum sued for by the pursuer.

CHAPTER 20

THIRD PARTY PROCEDURE

Applications for third party notice

20.1.—(1) Where, in an action, a defender claims that—

- (a) he has in respect of the subject-matter of the action a right of contribution, relief or indemnity against any person who is not a party to the action, or
- (b) a person whom the pursuer is not bound to call as a defender should be made a party to the action along with the defender in respect that such person is—
 - (i) solely liable, or jointly or jointly and severally liable with the defender, to the pursuer in respect of the subject-matter of the action, or
 - (ii) liable to the defender in respect of a claim arising from or in connection with the liability, if any, of the defender to the pursuer,

he may apply by motion for an order for service of a third party notice on that other person in Form O10 for the purpose of convening that other person as a third party to the action.

(2) Where—

- (a) a pursuer against whom a counterclaim has been made, or
- (b) a third party convened in the action,

seeks, in relation to the claim against him, to make against a person who is not a party, a claim mentioned in paragraph (1) as a claim which could be made by a defender against a third party, he shall apply by motion for an order for service of a third party notice in Form O10 in the same manner as a defender under that paragraph; and rules 20.2 to 20.7 shall, with the necessary modifications, apply to such a claim as they apply in relation to such a claim by a defender.

Averments where order for service of third party notice sought

20.2.—(1) Where a defender intends to apply by motion for an order for service of a third party notice before the closing of the record, he shall, before lodging the motion, set out in his defences, by adjustment to those defences, or in a separate statement of facts annexed to those defences—

- (a) averments setting out the grounds on which he maintains that the proposed third party is liable to him by contribution, relief or indemnity or should be made a party to the action; and
- (b) appropriate pleas-in-law.

(2) Where a defender applies by motion for an order for service of a third party notice after the closing of the record, he shall, on lodging the motion, lodge a minute of amendment containing—

- (a) averments setting out the grounds on which he maintains that the proposed third party is liable to him by contribution, relief or indemnity or should be made a party to the action, and
- (b) appropriate pleas-in-law,

unless those grounds and pleas-in-law have been set out in the defences in the closed record.

(3) A motion for an order for service of a third party notice shall be lodged before the commencement of the hearing of the merits of the cause.

Warrants for diligence on third party notice

20.3.—(1) A defender who applies for an order for service of a third party notice may apply for a warrant for arrestment to found jurisdiction or for arrestment on the dependence which would have been permitted had the warrant been sought in an initial writ in a separate action.

(2) Averments in support of the application for such a warrant shall be included in the defences or the separate statement of facts referred to in rule 20.2(1).

(3) An application for a warrant under paragraph (1) shall be made by motion—

(a) at the time of applying for the third party notice; or

(b) if not applied for at that time, at any stage of the cause thereafter.

(4) A certified copy of the interlocutor granting warrant for diligence applied for under paragraph (2) shall be sufficient authority for execution of the diligence.

Service on third party

20.4.—(1) A third party notice shall be served on the third party within 14 days after the date of the interlocutor allowing service of that notice.

(2) Where service of a third party notice has not been made within the period specified in paragraph (1), the order for service of it shall cease to have effect; and no service of the notice may be made unless a further order for service of it has been applied for and granted.

(3) There shall be served with a third party notice a copy of the pleadings (including any adjustments and amendments).

(4) A copy of the third party notice, with a certificate of service attached to it, shall be lodged in process by the defender.

Answers to third party notice

20.5.—(1) An order for service of a third party notice shall specify 28 days, or such other period as the sheriff on cause shown may specify, as the period within which the third party may lodge answers.

(2) Answers for a third party shall be headed “Answers for [E.F.], Third Party in the action at the instance of [A.B.], Pursuer against [C.D.], Defender” and shall include—

(a) answers to the averments of the defender against him in the form of numbered paragraphs corresponding to the numbered articles of the condescence in the initial writ and incorporating, if the third party so wishes, answers to the averments of the pursuer; or

(b) where a separate statement of facts has been lodged by the defender under rules 20.2(1), answers to the statement of facts in the form of numbered paragraphs corresponding to the numbered paragraphs of the statement of facts; and

(c) appropriate pleas-in-law.

Procedure following answers

20.6.—(1) Where a third party lodges answer, the sheriff clerk shall fix a date and time under rule 9.2 for a hearing under rule 9.12 (Options Hearing) as if the third party had lodged

a notice of intention to defend and the period of notice had expired on the date for lodging answers.

(2) At the Options Hearing, or at any time thereafter, the sheriff may grant such decree or other order as he thinks fit.

(3) A decree or other order against the third party shall have effect and be extractable in the same way as a decree or other order against a defender.

CHAPTER 21

DOCUMENTS FOUNDED ON OR ADOPTED IN PLEADINGS

Lodging documents founded on or adopted

21.1.—(1) Subject to any other provision in these Rules, any document founded on by a party, or adopted as incorporated, in his pleadings shall, so far as in his possession or within his control, be lodged in process as a production by him—

- (a) when founded on or adopted in an initial writ, at the time of returning the initial writ under rule 9.3;
- (b) when founded on or adopted in a minute, defences, counterclaim or answers, at the time of lodging that part of process; and
- (c) when founded on or adopted in an adjustment to any pleadings, at the time when such adjustment is intimated to any other party.

(2) Paragraph (1) shall be without prejudice to any power of the sheriff to order the production of any document or grant a commission and diligence for recovery of it.

Consequences of failure to lodge documents founded on or adopted

21.2. Where a party fails to lodge a document in accordance with rule 21.1(1), he may be found liable in the expenses of any order for production or recovery of it obtained by any other party.

Objection to documents founded on

21.3.—(1) Where a deed or writing is founded on by a party, any objection to it by any other party may be stated and maintained by exception without its being reduced.

(2) Where an objection is stated under paragraph (1) and an action of reduction would otherwise have been competent, the sheriff may order the party stating the objection to find caution or give such other security as the sheriff thinks fit.

CHAPTER 22

PRELIMINARY PLEAS

Note of basis of preliminary plea

22.1.—(1) A party intending to insist on a preliminary plea shall, not later than 3 days before the Options Hearing under rule 9.12 or the Procedural Hearing under rule 10.6—

- (a) lodge in process a note of the basis for the plea; and

(b) intimate a copy of it to every other party.

(2) If a party fails to comply with paragraph (1), he shall be deemed to be no longer insisting on the preliminary plea; and the plea shall be repelled by the sheriff at the Options Hearing or Procedural Hearing.

(3) At any proof before answer or debate, parties may raise matters in addition to those set out in the note mentioned in paragraph (1).

CHAPTER 23

ABANDONMENT

Abandonment of causes

23.1.—(1) A pursuer may abandon a cause at any time before decree of absolvitor or dismissal by lodging a minute of abandonment and—

- (a) consenting to decree of absolvitor; or
- (b) seeking decree of dismissal.

(2) The sheriff shall not grant decree of dismissal under paragraph (1)(b) unless full judicial expenses have been paid to the defender, and any third party against whom he has directed any crave, within 28 days after the date of taxation.

(3) If the pursuer fails to pay the expenses referred to in paragraph (2) to the party to whom they are due within the period specified in that paragraph, that party shall be entitled to decree of absolvitor with expenses.

Application of abandonment to counterclaims

23.2. Rule 23.1 shall, with the necessary modifications, apply to the abandonment by a defender of his counterclaim as it applies to the abandonment of a cause.

CHAPTER 24

WITHDRAWAL OF SOLICITORS

Intimation of withdrawal to court

24.1.—(1) Where a solicitor withdraws from acting on behalf of a party, he shall intimate his withdrawal by letter to the sheriff clerk and to every other party.

(2) The sheriff clerk shall lodge such letter in process.

Intimation to party whose solicitor has withdrawn

24.2.—(1) The sheriff shall, of his own motion, or on the motion of any other party, pronounce an interlocutor ordaining the party whose solicitor has withdrawn from acting to appear or be represented at a specified diet fixed by the sheriff to state whether or not he intends to proceed, under certification that if he fails to do so the sheriff may grant decree or make such other order or finding as he thinks fit.

(2) The diet fixed in the interlocutor under paragraph (1) shall not be less than 14 days after the date of the interlocutor unless the sheriff otherwise orders.

(3) The party who has lodged the motion under paragraph (1), or any other party appointed by the sheriff, shall forthwith serve on the party whose solicitor has withdrawn a copy of the interlocutor and a notice in Form G10; and a certificate of service shall be lodged in process.

Consequences of failure to intimate intention to proceed

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

CHAPTER 25

MINUTES OF SIST AND TRANSFERENCE

Minutes of sist

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

Minutes of transference

25.2.—(1) Where a party dies or comes under legal incapacity while a cause is depending and the provisions of rule 25.1 are not invoked, any other party may apply by minute to have the cause transferred in favour of or against, as the case may be, any person who represents that party or his estate.

(2) The party intimating a minute of transference on a person referred to in paragraph (1) of this rule in accordance with rule 15.2 by virtue of rule 14.3 (5) (intimation of minutes) shall at the same time intimate a copy of the pleadings (including any adjustments and amendments) to that person.

CHAPTER 26

TRANSFER AND REMIT OF CAUSES

Transfer to another sheriff court

26.1.—(1) The sheriff may, on cause shown, remit any cause to another sheriff court.

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

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

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

(a) on the motion of a party; and

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

Remit to Court of Session

26.2.—(1) The sheriff clerk shall, within four days after the sheriff has pronounced an interlocutor remitting a cause to the Court of Session, transmit the process to the Deputy Principal Clerk of Session.

(2) The sheriff clerk shall, within the period specified in paragraph (1), send written notice of the remit to each party and certify on the interlocutor sheet that he has done so.

(3) Failure by a sheriff clerk to comply with paragraph (2) shall not affect the validity of a remit made under paragraph (1).

Remit from Court of Session

26.3. On receipt of the process in an action which has been remitted from the Court of Session under section 14 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985⁽²⁸⁾, the sheriff clerk shall—

- (a) record the date of receipt on the interlocutor sheet;
- (b) fix a hearing to determine further procedure on the first suitable court day occurring not earlier than 14 days after the date of receipt of the process; and
- (c) forthwith send written notice of the date of the hearing fixed under sub-paragraph (b) to each party.

CHAPTER 27

CAUTION AND SECURITY

Application of this Chapter

27.1. This Chapter applies to—

- (a) any cause in which the sheriff has power to order a person to find caution or give other security; and
- (b) security for expenses ordered to be given by the election court or the sheriff under section 136(2)(i) of the Representation of the People Act 1983⁽²⁹⁾ in an election petition.

⁽²⁸⁾ 1985 c. 73.

⁽²⁹⁾ 1983 c. 2; section 136 was amended by the Representation of the People Act 1985 (c. 50), Schedule 4, paragraph 48.

Form of applications

27.2.—(1) An application for an order for caution or other security, or for variation or recall of such an order, shall be made by motion.

(2) The grounds on which such an application is made shall be set out in the motion.

Orders

27.3. Subject to section 726(2) of the Companies Act 1985⁽³⁰⁾ (expenses by certain limited companies), an order to find caution or give other security shall specify the period within which such caution is to be found or such security given.

Methods of finding caution or giving security

27.4.—(1) A person ordered—

(a) to find caution, shall do so by obtaining a bond of caution; or

(b) to consign a sum of money into court, shall do so by consignment under the Sheriff Court Consignations (Scotland) Act 1893⁽³¹⁾ in the name of the sheriff clerk.

(2) The sheriff may approve a method of security other than one mentioned in paragraph (1), including a combination of two or more methods of security.

(3) Subject to paragraph (4), any document by which an order to find caution or give other security is satisfied shall be lodged in process.

(4) Where the sheriff approves a security in the form of a deposit of a sum of money in the joint names of the agents of parties, a copy of the deposit receipt, and not the principal, shall be lodged in process.

(5) Any document lodged in process, by which an order to find caution or give other security is satisfied, shall not be borrowed from process.

Cautioners and quarantors

27.5. A bond of caution or other security obtained from an insurance company shall be given only by a company authorised under section 3 or 4 of the Insurance Companies Act 1982⁽³²⁾ to carry on insurance business of class 15(b) in Schedule 2 to that Act.

Forms of bonds of caution and other securities

27.6.—(1) A bond of caution shall oblige the cautioner, his heirs and executors to make payment of the sums for which he has become cautioner to the party to whom he is bound, as validity and in the same manner as the party and his heirs and successors, for whom he is cautioner, are obliged.

(2) A bond of caution or other security document given by an insurance company shall state whether the company is authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on insurance business of class 15(b) in Schedule 2 to that Act.

Sufficiency of caution or security and objections

27.7.—(1) The sheriff clerk shall satisfy himself that any bond of caution, or other document lodged in process under rule 27.4(3), is in proper form.

⁽³⁰⁾ 1985 c. 6.
⁽³¹⁾ 1893 c. 44.
⁽³²⁾ 1982 c. 50.

(2) A party who is dissatisfied with the sufficiency or form of the caution or other security offered in obedience to an order of the court may apply by motion for an order under rule 27.9 (failure to find caution or give security).

Insolvency or death of cautioner or guarantor

27.8. Where caution has been found by bond of caution or security has been given by guarantee and the cautioner or guarantor, as the case may be—

- (a) becomes apparently insolvent within the meaning assigned by section 7 of the Bankruptcy (Scotland) Act 1985⁽³³⁾ (constitution of apparent insolvency),
 - (b) calls a meeting of his creditors to consider the state of his affairs,
 - (c) dies unrepresented, or
 - (d) is a company and—
 - (i) an administration or winding up order has been made, or a resolution for a voluntary winding up has been passed, with respect to it,
 - (ii) a receiver of all or any part of its undertaking has been appointed, or
 - (iii) a voluntary arrangement (within the meaning assigned by section 1(1) of the Insolvency Act 1986⁽³⁴⁾) has been approved under Part I of that Act,
- the party entitled to benefit from the caution or guarantee may apply by motion for a new security or further security to be given.

Failure to find caution or give security

27.9. Where a party fails to find caution or give other security (in this rule referred to as “the party in default”), any other party may apply by motion—

- (a) where the party in default is a pursuer, for decree of absolvitor; or
- (b) where the party in default is a defender or a third party, for decree by default or for such other finding or order as the sheriff thinks fit.

CHAPTER 28

RECOVERY OF EVIDENCE

Application and interpretation of this Chapter

28.1.—(1) This Chapter applies to the recovery of any evidence in a cause depending before the sheriff.

(2) In this Chapter, “the Act of 1972” means the Administration of Justice (Scotland) Act 1972⁽³⁵⁾.

Applications for commission and diligence for recovery of documents or for orders under section 1 of the Act of 1972

28.2.—(1) An application by a party for—

- (a) a commission and diligence for the recovery of a document, or

(33) 1985 c. 66.
 (34) 1986 c. 65.
 (35) 1972 c. 59.

(b) an order under section 1 of the Act of 1972⁽³⁶⁾,
shall be made by motion.

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

(a) the document or other property sought to be inspected, photographed, preserved, taken into custody, detained, produced, recovered, sampled or experimented on or with, as the case may be, or

(b) the matter in respect of which information is sought as to the identity of a person who might be a witness or a defender,

shall be lodged in process.

(3) A copy of the specification lodged under paragraph (2) and intimation of the motion made under paragraph (1) shall be sent by the applicant to every other party, any third party haver and, where necessary, the Lord Advocate.

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

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

Optional procedure before executing commission and diligence

28.3.

(1) The party who has obtained a commission and diligence for the recovery of a document on an application made under rule 28.2(1)(a), may at any time before executing it against a haver, serve on the haver an order in Form G11 (in this rule referred to as “the order”); and if so, the provisions of this rule shall apply.

(2) The order shall be served on the haver or his known solicitor and shall be complied with by the haver in the manner and within the period specified in the order.

(3) Not later than the day after the date on which the order, a certificate in Form G12 and any document is received by the sheriff clerk from a haver, he shall intimate that fact to each party.

(4) No party, other than the party who served the order, may uplift such a document until after the expiry of 7 days after the date of intimation under paragraph (3).

(5) Where the party who served the order fails to uplift such a document within 7 days after the date of intimation under paragraph (3), the sheriff clerk shall intimate that failure to every other party.

(6) Where no party has uplifted such a document within 14 days after the date of intimation under paragraph (5), the sheriff clerk shall return it to the haver who delivered it to him.

(7) Where a party who has uplifted such a document does not wish to lodge it, he shall return it to the sheriff clerk who shall—

(a) intimate the return of the document to every other party; and

(b) if no other party uplifts the document within 14 days after the date of intimation, return it to the haver.

(8) If the party who served the order is not satisfied—

(a) that full compliance has been made with the order, or

(b) that adequate reasons for non-compliance have been given,

he may execute the commission and diligence under rule 28.4.

(36) Section 1 of the Administration of Justice (Scotland) Act 1972 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 19 and Schedule 2, paragraph 15.

(9) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the sheriff may, on the motion of the party who served the order, direct that that party shall be allowed to inspect the book and take copies of any entries falling within the specification.

(10) Where any question of confidentiality arises in relation to a book directed to be inspected under paragraph (9), the inspection shall be made, and any copies shall be taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence.

(11) The sheriff may, on cause shown, order the production of any book (not being a banker's book or book of public record) containing entries falling under a specification, notwithstanding the production of a certified extract.

Execution of commission and diligence for recovery of documents

28.4.—(1) The party who seeks to execute a commission and diligence for recovery of a document obtained on an application made under rule 28.2(1)(a) shall—

- (a) provide the commissioner with a copy of the specification, a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment; and
- (b) instruct the clerk and any shorthand writer considered necessary by the commissioner or any party; and
- (c) be responsible for the fees of the commissioner and his clerk, and of any shorthand writer.

(2) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission.

(3) The interlocutor granting such a commission and diligence shall be sufficient authority for citing a haver to appear before the commissioner.

(4) A citation in Form G13 shall be served on the haver with a copy of the specification and, where necessary for a proper understanding of the specification, a copy of the pleadings (including any adjustments and amendments).

(5) The parties and the haver shall be entitled to be represented by a solicitor or person having a right of audience before the sheriff at the execution of the commission.

(6) At the commission, the commissioner shall—

- (a) administer the oath de fideli administratione to any shorthand writer appointed for the commission; and
- (b) administer to the haver the oath in Form G14, or, where the haver elects to affirm, the affirmation in Form G15.

(7) The report of the execution of the commission and diligence, any document recovered and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.

(8) Not later than the day after the date on which such a report, document and inventory, if any, are received by the sheriff clerk, he shall intimate to the parties that he has received them.

(9) No party, other than the party who served the order, may uplift such a document until after the expiry of 7 days after the date of intimation under paragraph (8).

(10) Where the party who served the order fails to uplift such a document within 7 days after the date of intimation under paragraph (8), the sheriff clerk shall intimate that failure to every other party.

(11) Where no party has uplifted such a document within 14 days after the date of intimation under paragraph (10), the sheriff clerk shall return it to the haver.

(12) Where a party who has uplifted such a document does not wish to lodge it, he shall return it to the sheriff clerk who shall—

- (a) intimate the return of the document to every other party; and
- (b) if no other party uplifts the document within 14 days of the date of intimation, return it to the haver.

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

28.5.—(1) An order under section 1(1) of the Act of 1972 for the production or recovery of a document or other property shall grant a commission and diligence for the production or recovery of that document or other property.

(2) Rules 28.3 (optional procedure before executing commission and diligence) and 28.4 (execution of commission and diligence for recovery of documents) shall apply to an order to which paragraph (1) applies as they apply to a commission and diligence for the recovery of a document.

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

28.6.—(1) An order under section 1(1) of the Act of 1972 for the inspection or photographing of a document or other property, the taking of samples or the carrying out of any experiment thereon or therewith, shall authorise and appoint a specified person to photograph, inspect, take samples of, or carry out any experiment on or with any such document or other property, as the case may be, subject to such conditions, if any, as the sheriff thinks fit.

(2) A certified copy of the interlocutor granting such an order shall be sufficient authority for the person specified to execute the order.

(3) When such an order is executed, the party who obtained the order shall serve on the haver a copy of the interlocutor granting it, a copy of the specification and, where necessary for a proper understanding of the specification, a copy of the pleadings (including any adjustments and amendments).

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

28.7.—(1) An order under section 1(1) of the Act of 1972 for the preservation, custody and detention of a document or other property, other than in the hands of a haver, shall grant a commission and diligence for the detention and custody of that document or other property.

(2) The party who has obtained an order under paragraph (1) shall—

- (a) provide the commissioner with a copy of the specification, a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
- (b) be responsible for the fees of the commissioner and his clerk; and
- (c) serve a copy of the order on the haver.

(3) The report of the execution of the commission and diligence, any document or other property taken by the commissioner and an inventory of such property, shall be sent by the commissioner to the sheriff clerk for the further order of the sheriff.

Confidentiality

28.8.—(1) Where confidentiality is claimed for any evidence sought to be recovered under any of the following rules, such evidence shall be enclosed in a sealed packet:—

(28.3) (optional procedure before executing commission and diligence),

(28.4) (execution of commission and diligence for recovery of documents),

(28.5) (execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972),

(28.7) (execution of orders for preservation etc. of documents or other property under section 1(1) of the Act of 1972).

(2) A motion to have such a sealed packet opened up may be lodged by—

(a) the party who obtained the commission and diligence; or

(b) any other party after the date of intimation by the sheriff clerk under rule 28.3(5) or 28.4(10) (intimation of failure to uplift documents).

(3) In addition to complying with rule 15.2 (intimation of motions), the party lodging such a motion shall intimate the terms of the motion to the haver by post by the first class recorded delivery service.

(4) The person claiming confidentiality may oppose a motion made under paragraph (2).

Warrants for production of original documents from public records

28.9.—(1) Where a party seeks to obtain from the keeper of any public record production of the original of any register or deed in his custody for the purposes of a cause, he shall apply to the sheriff by motion.

(2) Intimation of a motion under paragraph (1) shall be given to the keeper of the public record concerned at least 7 days before the motion is lodged.

(3) In relation to a public record kept by the Keeper of the Registers of Scotland or the Keeper of the Records of Scotland, where it appears to the sheriff that it is necessary for the ends of justice that a motion under this rule should be granted, he shall pronounce an interlocutor containing a certificate to that effect; and the party applying for production may apply by letter (enclosing a copy of the interlocutor duly certified by the sheriff clerk), addressed to the Deputy Principal Clerk of Session, for an order from the Court of Session authorising the Keeper of the Registers or the Keeper of the Records, as the case may be, to exhibit the original of any register or deed to the sheriff.

(4) The Deputy Principal Clerk of Session shall submit the application sent to him under paragraph (3) to the Lord Ordinary in chambers who, if satisfied, shall grant a warrant for production or exhibition of the original register or deed sought.

(5) A certified copy of the warrant granted under paragraph (4) shall be served on the keeper of the public record concerned.

(6) The expense of the production or exhibition of such an original register or deed shall be met, in the first instance, by the party who applied by motion under paragraph (1).

Commissions for examination of witnesses

28.10.—(1) This rule applies to a commission—

(a) to take the evidence of a witness who—

(i) is resident beyond the jurisdiction of the court;

- (ii) although resident within the jurisdiction of the court, resides at some place remote from that court; or
 - (iii) by reason of age, infirmity or sickness, is unable to attend the diet of proof; or
 - (b) in respect of the evidence of a witness which is in danger of being lost, to take the evidence to lie in retentis.
- (2) An application by a party for a commission to examine a witness shall be made by motion; and that party shall specify in the motion the name and address of at least one proposed commissioner for approval and appointment by the sheriff.
- (3) The interlocutor granting such a commission shall be sufficient authority for citing the witness to appear before the commissioner.
- (4) At the commission, the commissioner shall—
- (a) administer the oath de fidei administratione to any shorthand writer appointed for the commission; and
 - (b) administer to the witness the oath in Form G14, or where the witness elects to affirm, the affirmation in Form G15.
- (5) Where a commission is granted for the examination of a witness, the commission shall proceed without interrogatories unless, on cause shown, the sheriff otherwise directs.

Commissions on interrogatories

- 28.11.**—(1) Where interrogatories have not been dispensed with, the party who obtained the commission to examine a witness under rule 28.10 shall lodge draft interrogatories in process.
- (2) Any other party may lodge cross-interrogatories.
- (3) The interrogatories and any cross-interrogatories, when adjusted, shall be extended and returned to the sheriff clerk for approval and the settlement of any dispute as to their contents by the sheriff.
- (4) The party who has obtained the commission shall—
- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments), the approved interrogatories and any cross-interrogatories and a certified copy of the interlocutor of his appointment;
 - (b) instruct the clerk; and
 - (c) be responsible, in the first instance, for the fee of the commissioner and his clerk.
- (5) The commissioner shall, in consultation with the parties, fix a diet for the execution of the commission to examine the witness.
- (6) The executed interrogatories, any document produced by the witness and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.
- (7) Not later than the day after the date on which the executed interrogatories, any document and an inventory of that document, are received by the sheriff clerk, he shall intimate to each party that he has received them.
- (8) The party who obtained the commission to examine the witness shall lodge in process—
- (a) the report of the commission; and
 - (b) the executed interrogatories and any cross-interrogatories.

Commissions without interrogatories

28.12.—(1) Where interrogatories have been dispensed with, the party who has obtained a commission to examine a witness under rule 28.10 shall—

- (a) provide the commissioner with a copy of the pleadings (including any adjustments and amendments) and a certified copy of the interlocutor of his appointment;
- (b) fix a diet for the execution of the commission in consultation with the commissioner and every other party;
- (c) instruct the clerk and any shorthand writer; and
- (d) be responsible for the fees of the commissioner, his clerk and any shorthand writer.

(2) All parties shall be entitled to be present and represented at the execution of the commission.

(3) The report of the execution of the commission, any document produced by the witness and an inventory of that document, shall be sent by the commissioner to the sheriff clerk.

(4) Not later than the day after the date on which such a report, any document and an inventory of that document are received by the sheriff clerk, he shall intimate to each party that he has received them.

(5) The party who obtained the commission to examine the witness shall lodge the report in process.

Evidence taken on commission

28.13.—(1) Subject to the following paragraphs of this rule and to all questions of relevancy and admissibility, evidence taken on commission under rule 28.11 or 28.12 may be used as evidence at any proof of the cause.

(2) Any party may object to the use of such evidence at a proof; and the objection shall be determined by the sheriff.

(3) Such evidence shall not be used at a proof if the witness becomes available to attend the diet of proof.

(4) A party may use such evidence in accordance with the preceding paragraphs of this rule notwithstanding that it was obtained at the instance of another party.

Letters of request

28.14.—(1) This rule applies to an application for a letter of request to a court or tribunal outside Scotland to obtain evidence of the kind specified in paragraph (2), being evidence obtainable within the jurisdiction of that court or tribunal, for the purposes of a cause depending before the sheriff.

(2) An application to which paragraph (1) applies may be made in relation to a request—

- (a) for the examination of a witness;
- (b) for the inspection, photographing, preservation, custody, detention, production or recovery of, or the taking of samples of, or the carrying out of any experiment on or with, a document or other property, as the case may be.

(3) Such an application shall be made by minute in Form G16 together with a proposed letter of request in Form G17.

(4) It shall be a condition of granting a letter of request that any solicitor for the applicant shall become personally liable for the whole expenses which may become due and payable in respect of the letter of request to the court or tribunal obtaining the evidence and to any witness

who may be examined for the purpose; and he shall consign into court such sum in respect of such expenses as the sheriff thinks fit.

(5) Unless the court or tribunal to which a letter of request is addressed is a court or tribunal in a country or territory—

(a) where English is an official language, or

(b) in relation to which the sheriff clerk certifies that no translation is required,

then the applicant shall, before the issue of the letter of request, lodge in process a translation of that letter and any interrogatories and cross-interrogatories into the official language of that court or tribunal.

(6) The letter of request when issued, any interrogatories and cross-interrogatories adjusted as required by rule 28.11 and the translations (if any), shall be forwarded by the sheriff clerk to the Foreign and Commonwealth Office or to such person and in such manner as the sheriff may direct.

Citation of witnesses and havers

28.15. The following rules shall apply to the citation of a witness or haver to a commission under this Chapter as they apply to the citation of a witness for a proof:—

rule 29.7 (citation of witnesses), except paragraph (4),

rule 29.9 (second diligence against a witness),

rule 29.10 (failure of witness to attend).

CHAPTER 29

PROOF

Reference to oath

29.1.—(1) Where a party intends to refer any matter to the oath of his opponent he shall lodge a motion to that effect.

(2) If a party fails to appear at the diet for taking his deposition on the reference to his oath, the sheriff may hold him as confessed and grant decree accordingly.

Remit to person of skill

29.2.—(1) The sheriff may, on a motion by any party or on a joint motion, remit to any person of skill, or other person, to report on any matter of fact.

(2) Where a remit under paragraph (1) is made by joint motion or of consent of all parties, the report of such person shall be final and conclusive with respect to the subject-matter of the remit.

(3) Where a remit under paragraph (1) is made—

(a) on the motion of one of the parties, the expenses of the remit shall, in the first instance, be met by that party; and

(b) on a joint motion or of consent of all parties, the expenses shall, in the first instance, be met by the parties equally, unless the sheriff otherwise orders.

Evidence generally

29.3.—(1) A party may apply by motion for the evidence of a witness to be received by way of affidavit; and the sheriff, after considering the affidavit, may make such order as he thinks fit.

(2) A party may apply by motion for a specified statement or document to be admitted as evidence without calling as a witness the maker of the statement or document; and the sheriff, after considering the statement or document, may make such order on such conditions, if any, as he thinks fit.

Renouncing probation

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

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

Orders for proof

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

Hearing parts of proof separately

29.6.—(1) In action with pecuniary conclusions, the sheriff may—

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

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

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

Citation of witnesses

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

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

(2) Where service is executed under paragraph (1)(b)(iii) or (iv), the sheriff officer shall, as soon as possible after such service, send, by ordinary post to the address at which he thinks it most likely that the person may be found, a letter containing a copy of the citation.

(3) A certified copy of the interlocutor allowing a proof shall be sufficient warrant to a sheriff officer to cite a witness on behalf of a party.

(4) A witness shall be cited on a period of notice of 7 days in Form G13 and the party citing the witness shall lodge a certificate of citation in Form G12.

(5) A solicitor who cites a witness shall be personally liable for his fees and expenses.

(6) In the event of a solicitor intimating to a witness that his citation is cancelled, the solicitor shall advise him that the cancellation is not to affect any other citation which he may have received from another party.

Citation of witnesses by party litigants

29.8.—(1) Where a party to a cause is a party litigant, he shall—

- (a) not later than 4 weeks before the diet of proof, apply to the sheriff by motion to fix caution in such sum as the sheriff considers reasonable having regard to the number of witnesses he proposes to cite and the period for which they may be required to attend court; and
- (b) before instructing a sheriff officer to cite a witness, find caution for such expenses as can reasonably be anticipated to be incurred by the witness in answering the citation.

(2) A party litigant who does not intend to cite all the witnesses referred to in his application under paragraph (1)(a), may apply by motion for variation of the amount of caution.

Second diligence against a witness

29.9.—(1) The sheriff may, on the motion of a party, grant a second diligence to compel the attendance of a witness under pain of arrest and imprisonment until caution can be found for his due attendance.

(2) The warrant for a second diligence shall be effective without endorsement and the expenses of such a motion and diligence may be decreed for against the witness.

Failure of witness to attend

29.10.—(1) Where a witness fails to answer a citation after having been duly cited, the sheriff may, on the motion of a party and on production of a certificate of citation, grant warrant for the apprehension of the witness and for bringing him to court; and the expenses of such a motion and apprehension may be decreed for against the witness.

(2) Where a witness duly cited and after having demanded and been paid his travelling expenses fails to attend a diet, either before the sheriff or before a commissioner, the sheriff may—

- (a) ordain the witness to forfeit and pay a penalty not exceeding £250 unless a reasonable excuse be offered and sustained; and
- (b) grant decree for that penalty in favour of the party on whose behalf the witness was cited.

Lodging productions

29.11.—(1) Where a proof has been allowed, all productions which are intended to be used at the proof shall be lodged in process not later than 14 days before the diet of proof.

(2) A production which is not lodged in accordance with paragraph (1) shall not be used or put in evidence at a proof unless—

- (a) by consent of parties; or
- (b) with leave of the sheriff on cause shown and on such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.

Copy productions

29.12.—(1) A copy of every production, marked with the appropriate number of process of the principal production, shall be lodged for the use of the sheriff at a proof not later than 48 hours before the diet of proof.

(2) Each copy production consisting of more than one sheet shall be securely fastened together by the party lodging it.

Returning borrowed parts of process and productions before proof

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

Notices to admit and notices of non-admission

29.14.—(1) At any time after a proof has been allowed, a party may intimate to any other party a notice or notices calling on him to admit for the purposes of that cause only—

- (a) such facts relating to an issue averred in the pleadings as may be specified in the notice;
 - (b) that a particular document lodged in process and specified in the notice is—
 - (i) an original and properly authenticated document; or
 - (ii) a true copy of an original and properly authenticated document.
- (2) Where a party on whom a notice is intimated under paragraph (1)—
- (a) does not admit a fact specified in the notice, or
 - (b) does not admit, or seeks to challenge, the authenticity of a document specified in the notice,

he shall, within 21 days after the date of intimation of the notice under paragraph (1), intimate a notice of non-admission to the party intimating the notice to him under paragraph (1) stating that he does not admit the fact or document specified.

(3) A party who fails to intimate a notice of non-admission under paragraph (2) shall be deemed to have admitted the fact or document specified in the notice intimated to him under paragraph (1); and such fact or document may be used in evidence at a proof if otherwise admissible in evidence, unless the sheriff, on special cause shown, otherwise directs.

(4) A party who fails to intimate a notice of non-admission under paragraph (2) within 14 days after the notice to admit intimated to him under paragraph (1) shall be liable to the party intimating the notice to admit for the expenses of proving the fact or document specified in that notice unless the sheriff, on special cause shown, otherwise directs.

(5) The party serving a notice under paragraph (1) or (2) shall lodge a copy of it in process.

(6) A deemed admission under paragraph (3) shall not be used against the party by whom it was deemed to be made other than in the cause for the purpose for which it was deemed to be made or in favour of any person other than the party by whom the notice was given under paragraph (1).

Instruction of shorthand writer

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

Administration of oath or affirmation to witnesses

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

Proof to be taken continuously

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

Recording of evidence

29.18. Evidence in a cause shall be recorded by—

- (a) a shorthand writer, to whom the oath de fideli administratione in connection with the sheriff court service generally has been administered, or
- (b) tape recording or other mechanical means approved by the court,

unless the parties, by agreement and with the approval of the sheriff, dispense with the recording of evidence.

(2) Where a shorthand writer is employed to record evidence, he shall, in the first instance, be paid by the parties equally.

(3) Where evidence is recorded by tape recording or other mechanical means, any fee payable shall, in the first instance, be paid by the parties in equal proportions.

(4) The solicitors for the parties shall be personally liable for the fees payable under paragraph (2) or (3), and the sheriff may make an order directing payment to be made.

(5) The record of the evidence at a proof shall include—

- (a) any objection taken to a question or to the line of evidence;
- (b) any submission made in relation to such an objection; and
- (c) the ruling of the court in relation to the objection and submission.

(6) A transcript of the record of the evidence shall be made only on the direction of the sheriff; and the cost shall, in the first instance, be borne—

- (a) in an undefended cause, by the solicitor for the pursuer; and
- (b) in a defended cause, by the solicitor for the parties in equal proportions.

(7) The transcript of the record of the evidence provided for the use of the court shall be certified as a faithful record of the evidence by—

- (a) the shorthand writer who recorded the evidence; or
- (b) where the evidence was recorded by tape recording or other mechanical means, by the persons who transcribed the record.

(8) The sheriff may make such alterations to the transcript of the record of the evidence as appear to him to be necessary after hearing the parties; and, where such alterations are made, the sheriff shall authenticate the alterations.

(9) Where a transcript of the record of the evidence has been made for the use of the sheriff, copies of it may be obtained by any party from the person who transcribed the record on payment of his fee.

(10) Except with leave of the sheriff, the transcript of the record of the evidence may be borrowed from process only for the purpose of enabling a party to consider whether to appeal against the interlocutor of the sheriff on the proof.

(11) Where a transcript of the record of the evidence is required for the purpose of an appeal but has not been directed to be transcribed under paragraph (6), the appellant—

- (a) may request such a transcript from the shorthand writer or as the case may be, the cost of the transcript being borne by the solicitor for the appellant in the first instance; and
- (b) shall lodge the transcript in process;

and copies of it may be obtained by any party from the shorthand writer or as the case may be, on payment of his fee.

(12) Where the recording of evidence has been dispensed with under paragraph (1), the sheriff, if called upon to do so, shall—

- (a) in the case of an objection to—
 - (i) the admissibility of evidence on the ground of confidentiality, or
 - (ii) the production of a document on any ground,note the terms in writing of such objections and his decisions on the objection; and
- (b) in the case of any other objection, record, in the note to his interlocutor disposing of the merits of the cause, the terms of the objection and his decision on the objection.

(13) This rule shall, with the necessary modifications, apply to the recording of evidence at a commission as it applies to the recording of evidence at a proof.

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

29.19.—(1) Where a party or any other person objects to the admissibility of oral or documentary evidence on the ground of confidentiality or to the production of a document on any ground, he may, if dissatisfied with the ruling of the sheriff on the objection, express immediately his formal dissatisfaction with the ruling and, with leave of the sheriff, appeal to the sheriff principal.

(2) The sheriff principal shall dispose of an appeal under paragraph (1) with the least possible delay.

(3) Except as provided in paragraph (1), no appeal may be made during a proof against any decision of the sheriff as to the admissibility of evidence or the production of documents.

(4) The appeal referred to in paragraph (1) shall not remove the cause from the sheriff who may proceed with the cause in relation to any issue which is not dependent on the ruling appealed against.

Parties to be heard at close of proof

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

CHAPTER 30

DECREES, EXTRACTS AND EXECUTION

Interpretation of this Chapter

30.1. In this Chapter, “decree” includes any judgment, deliverance, interlocutor, act, order, finding or authority which may be extracted.

Taxes on money under control of the court

30.2.—(1) Subject to paragraph (2), in a cause in which money has been consigned into court under the Sheriff Court Consignations (Scotland) Act 1893⁽³⁷⁾, no decree, warrant or order for payment to any person shall be granted until there has been lodged with the sheriff clerk a certificate by an authorised officer of the Inland Revenue stating that all taxes or duties payable to the Commissioners of Inland Revenue have been paid or satisfied.

(2) In an action of multiplepointing, it shall not be necessary for the grant of a decree, warrant or order for payment under paragraph (1) that all of the taxes or duties payable on the estate of a deceased claimant have been paid or satisfied.

Decrees for payment in foreign currency

30.3.—(1) Where decree has been granted for payment of a sum of money in a foreign currency or the sterling equivalent, a party requesting extract of the decree shall do so by minute endorsed on or annexed to the initial writ stating the rate of exchange prevailing on the date of the decree sought to be extracted or the date, or within 3 days before the date, on which the extract is ordered, and the sterling equivalent at that rate for the principal sum and interest decerned for.

(2) A certificate in Form G18, from the Bank of England or a bank which is an institution authorised under the Banking Act 1987⁽³⁸⁾ certifying the rate of exchange and the sterling equivalent shall be lodged with the minute requesting extract of the decree.

(3) The extract decree issued by the sheriff clerk shall mention any certificate referred to in paragraph (2).

When decrees extractable

30.4.—(1) Subject to the following paragraphs:—

- (a) a decree in absence may be extracted after the expiry of 14 days from the date of decree;
- (b) any decree pronounced in a defended cause may be extracted at any time after whichever is the later of the following:—
 - (i) the expiry of the period within which an application for leave to appeal may be made and no such application has been made;
 - (ii) the date on which leave to appeal has been refused and there is no right of appeal from such refusal;
 - (iii) the expiry of the period within which an appeal may be marked and no appeal has been marked; or
 - (iv) the date on which an appeal has been finally disposed of; and

⁽³⁷⁾ 1893 c. 44.
⁽³⁸⁾ 1987 c. 22.

- (c) where the sheriff has, in pronouncing decree, reserved any question of expenses, extract of that decree may be issued only after the expiry of 14 days from the date of the interlocutor disposing of the question of expenses unless the sheriff otherwise directs.
- (2) The sheriff may, on cause shown, grant a motion to allow extract to be applied for and issued earlier than a date referred to in paragraph (1).
- (3) In relation to a decree referred to in paragraph (1)(b) or (c), paragraph (2) shall not apply unless—
 - (a) the motion under that paragraph is made in the presence of parties; or
 - (b) the sheriff is satisfied that proper intimation of the motion has been made in writing to every party not present at the hearing of the motion.
- (4) Nothing in this rule shall affect the power of the sheriff to supersede extract.

Extract of certain awards notwithstanding appeal

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

Form of extract decree

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

Form of warrant for execution

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

Date of decree in extract

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

Service of charge where address of defender not known

- 30.9.—**(1) Where the address of a defender is not known to the pursuer, a charge shall be deemed to have been served on the defender if it is—
 - (a) served on the sheriff clerk of the sheriff court district where the defender’s last known address is located; and
 - (b) displayed by the sheriff clerk on the walls of court for the period of the charge.
- (2) On receipt of such a charge, the sheriff clerk shall display it on the walls of court and it shall remain displayed for the period of the charge.

(3) The period specified in the charge shall run from the first date on which it was displayed on the walls of court.

(4) On the expiry of the period of charge, the sheriff clerk shall endorse a certificate on the charge certifying that it has been displayed in accordance with this rule and shall thereafter return it to the sheriff officer by whom service was executed.

CHAPTER 31

APPEALS

Time limit for appeal

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

Applications for leave to appeal

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

(2) Subject to the provisions of any other enactment, where leave to appeal has been granted, an appeal shall be made within 7 days after the date on which leave was granted.

(3) An application for leave to appeal from a decision in relation to a time to pay direction made under section 1 of the Debtors (Scotland) Act 1987(39) or the recall or restriction of an arrestment made under section 3(4) of that Act shall specify the question of law on which the appeal is made.

Form of appeal and notice to parties

31.3.—(1) An appeal shall be marked by writing a note of appeal on the interlocutor sheet, or other written record containing the interlocutor appealed against, or on a separate sheet lodged with the sheriff clerk, in the following terms:— “The pursuer [or applicant, claimant, defender, respondent or other party, as the case may be] appeals to the sheriff principal [or the Court of Session].”.

(2) A note of appeal shall be—

- (a) signed by the appellant;
- (b) bear the date on which it is signed; and
- (c) where the appeal is to the Court of Session and the appellant is represented, specify the name and address of the solicitor or other agent who will be acting for him in the appeal.

(3) The sheriff clerk shall transmit the process of a cause within 4 days after the appeal is marked—

- (a) in an appeal to the sheriff principal, to him;
- (b) in an appeal to the Court of Session, to the Deputy Principal Clerk of Session.

(4) Within the period specified in paragraph (3), the sheriff clerk shall—

- (a) send written notice of the appeal to every other party; and
 - (b) certify on the interlocutor sheet that he has done so.
- (5) Failure of the sheriff clerk to comply with paragraph (4) shall not invalidate the appeal.

Reclaiming petition or oral hearing ordered or dispensed with

- 31.4.** In an appeal to him, the sheriff principal may—
- (a) order a reclaiming petition and answers;
 - (b) hear parties orally; or
 - (c) on the motion of the parties, if he thinks fit, dispose of the appeal without ordering either a reclaiming petition and answers or an oral hearing.

Appeals in connection with custody, access or aliment

31.5. Where an appeal is marked against an interlocutor containing an award of custody, access or aliment, the marking of that appeal shall not excuse obedience to or implement of the award of custody, access or aliment unless by order of the sheriff, the sheriff principal or the Court of Session, as the case may be.

Interim possession etc. pending appeal

- 31.6.—**(1) Notwithstanding an appeal, the sheriff or sheriff principal from whose decision an appeal has been taken shall have power—
- (a) to regulate all matters relating to interim possession;
 - (b) to make any order for the preservation of any property to which the action relates or for its sale if perishable;
 - (c) to make provision for the preservation of evidence; or
 - (d) to make any interim order which a due regard to the interests of the parties may require.
- (2) An order made under paragraph (1) may be reviewed—
- (a) by the sheriff principal, on an appeal to him; or
 - (b) the Court of Session, on an appeal to it.

Abandonment of appeal

- 31.7.** After an appeal to the sheriff principal has been marked, the appellant shall not be entitled to abandon his appeal unless—
- (a) of consent of all other parties; or
 - (b) with leave of the sheriff principal.

CHAPTER 32

TAXATION OF EXPENSES

Taxation before decree for expenses

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

Decree for expenses in name of solicitor

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

Procedure for taxation

32.3.—(1) Where an account of expenses awarded in a cause is lodged for taxation, the account and process shall be transmitted by the sheriff clerk to the auditor of court.

(2) The auditor of court shall—

- (a) assign a diet of taxation not earlier than 7 days from the date he receives the account from the sheriff clerk; and
- (b) intimate that diet forthwith to the party who lodged the account.

(3) The party who lodged the account of expenses shall, on receiving intimation from the auditor of court under paragraph (2)—

- (a) send a copy of the account, and
- (b) intimate the date, time and place of the diet of taxation,

to every other party.

(4) After the account has been taxed, the auditor of court shall transmit the process with the account and his report to the sheriff clerk.

(5) Where the auditor of court has reserved consideration of the account at the diet of taxation, he shall intimate his decision to the parties who attended the taxation.

(6) Where no objections are lodged under rule 32.4 (objections to auditor's report), the sheriff may grant decree for the expenses as taxed.

Objections to auditor's report

32.4.—(1) A party may lodge a note of objections to an account as taxed only where he attended the diet of taxation.

(2) Such a note shall be lodged within 7 days after—

- (a) the diet of taxation; or
- (b) where the auditor of court reserved consideration of the account under paragraph (5) of rule 32.3, the date on which the auditor of court intimates his decision under that paragraph.

(3) The sheriff shall dispose of the objection in a summary manner, with or without answers. Special provisions in relation to particular causes

CHAPTER 33

FAMILY ACTIONS

PART I

GENERAL PROVISIONS

Intepretation of this Chapter

33.1.—(1) In this Chapter, "family action" means—

- (a) an action of divorce;

- (b) an action of separation;
 - (c) an action of declarator of legitimacy;
 - (d) an action of declarator of illegitimacy;
 - (e) an action of declarator of parentage;
 - (f) an action of declarator of non-parentage;
 - (g) an action of declarator of legitimation;
 - (h) an action or application for any parental rights;
 - (i) an action of affiliation and aliment;
 - (j) an action of, or application for or in respect of, aliment;
 - (k) an action or application for financial provision after a divorce or annulment in an overseas country within the meaning of Part IV of the Matrimonial and Family Proceedings Act 1984(40);
 - (l) an action or application for an order under the Act of 1981;
 - (m) an application for the variation or recall of an order mentioned in section 8(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966(41).
- (2) In this Chapter, unless the context otherwise requires—
- “the Act of 1975” means the Children Act 1975(42);
 - “the Act of 1976” means the Divorce (Scotland) Act 1976(43);
 - “the Act of 1981” means the Matrimonial Homes (Family Protection) (Scotland) Act 1981(44);
 - “the Act of 1985” means the Family Law (Scotland) Act 1985(45);
 - “child” means a person under the age of 16 years;
 - “local authority” means a regional or islands council;
 - “mental disorder” means mental illness or mental handicap however caused or manifested;
 - “order for financial provision” means, except in Part VII of this Chapter (financial provision after overseas divorce or annulment), an order mentioned in section 8(1) of the Act of 1985;
 - “parental rights” has the meaning assigned in section 8 of the Law Reform (Parent and Child) (Scotland) Act 1986(46).
- (3) For the purposes of rules 33.2 (averments in actions of divorce or separation about other proceedings) and 33.3 (averments where custody sought) and, in relation to proceedings in another jurisdiction, Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973(47) (sisting of consistorial actions in Scotland), proceedings are continuing at any time after they have commenced and before they are finally disposed of.

(40) 1984 c. 42; Part IV was amended by the Family Law (Scotland) Act 1985 (c. 37), Schedule 1, paragraphs 12 and 13.
 (41) 1966 c. 19; section 8(1) was amended by the Guardianship Act 1973 (c. 29), Schedule 5, the Divorce (Scotland Act 1976 (c. 39), Schedule 1, the Matrimonial and Family Proceedings Act 1984 (c. 42), Schedule 1, paragraph 7 and the Family Law (Scotland) Act 1985 (c. 37), Schedule 1, paragraph 5.

(42) 1975 c. 72.

(43) 1976 c. 39.

(44) 1981 c. 59.

(45) 1985 c. 37.

(46) 1986 c. 9.

(47) 1973 c. 45; Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraphs 19 and 20.

Averments in actions of divorce or separation about other proceedings

33.2.—(1) This rule applies to an action of divorce or separation.

(2) In an action to which this rule applies, the pursuer shall state in the condescendence of the initial writ—

- (a) whether to his knowledge any proceedings are continuing in Scotland or in any other country in respect of the marriage to which the initial writ relates or are capable of affecting its validity or subsistence; and
- (b) where such proceedings are continuing—
 - (i) the court, tribunal or authority before which the proceedings have been commenced;
 - (ii) the date of commencement;
 - (iii) the names of the parties;
 - (iv) the date, or expected date of any proof (or its equivalent) in the proceedings; and
 - (v) such other facts as may be relevant to the question of whether or not the action before the sheriff should be sisted under Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973.

(3) Where—

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

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

Averments where custody sought

33.3.—(1) A party to a family action, who makes an application in that action for a custody order (within the meaning assigned in section 1(1)(b) of the Family Law Act 1986⁽⁴⁸⁾) in respect of a child shall include in his pleadings—

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

(2) Where such other proceedings are continuing or have taken place and the averments of the applicant for such a custody order—

(48) 1986 c. 55.

- (a) do not contain particulars of the other proceedings, or
- (b) contain particulars which are incomplete or incorrect,

any defences or minute, as the case may be, lodged by any person to the family action shall include such particulars or such further or correct particulars as are known to him.

(3) In paragraph 1(b)(ii), “child” includes a child of the family within the meaning assigned in section 42(4) of the Family Law Act 1986.

Averments where identity or address of person not known

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

Averments about maintenance orders

33.5. In a family action in which an order for aliment or periodical allowance is sought, or is sought to be varied or recalled, by any party, the pleadings of that party shall contain an averment stating whether and, if so, when and by whom, a maintenance order (within the meaning of section 106 of the Debtors (Scotland) Act 1987⁽⁴⁹⁾) has been granted in favour of or against that party or of any other person in respect of whom the order is sought.

Averments where aliment or financial provision sought

33.6.—(1) In this rule—

“the Act of 1991” means the Child Support Act 1991⁽⁵⁰⁾;

“child” has the meaning assigned in section 55 of the Act of 1991;

“crave relating to aliment” means—

- (a) for the purposes of paragraph (2), a crave for decree of aliment in relation to a child or for recall or variation of such a decree; and
- (b) for the purposes of paragraph (3), a crave for decree of aliment in relation to a child or for recall or variation of such a decree or for the variation or termination of an agreement on aliment in relation to a child;

“maintenance assessment” has the meaning assigned in section 55 of the Act of 1991.

(2) A family action containing a crave relating to aliment and to which section 8(6), (7), (8) or (10) of the Act of 1991 (top up maintenance orders) applies shall—

(a) include averments stating, where appropriate—

- (i) that a maintenance assessment under section 11 of that Act (maintenance assessments) is in force;
- (ii) the date of the maintenance assessment;
- (iii) the amount and frequency of periodical payments of child support maintenance fixed by the maintenance assessment; and
- (iv) the grounds on which the sheriff retains jurisdiction under section 8(6), (7), (8) or (10) of that Act; and

⁽⁴⁹⁾ 1987 c. 18; section 106 was amended by the Child Support Act 1991 (c. 48), Schedule 5, paragraph 8(7).
⁽⁵⁰⁾ 1991 c. 48.

- (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the party intimating the making of the maintenance assessment referred to in sub-paragraph (a).
- (3) A family action containing a crave relating to aliment, and to which section 8(6), (7), (8) or (10) of the Act of 1991 does not apply, shall include averments stating—
 - (a) that the habitual residence of the absent parent, person with care or qualifying child, within the meaning of section 3 of that Act, is furth of the United Kingdom;
 - (b) that the child is not a child within the meaning of section 55 of that Act; or
 - (c) where the action is lodged for warranting before 7th April 1997, the grounds on which the sheriff retains jurisdiction.
- (4) In an action for declarator of non-parentage or illegitimacy—
 - (a) the initial writ shall include an article of condescendence stating whether the pursuer previously has been alleged to be the parent in an application for a maintenance assessment under section 4, 6 or 7 of the Act of 1991 (applications for maintenance assessment); and
 - (b) where an allegation of paternity has been made against the pursuer, the Secretary of State shall be named as a defender in the action.
- (5) A family action involving parties in respect of whom a decision has been made in any application, review or appeal under the Act of 1991 relating to any child of those parties, shall—
 - (a) include averments stating that such a decision has been made and giving details of that decision; and
 - (b) unless the sheriff on cause shown otherwise directs, be accompanied by any document issued by the Secretary of State to the parties intimating that decision.

Warrants and forms for intimation

- 33.7.—**(1) In the initial writ in a family action, the pursuer shall include a crave for a warrant for intimation—
- (a) in an action where the address of the defender is not known to the pursuer and cannot reasonably be ascertained, to—
 - (i) every child of the marriage between the parties who has reached the age of 16 years, and
 - (ii) one of the next-of-kin of the defender who has reached that age,unless the address of such a person is not known to the pursuer and cannot reasonably be ascertained, and a notice of intimation in Form F1 shall be attached to the copy of the initial writ intimated to any such person;
 - (b) in an action where the pursuer alleges that the defender has committed adultery with another person, to that person, unless—
 - (i) that person is not named in the initial writ and, if the adultery is relied on for the purposes of section 1(2)(a) of the Act of 1976 (irretrievable breakdown of marriage by reason of adultery), the initial writ contains an averment that his or her identity is not known to the pursuer and cannot reasonably be ascertained, or
 - (ii) the pursuer alleges that the defender has been guilty of rape upon or incest with, that named person,

- and a notice of intimation in Form F2 shall be attached to the copy of the initial writ intimated to any such person;
- (c) in an action where the defender is a person who is suffering from a mental disorder, to—
- (i) those persons mentioned in sub-paragraph (a)(i) and (ii), unless the address of such person is not known to the pursuer and cannot reasonably be ascertained, and
 - (ii) the curator bonis to the defender, if one has been appointed,
- and a notice of intimation in Form F3 shall be attached to the copy of the initial writ intimated to any such person;
- (d) in an action relating to a marriage which was entered into under a law which permits polygamy where—
- (i) one of the decrees specified in section 2(2) of the Matrimonial Proceedings (Polygamous Marriages) Act 1972(51) is sought, and
 - (ii) either party to the marriage in question has any spouse additional to the other party,
- to any such additional spouse, and a notice of intimation in Form F4 shall be attached to the initial writ intimated to any such person;
- (e) in an action of divorce or separation where the sheriff may make an order for any parental rights in respect of a child—
- (i) who is in the care of a local authority, to that authority and a notice of intimation in Form F5 shall be attached to the initial writ intimated to that authority;
 - (ii) who, being a child of one party to the marriage, has been accepted as a child of the family by the other party to the marriage and who is liable to be maintained by a third party, to that third party, and a notice of intimation in Form F5 shall be attached to the initial writ intimated to that third party; or
 - (iii) in respect of whom a third party exercises such rights de facto, to that third party, and a notice of intimation in Form F6 shall be attached to the initial writ intimated to that third party;
- (f) in an action where the pursuer craves the custody of a child, to any parent or guardian of the child who is not a party to the action, and a notice of intimation in Form F7 shall be attached to the initial writ intimated to any such parent or guardian;
- (g) in an action where the pursuer craves the custody of a child and he is—
- (i) not a parent of that child, and
 - (ii) resident in Scotland when the initial writ is lodged,
- to the local authority within which area the pursuer resides, and a notice of intimation in Form F8 shall be attached to the initial writ intimated to that authority;
- (h) in an action which affects a child, to that child if not a party to the action, and a notice of intimation in Form F9 shall be attached to the initial writ intimated to that child;
- (i) in an action where the pursuer makes an application for an order under section 8(1) (aa) of the Act of 1985(52) (transfer of property) and—

(51) 1972 c. 38; section 2(2) was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraphs 13, the Law Reform (Husband and Wife) (Scotland) Act 1984 (c. 15), Schedule 1, paragraph 6, the Family Law (Scotland) Act 1985 (c. 37), Schedule 1, paragraph 8 and the Statute Law (Repeals) Act 1986 (c. 12), Schedule 1, Part I.

- (i) the consent of a third party to such a transfer is necessary by virtue of an obligation, enactment or rule of law, or
 - (ii) the property is subject to a security,to the third party or creditor, as the case may be, and a notice of intimation in Form F10 shall be attached to the initial writ intimated to any such person;
- (j) in an action where the pursuer makes an application for an order under section 18 of the Act of 1985 (which relates to avoidance transactions), to—
 - (i) any third party in whose favour the transfer of, or transaction involving, the property is to be or was made, and
 - (ii) any other person having an interest in the transfer of, or transaction involving, the property,and a notice of intimation in Form F11 shall be attached to the initial writ intimated to any such person; and
- (k) in an action where the pursuer makes an application for an order under the Act of 1981~~(53)~~—
 - (i) where he is a non-entitled partner and the entitled partner has a spouse, to that spouse, or
 - (ii) where the application is under section 2(1)(e), 2(4)(a), 3(1), 3(2), 4, 7, 13 or 18 of that Act, and the entitled spouse or entitled partner is a tenant or occupies the matrimonial home by permission of a third party, to the landlord or the third party, as the case may be,and a notice of intimation in Form F12 shall be attached to the initial writ intimated to any such person.

(2) Expressions used in paragraph (1)(k) which are also used in the Act of 1981 have the same meaning as in that Act.

(3) A notice of intimation under paragraph (1) shall be on a period of notice of 21 days unless the sheriff otherwise orders; but the sheriff shall not order a period of notice of less than 2 days.

(4) In a family action, where the pursuer—

- (a) craves for the custody of a child, and
- (b) is not resident in Scotland when the initial writ is lodged for warranting,

he shall include a crave for an order for intimation in form F8 to such local authority as the sheriff thinks fit.

(5) Where the address of a person mentioned in paragraph (1)(b), (d), (e), (f), (h), (i), (j) or (k) is not known and cannot reasonably be ascertained, the pursuer shall include a crave in the initial writ to dispense with intimation; and the sheriff may grant that crave or make such other order as he thinks fit.

(6) Where the identity or address of a person to whom intimation of a family action is required becomes known during the course of the action, the party who would have been required to insert a warrant for intimation to that person shall lodge a motion for a warrant for intimation to that person or to dispense with such intimation.

(52) 1985 c. 37; section 8(1)(aa) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 34.

(53) 1981 c. 59.

Intimation where improper association

33.8.—(1) In a family action where the pursuer alleges an improper association between the defender and another named person, the pursuer shall, immediately after the expiry of the period of notice, lodge a motion for an order for intimation to that person or to dispense with such intimation

(2) In determining a motion under paragraph (1), the sheriff may—

- (a) make such order for intimation as he thinks fit; or
- (b) dispense with intimation; and
- (c) where he dispenses with intimation, order that the name of that person be deleted from the condescendence of the initial writ.

(3) Where intimation is ordered under paragraph (2), a copy of the initial writ and an intimation in Form F13 shall be intimated to the named person.

(4) In paragraph (1), “improper association” means sodomy, incest or any homosexual relationship.

Productions in action of divorce or where order for custody may be made

33.9. Unless the sheriff otherwise directs—

- (a) in an action of divorce, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of marriages or an equivalent document; and
- (b) in an action where the sheriff may make an order in respect of the custody of a child, a warrant for citation shall not be granted without there being produced with the initial writ an extract of the relevant entry in the register of births or an equivalent document.

Warrant of citation

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

Form of citation and certificate

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

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

Execution of service on, or intimation to, local authority

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

(2) Where in a family action—

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

the local authority referred to in that provision is named as a defender in the initial writ at the time it is lodged, a notice in Form F8 shall be attached to the copy of the initial writ served on that local authority.

(3) Where, by virtue of rule 33.7(1)(g), 33.7(4) or 33.15(2), intimation of an application for custody is to be made to a local authority, intimation to that local authority shall be given within 7 days after the date on which a warrant of citation, or an order for intimation, as the case may be, has been granted.

Service in cases of mental disorder of defender

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

- (a) a citation in Form F15;
- (b) any notice required by rule 33.14(1);
- (c) a request in Form F17;
- (d) a form of certificate in Form F18 requesting the medical officer to—
 - (i) deliver and explain the initial writ, citation and any notice or form of notice of consent required under rule 33.14(1) personally to the defender; or
 - (ii) certify that such delivery or explanation would be dangerous to the health or mental condition of the defender; and
- (e) a stamped envelope addressed for return of that certificate to the pursuer or his solicitor, if he has one.

(2) The medical officer referred to in paragraph (1) shall send the certificate in Form F18 duly completed to the pursuer or his solicitor, as the case may be.

(3) The certificate mentioned in paragraph (2) shall be attached to the certificate of citation.

(4) Where such a certificate bears that the initial writ has not been delivered to the defender, the sheriff may, at any time before decree—

- (a) order such further medical inquiry, and
- (b) make such order for further service or intimation,

as he thinks fit.

Notices in certain actions of divorce or separation

33.14.—(1) In the following actions of divorce or separation there shall be attached to the copy of the initial writ served on the defender—

- (a) in an action relying on section 1(2)(d) of the Act of 1976(54) (no cohabitation for two years with consent of defender to decree)—
 - (i) which is an action of divorce, a notice in form F19 and a notice of consent in form F20;
 - (ii) which is an action of separation, a notice in Form F21 and a form of notice of consent in form F22;

(b) in an action relying on section 1(2)(e) of the Act of 1976 (no cohabitation for five years)—

- (i) which is an action of divorce, a notice in Form F23;
- (ii) which is an action of separation, a notice in Form F24.

(2) The certificate of service of an initial writ in an action mentioned in paragraph (1) shall state which notice or form mentioned in paragraph (1) has been attached to the initial writ.

Orders for intimation by sheriff

33.15.—(1) In any family action, the sheriff may order intimation to be made to such person as he thinks fit.

(2) Where a party makes an application or averment in a family action which, had it been made in an initial writ, would have required a warrant for intimation under rule 33.7, that party shall lodge a motion for a warrant for intimation or to dispense with such intimation.

Appointment of curators ad litem to defenders

33.16.—(1) This rule applies to an action of divorce or separation where it appears to the court that the defender is suffering from a mental disorder.

(2) In an action to which this rule applies, the sheriff shall—

- (a) appoint a curator ad litem to the defender;
- (b) where the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on—
 - (i) make an order for intimation of the ground of the action to the Mental Welfare Commission for Scotland; and
 - (ii) include in such an order a requirement that the Commission sends to the sheriff clerk a report indicating whether in its opinion the defender is capable of deciding whether or not to give consent to the granting of decree.

(3) Within 7 days after the appointment of a curator ad litem under paragraph (2)(a), the pursuer shall send to him—

- (a) a copy of the initial writ and any defences (including any adjustments and amendments) lodged; and
- (b) a copy of the notice in Form G5 sent to him by the sherrif clerk.

(4) On receipt of a report required under paragraph (2)(b)(ii), the sheriff clerk shall—

- (a) lodge the report in process; and
- (b) intimate that this has been done to—
 - (i) the pursuer;
 - (ii) the solicitor for the defender, if known; and
 - (iii) the curator ad litem.

(5) The curator ad litem shall lodge in process one of the writs mentioned in paragraph (6)—

- (a) within 14 days after the report required under paragraph (2)(b)(ii) has been lodged in process; or
- (b) where no such report is required, within 21 days after the date of his appointment under paragraph (2)(a).

(6) The writs referred to in paragraph (5) are—

- (a) a notice of intention to defend;
- (b) defences to the action;
- (c) a minute adopting defences already lodged; and
- (d) a minute stating that the curator ad litem does not intend to lodge defences.

(7) Notwithstanding that he has lodged a minute stating that he does not intend to lodge defences, a curator ad litem may appear at any stage of the action to protect the interests of the defender.

(8) If, at any time, it appears to the curator ad litem that the defender is not suffering from mental disorder, he may report that fact to the court and seek his own discharge.

(9) The pursuer shall be responsible, in the first instance, for payment of the fees and outlays of the curator ad litem incurred during the period from his appointment until—

- (a) he lodges a minute stating that he does not intend to lodge defences;
- (b) he decides to instruct the lodging of defences or a minute adopting defences already lodged; or
- (c) being satisfied after investigation that the defender is not suffering from mental disorder, he is discharged.

Applications for sist

33.17. An application for a sist, or the recall of a sist, under Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973(55) shall be made by written motion.

Notices of consent to divorce or separation

33.18.—(1) Where, in an action of divorce or separation in which the facts in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on, the defender wishes to consent to the grant of decree of divorce or separation he shall do so by giving notice in writing in Form F20 (divorce) or Form F22 (separation), as the case may be, to the sheriff clerk.

(2) The evidence of one witness shall be sufficient for the purpose of establishing that the signature on a notice of consent under paragraph (1) is that of the defender.

(3) In an action of divorce or separation where the initial writ includes, for the purposes of section 1(2)(d) of the Act of 1976, an averment that the defender consents to the grant of decree, the defender may give notice by letter sent to the sheriff clerk stating that he has not so consented or that he withdraws any consent which he has already given.

(4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the pursuer.

(5) On receipt of any intimation under paragraph (4), the pursuer may, within 14 days after the date of the intimation, if none of the other facts mentioned in section 1(2) of the Act of 1976 is averred in the initial writ, lodge a motion for the action to be sisted.

(6) If no such motion is lodged, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

(7) If a motion under paragraph (5) is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action and the action shall be dismissed.

(55) 1973 c. 45; Schedule 3 was amended by the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c. 12), Schedule 1, paragraphs 19 and 20.

Consents to grant of custody

33.19.—(1) Where a party who requires a consent under section 47(2) of the Act of 1975⁽⁵⁶⁾ to the grant of custody, executes service on, or gives intimation to, a person who may give such consent, he shall—

- (a) include with the copy of the initial writ or other pleadings, as the case may be—
 - (i) a notice in Form F7; and
 - (ii) a form of notice of consent in Form F25; and
- (b) in the certificate of service or intimation, as the case may be, state expressly that such notice and form of notice of consent was included.

(2) Where a parent or guardian wishes to consent to the grant of an application for custody, he shall—

- (i) complete and sign the notice of consent in Form F25;
- (ii) have his signature witnessed; and
- (iii) send the notice of consent to the sheriff clerk.

(3) Where a person, who has consented under paragraph (2) to the grant of such an application, wishes to withdraw that consent, he shall give notice by letter sent to the sheriff clerk stating that he withdraws his consent.

(4) On receipt of a letter under paragraph (3), the sheriff clerk shall intimate the terms of the letter to the applicant and to every other party.

Reports by local authorities under section 49(2) of the Act of 1975

33.20.—(1) On completion of a report made under section 49(2) of the Act of 1975 (reports by local authority on child in certain custody applications), the local authority shall—

- (a) send the report, with a copy for each party, to the sheriff clerk; and
- (b) where a curator ad litem has been appointed to the child in respect of whom the application for custody has been made, send a copy of the report to him.

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

(3) Where intimation is given to a local authority under rule 33.7(1)(g) or (4) for the purposes of section 49(2) of the Act of 1975, an application for the custody of the child shall not be determined until the report of the local authority has been lodged.

(4) When disposing of an application for custody, the sheriff shall determine which party or parties are to be liable for the expenses of the local authority incurred in the preparation of any report made under section 49(2) of the Act of 1975.

Appointment of local authority or reporter to report on a child

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

- (a) a local authority under section 11(1) of the Matrimonial Proceedings (Children) Act 1958⁽⁵⁷⁾ or section 12(2)(a) of the Guardianship Act 1973⁽⁵⁸⁾ (which both relate to a report on a child with respect to custody, or

(56) 1975 c. 72; section 47(2) was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1, paragraph 14(1).

(57) 1958 c. 40; section 11(1) was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 2 and the Family Law Act 1986 (c. 55), Schedule 1, paragraph 7.

(58) 1973 c. 29; section 12(2)(a) was amended by the Children Act 1975 (c. 72), section 48(4).

(b) another person (referred to in this rule as a “reporter”), whether under a provision mentioned in sub-paragraph (a) or otherwise,
to investigate and report to the court on the circumstances of a child and on proposed arrangements for the care and upbringing of the child.

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

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

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

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

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

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

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

(6) Where a local authority or reporter has been appointed to investigate and report in respect of a child, an application for the custody of that child shall not be determined until the report of the local authority or reporter, as the case may be, has been lodged.

Referral to family mediation and conciliation service

33.22. In any family action in which the custody of, or access to, a child is in dispute, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that dispute to a specified family mediation and conciliation service.

Applications for orders to disclose whereabouts of children

33.23.—(1) An application for an order under section 33(1) of the Family Law Act 1986⁽⁵⁹⁾ (which relates to the disclosure of the whereabouts of a child) shall be made by motion.

(2) Where the sheriff makes an order under section 33(1) of the Family Law Act 1986, he may ordain the person against whom the order has been made to appear before him or to lodge an affidavit.

Applications in relation to removal of children

33.24.—(1) An application for leave under section 51(1) of the Act of 1975⁽⁶⁰⁾ (authority to remove a child from the care and possession of the applicant for custody) or for an order under section 35(3) of the Family Law Act 1986 (application for interdict or interim interdict prohibiting removal of child from jurisdiction) shall be made—

- (a) by a party to the action, by motion; or

⁽⁵⁹⁾ 1986 c. 55.

⁽⁶⁰⁾ Section 51(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraph 25.

(b) by a person who is not a party to the action, by minute.

(2) An application under section 35(3) of the Family Law Act 1986 need not be served or intimated.

(3) An application under section 23(2) of the Child Abduction and Custody Act 1985⁽⁶¹⁾ (declarator that removal of child from United Kingdom was unlawful) shall be made—

(a) in an action depending before the sheriff—

(1) by a party, in the initial writ, defences or minute, as the case may be, or by motion; or

(ii) by any other person, by minute; or

(b) after final decree, by minute in the process of the action to which the application relates.

Intimation to local authority before supervised access

33.25. Where the sheriff, of his own motion or on the motion of a party, is considering making an award of access or interim access subject to supervision by the social work department of a local authority, he shall ordain the party moving for access or interim access to intimate to the chief executive of that local authority (where not already a party to the action and represented at the hearing at which the issue arises)—

(a) the terms of any relevant motion;

(b) the intention of the sheriff to order that access be supervised by the social work department of that local authority; and

(c) that the local authority shall, within such period as the sheriff has determined—

(i) notify the sheriff clerk whether it intends to make representations to the sheriff; and

(ii) where it intends to make representations in writing, to do so within that period.

Joint minutes

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

(a) any parental rights in respect of a child,

(b) aliment for a child, or

(c) an order for financial provision,

a joint minute may be entered into expressing that agreement; and the sheriff may grant decree in respect of those parts of the joint minute in relation to which he could otherwise make an order, whether or not such a decree would include a matter for which there was no crave.

Affidavits

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

(61) 1985 c. 60.

PART II

UNDEFENDED FAMILY ACTIONS

Evidence in certain undefended family actions

33.28.—(1) This rule—

- (a) subject to sub-paragraph (b), applies to all family actions in which no notice of intention to defend has been lodged, other than a family action—
 - (i) for any parental rights or aliment;
 - (ii) of affiliation and aliment;
 - (iii) for financial provision after an overseas divorce or annulment within the meaning of Part IV of the Matrimonial and Family Proceedings Act 1984⁽⁶²⁾; or
 - (iv) for an order under the Act of 1981⁽⁶³⁾;
- (b) applies to a family action in which a curator ad litem has been appointed under rule 33.16 where the curator ad litem to the defender has lodged a minute intimating that he does not intend to lodge defences;
- (c) applies to any family action which proceeds at any stage as undefended where the sheriff so directs;
- (d) applies to the merits of a family action which is undefended on the merits where the sheriff so directs, notwithstanding that the action is defended on an ancillary matter.

(2) Unless the sheriff otherwise directs, evidence shall be given by affidavit.

(3) Unless the sheriff otherwise directs, evidence relating to the welfare of a child shall be given by affidavit, at least one affidavit being emitted by a person other than a parent or party to the action.

(4) Evidence in the form of a written statement bearing to be the professional opinion of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence by him.

Procedure for decree in actions under rule 33.28

33.29.—(1) In an action to which rule 33.28 (evidence in certain undefended family actions) applies, the pursuer shall at any time after the expiry of the period for lodging a notice of intention to defend—

- (a) lodge in process the affidavit evidence; and
- (b) endorse a minute in Form F27 on the initial writ.

(2) The sheriff may, at any time after the pursuer has complied with paragraph (1), without requiring the appearance of parties—

- (a) grant decree in terms of the motion for decree; or
- (b) remit the cause for such further procedure, if any, including proof by parole evidence, as the sheriff thinks fit.

(62) 1984 c. 42; Part IV was amended by the Act of 1985 (c. 37), Schedule 1, paragraphs 12 and 13.

(63) 1981 c. 59.

Extracts of undefended decree

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

Procedure in undefended family actions for parental rights

33.31.—(1) Where no notice of intention to defend has been lodged in a family action for any parental rights or any right or authority relating to the welfare or upbringing of a child, any proceedings in the cause shall be dealt with by the sheriff in chambers.

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

No recording of evidence

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

Disapplication of Chapter 15

33.33. Chapter 15 (motions) shall not apply to a family action in which no notice of intention to defend has been lodged.

PART III

DEFENDED FAMILY ACTIONS

Notice of intention to defend and defences

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

- (a) to oppose any crave in the initial writ;
- (b) to make a claim for—
 - (i) aliment;
 - (ii) an order for financial provision within the meaning of section 8(3) of the Act of 1985; or
 - (iii) an order relating to parental rights; or
- (c) an order—
 - (i) under section 16(1)(b) or (3) of the Act of 1985⁽⁶⁴⁾ (setting aside or varying agreement as to financial provision);
 - (ii) under section 18 of the Act of 1985 (which relates to avoidance transactions); or
 - (iii) under the Act of 1981; or
- (d) to challenge the jurisdiction of the court.

(2) In an action to which this rule applies, the defender shall—

- (a) lodge a notice of intention to defend in Form F26 before the expiry of the period of notice; and

(64) 1985 c. 37.

- (b) make any claim or seek any order referred to in paragraph (1), as the case may be, in those defences by setting out in his defences—
 - (i) craves;
 - (ii) averments in the answers to the condescence in support of those craves; and
 - (iii) appropriate pleas-in-law.

Abandonment by pursuer

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

Attendance of parties at Options Hearing

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

Decree by default

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

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

that party shall be in default.

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

- (a) where the family action is one mentioned in rule 33.1(1)(a) to (h), allow that action to proceed as undefended under Part II of this Chapter; or
- (b) where the family action is one mentioned in rule 33.1(1)(i) to (m), grant decree as craved; or
- (c) grant decree of absolvitor; or
- (d) dismiss the family action or any claim made or order sought; and
- (e) award expenses.

(3) Where no party appears at a diet in a family action, the sheriff may dismiss that action.

(4) In a family action, the sheriff may, on cause shown, prorogate the time for lodging any production or part of process, or for intimating or implementing any order.

PART IV

APPLICATIONS AND ORDERS RELATING TO CHILDREN IN CERTAIN ACTIONS

Application and interpretation of this Part

33.38.—(1) This Part applies to an action of divorce or separation.

(2) In this Part, “the Act of 1958” means the Matrimonial Proceedings (Children) Act 1958(65).

Applications in actions to which this Part applies

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

Intimation before committal to care or supervision

33.40. Where the sheriff is considering making an order under section 10(1) of the Act 1958⁽⁶⁶⁾ (committal of care of child to an individual other than one of the parties to the marriage or to a local authority) or under section 12(1) of that Act⁽⁶⁷⁾ (placing child under supervision of a local authority), he shall ordain one of the parties to intimate to that person or to the chief executive of the appropriate local authority, as the case may be, where not already a party to the action and represented at the hearing at which the issue arises—

- (a) a copy of the pleadings (including any adjustments and amendments);
- (b) the terms of any relevant motion; and
- (c) notice of intimation in Form F28 requiring any representations which that person or that local authority wishes to make to the sheriff to be made by minute in the process of the action within the period specified.

Care or supervision orders

33.41. Where the sheriff makes, varies or recalls an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958, the sheriff clerk shall send a copy of the interlocutor making the order and a notice of intimation in Form F29 to the chief executive of the local authority or other person concerned.

Intimation of certain applications to local authorities or other persons

33.42. Where a child is subject to an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958, any motion or minute lodged which relates to that child shall be intimated to the chief executive of the local authority or other person concerned.

Applications in depending actions by motion

33.43. An application by a party in an action depending before the court to which this Part applies—

- (a) for, or for variation of, an order—
 - (i) for interim aliment for a child under the age of 18 years, or

⁽⁶⁶⁾ Section 10(1) of the Act of 1958 was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 2 and the Family Law (Scotland) Act 1986 (c. 55), Schedule 1, paragraph 6.

⁽⁶⁷⁾ Section 12(1) of the Act of 1958 was amended by the Social Work (Scotland) Act 1968 (c. 49), Schedule 9.

- (ii) for interim custody of, or interim access to, a child, or
- (b) for variation or recall of an order under section 10(1) (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or section 12(1) (placing child under supervision of a local authority), of the Act of 1958,

shall be made by motion.

Applications after decree relating to parental rights, care or supervision

33.44.—(1) An application after final decree—

- (a) for, or for the variation or recall of, an order relating to parental rights,
- (b) for an order under section 10(1) of the Act of 1958 (committal of care of child to an individual other than one of the parties to the marriage or to a local authority), or
- (c) an order under section 12(1) of the Act of 1958 (placing child under supervision of a local authority),

shall be made by minute in the process of the action to which the application relates.

(2) Where a minute has been lodged under paragraph (1), any party may apply by motion for any interim order which may be made pending the determination of the application.

Applications after decree relating to aliment

33.45.—(1) An application after final decree for, or for the variation or recall of, an order for aliment for a child shall be made by minute in the process of the action to which the application relates.

(2) Where a minute has been lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

Applications after decree by persons over 18 years for aliment

33.46.—(1) A person—

- (a) to whom an obligation of aliment is owed under section 1 of the Act of 1985(68),
- (b) in whose favour an order for aliment while under the age of 18 years was made in an action to which this Part applies, and
- (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,

shall apply by minute in the process of that action.

(2) An application for interim aliment pending the determination of an application under paragraph (1) shall be made by motion.

(3) Where a decree has been pronounced in an application under paragraph (1) or (2), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

PART V

ORDERS RELATING TO FINANCIAL PROVISION

Application and interpretation of this Part

33.47.—(1) This Part applies to an action of divorce.

(2) In this Part, “incidental order” has the meaning assigned in section 14(2) of the Act of 1985.

Applications in actions to which this Part applies

33.48.—(1) An application for an order mentioned in paragraph (2) shall be made—

- (a) by a crave in the initial writ or defences, as the case may be, in an action to which this Part applies; or
- (b) where the application is made by a person other than the pursuer or defender, by minute in that action.

(2) The orders referred to in paragraph (1) are:—

- (a) an order for financial provision within the meaning of section 8(3) of the Act of 1985;
- (b) an order under section 16(1)(b) or (3) of the Act of 1985 (setting aside or varying agreement as to financial provision);
- (c) an order under section 18 of the Act of 1985 (which relates to avoidance transactions); and
- (d) an order under section 13 of the Act of 1981⁽⁶⁹⁾ (transfer or vesting of tenancy).

Applications in depending actions relating to incidental orders

33.49.—(1) In an action depending before the sheriff to which this Part applies—

- (a) the pursuer or defender, notwithstanding rules 33.34(2) (application by defender for order for financial provision) and 33.48(1)(a) (application for order for financial provision in initial writ or defences), may apply by motion for an incidental order; and
- (b) the sheriff shall not be bound to determine such a motion if he considers that the application should properly be by a crave in the initial writ or defences, as the case may be.

(2) In an action depending before the sheriff to which this Part applies, an application under section 14(4) of the Act of 1985 for the variation or recall of an incidental order shall be made by minute in the process of the action to which the application relates.

Applications relating to interim aliment

33.50. An application for, or for the variation or recall of, an order for interim aliment for the pursuer or defender shall be made by motion.

Applications relating to orders for financial provision

33.51.—(1) An application—

(69) 1981 c. 59; section 13 was amended by the Family Law (Scotland) Act 1985 (c. 37), Schedule 1, paragraph 11 and the Housing (Scotland) Act 1987 (c. 26), Schedule 23, paragraph 26.

- (a) after final decree under any of the following provisions of the Act of 1985—
 - (i) section 8(1) for periodical allowance,
 - (ii) section 12(1)(b) (payment of capital sum or transfer of property),
 - (iii) section 12(4) (variation of date or method of payment of capital sum or date of transfer of property), or
 - (iv) section 13(4) (variation, recall, backdating or conversion of periodical allowance), or
 - (b) after the grant or refusal of an application under—
 - (i) section 8(1) or 14(3) for an incidental order, or
 - (ii) section 14(4) (variation or recall of incidental order),
- shall be made by minute in the process of the action to which the application relates.

(2) Where a minute is lodged under paragraph (1), any party may lodge a motion for any interim order which may be made pending the determination of the application.

Applications after decree relating to agreements and avoidance transactions

33.52. An application for an order—

- (a) under section 16(1)(a) or (3) of the Act of 1985 (setting aside or varying agreements as to financial provision), or
- (b) under section 18 of the Act of 1985 (which relates to avoidance transactions),

made after final decree shall be made by minute in the process of the action to which the application relates.

PART VI

APPLICATIONS RELATING TO AVOIDANCE TRANSACTIONS

Form of applications

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

(2) An application for an order under section 18 of the Act of 1985 after final decree in an action, shall be made by minute in the process of the action to which the application relates.

PART VII

FINANCIAL PROVISION AFTER OVERSEAS DIVORCE OR ANNULMENT

Interpretation of this Part

33.54. In this Part—

- “the Act of 1984” means the Matrimonial and Family Proceedings Act 1984(70);
- “order for financial provision” has the meaning assigned in section 30(1) of the Act of 1984;
- “overseas country” has the meaning assigned in section 30(1) of the Act of 1984.

Applications for financial provision

33.55.—(1) An application under section 28 of the Act of 1984⁽⁷¹⁾ for an order for financial provision after a divorce or annulment in an overseas country shall be made by initial writ.

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

- (a) section 13 of the Act of 1981⁽⁷²⁾ (transfer of tenancy of matrimonial home),
- (b) section 29(4) of the Act of 1984 for interim periodical allowance, or
- (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),

shall be made by motion.

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

- (a) section 12(4) of the Act of 1985 (variation of date or method of payment of capital sum or date of transfer of property),
- (b) section 13(4) of the Act of 1985 (variation, recall, backdating or conversion or periodical allowance), or
- (c) section 14(4) of the Act of 1985 (variation or recall of incidental order),

shall be made by minute in the process of the action to which the application relates.

(4) Where a minute has been lodged under paragraph (3), any party may apply by motion for an interim order pending the determination of the application.

PART VIII

ACTIONS OF ALIMENT

Interpretation of this Part

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

Undefended actions of aliment

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

(2) Where the sheriff requires the appearance of parties, the sheriff clerk shall fix a hearing.

Applications relating to aliment

33.58.—(1) An application for, or for variation of, an order for interim aliment in a depending action of aliment shall be made by motion.

(2) An application after final decree for the variation or recall of an order for aliment in an action of aliment shall be made by minute in the process of the action to which the application relates.

(3) A person—

- (a) to whom an obligation of aliment is owed under section 1 of the Act of 1985⁽⁷³⁾,

(71) Section 28 was extended by section 29A (inserted by the Act of 1985, Schedule 1, paragraph 12) to an annulment.
 (72) 1981 c. 51; section 13(2) was amended by the Act of 1985, Schedule 1, paragraph 11.
 (73) 1985 c. 37.

- (b) in whose favour an order for aliment while under the age of 18 years was made in an action of aliment, or
- (c) who seeks, after attaining that age, an order for aliment against the person in that action against whom the order for aliment in his favour was made,

shall apply by minute in the process of that action.

(4) An application for interim aliment pending the determination of an application under paragraph (2) or (3) shall be made by motion.

(5) Where a decree has been pronounced in an application under paragraph (2) or (3), any application for variation or recall of any such decree shall be made by minute in the process of the action to which the application relates.

Applications relating to agreements on aliment

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

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

PART IX

ACTIONS RELATING TO PARENTAL RIGHTS

Application and interpretation of this Part

33.60.—(1) This Part applies to an application for any parental rights in a family action other than in an action of divorce or separation.

(2) In this Part, “the Act of 1973” means the Guardianship Act 1973(74).

Form of applications

33.61. Subject to any other provision in this Chapter, an application for an order for any parental rights in respect of a child shall be made—

- (a) by an action for parental rights;
- (b) by a crave in the initial writ or defences, as the case may be, in any other family action to which this Part applies; or
- (c) where the application is made by a person other than a party to an action mentioned in paragraph (a) or (b), by minute in that action.

Defences in actions for parental rights

33.62. In an action for parental rights, the pursuer shall call as a defender—

- (a) the parents or other parent of the child in respect of whom the order is sought;
- (b) any guardian of the child;
- (c) any person who has accepted the child into his family;
- (d) any person having the de facto custody of the child;
- (e) any local authority in whose care or under whose supervision the child is; and

- (f) in any case where there is no person falling within paragraphs (a) to (e), the Lord Advocate.

Applications relating to interim orders in depending actions

33.63. An application, in an action depending before the sheriff to which this Part applies, for, or for the variation or recall of, an order for interim custody or interim access shall be made—

- (a) by a party to the action, by motion; or
- (b) by a person who is not a party to the action, by minute.

Care and supervision by local authorities

33.64.—(1) Where the sheriff is considering making an order under section 11(1) of the Act of 1973⁽⁷⁵⁾ (committal of care of child to a local authority or order that child be under supervision of a local authority), he shall ordain one of the parties to intimate to the chief executive of the appropriate local authority unless a party to the cause and represented at the hearing at which the issue arises—

- (a) a copy of the pleadings (including any adjustments and amendments);
- (b) the terms of any relevant motion;
- (c) a notice of intimation in Form F28 requiring any representations which the local authority wishes to make to the court to be made by minute in the process of the action within the period specified.

(2) Where the sheriff makes, varies or recalls an order placing a child under the supervision of a local authority under section 11(1) of the Act of 1973, the sheriff clerk shall send a copy of the interlocutor making the order and a notice of intimation in Form F29 to the chief executive of that local authority.

(3) Where a child is subject to an order made under section 11(1) of the Act of 1973, any motion or minute lodged which relates to that child shall be intimated to the chief executive of the local authority concerned.

Applications after decree

33.65.—(1) An application after final decree—

- (a) for variation or recall of an order relating to parental rights, or
- (b) for, or for variation or recall of, an order under section 11(1) of the Act of 1973 (committal of care of child to a local authority or order that child be under the supervision of a local authority),

shall be made by minute in the process of the action to which the application relates.

(2) Where a minute has been lodged under paragraph (1), any party may apply by motion for an interim order pending the determination of the application.

(75) Section 11(1) was amended by the Act of 1975 (c. 72), section 48(3).

PART X

ACTIONS UNDER THE MATRIMONIAL HOMES (FAMILY PROTECTION) (SCOTLAND) ACT 1981

Interpretation of this Part

33.66. Unless the context otherwise requires, words and expressions used in this Part which are also used in the Act of 1981(76) have the same meaning as in that Act.

Form of applications

33.67.—(1) Subject to any other provision in this Chapter, an application for an order under the Act of 1981 shall be made—

- (a) by an action for such an order;
- (b) by a crave in the initial writ or in defences, as the case may be, in any other family action; or
- (c) where the application is made by a person other than a party to any action mentioned in paragraph (a) or (b), by minute in that action.

(2) An application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing) or section 11 (application in relation to poiding) shall, unless made in a depending family action, be made by summary application.

Defenders

33.68. The applicant for an order under the Act of 1981 shall call as a defender—

- (a) where he is seeking an order as a spouse, the other spouse;
- (b) where he is a third party making an application under section 7(1) (dispensing with consent of non-entitled spouse to a dealing), or 8(1) (payment from non-entitled spouse in respect of loan), of the Act of 1981, both spouses; and
- (c) where the application is made under section 18 of the Act of 1981(77) (occupancy rights of cohabiting couples), or is one to which that section applies, the other partner.

Applications by motion

33.69.—(1) An application under any of the following provisions of the Act of 1981 shall be made by motion in the process of the depending action to which the application relates:—

- (a) section 3(4) (interim order for regulation of rights of occupancy, etc.);
- (b) section 4(6) (interim order suspending occupancy rights);
- (c) section 7(1) (dispensing with consent of non-entitled spouse to a dealing);
- (d) section 15(1) (order attaching power of arrest), if made after application for matrimonial interdict; and
- (e) the proviso to section 18(1)(78) (extension of period of occupancy rights).

(2) Intimation of a motion under paragraph (1) shall be given—

- (a) to the other spouse or partner, as the case may be;

(76) 1981 c. 59.

(77) Section 18 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 13(9).

(78) Section 18(1) of the Act of 1981 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 13(9)(a).

- (b) where the motion is under paragraph (1)(a), (b) or (e) and the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

Applications by minute

33.70.—(1) An application for an order under—

- (a) section 5 of the Act of 1981 (variation and recall of orders regulating occupancy rights and of exclusion order), or
- (b) section 15(2) and (5) of the Act of 1981 (variation and recall of matrimonial interdict and power of arrest),

shall be made by minute.

(2) A minute under paragraph (1) shall be intimated—

- (a) to the other spouse or partner, as the case may be;
- (b) where the entitled spouse or partner is a tenant or occupies the matrimonial home by the permission of a third party, to the landlord or third party, as the case may be; and
- (c) to any other person to whom intimation of the application was or is to be made by virtue of rule 33.7(1)(k) (warrant for intimation to certain persons in actions for orders under the Act of 1981) or 33.15 (order for intimation by sheriff).

Sist of actions to enforce occupancy rights

33.71. Unless the sheriff otherwise directs, the sist of an action by virtue of section 7(4) of the Act of 1981 (where action raised by non-entitled spouse to enforce occupancy rights) shall apply only to such part of the action as relates to the enforcement of occupancy rights by a non-entitled spouse.

Certificates of delivery of documents to chief constable

33.72.—(1) Where an applicant is required to comply with section 15(4) or (5), as the case may be, of the Act of 1981⁽⁷⁹⁾ (delivery of documents to chief constable where power of arrest attached to matrimonial interdict is granted, varied or recalled), he shall, after such compliance, lodge in process a certificate of delivery in Form F30.

(2) Where a matrimonial interdict to which a power of arrest under section 15(1) of the Act of 1981 has been attached ceases to have effect by reason of a decree of divorce being pronounced by the sheriff, the pursuer shall send—

- (a) to the chief constable of the police area in which the matrimonial home is situated, and
- (b) if the applicant spouse (within the meaning of section 15(6) of the Act 1981) resides in another police area, to the chief constable of that other police area,

a copy of the interlocutor granting decree and lodge in process a certificate of delivery in Form F30.

(79) Section 15(4) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 64(b).

PART XI

SIMPLIFIED DIVORCE APPLICATIONS

Application and interpretation of this Part

33.73.—(1) This Part applies to an application for divorce by a party to a marriage made in the manner prescribed in rule 33.74 (form of applications) if, but only if—

- (a) that party relies on the facts set out in section 1(2)(d) (no cohabitation for two years with consent of defender to decree), or section 1(2)(e) (no cohabitation for five years), of the Act of 1976(80);
- (b) in an application under section 1(2)(d) of the Act of 1976, the other party consents to decree of divorce being granted;
- (c) no other proceedings are pending in any court which could have the effect of bringing the marriage to an end;
- (d) there are no children of the marriage under the age of 16 years;
- (e) neither party to the marriage applies for an order for financial provision on divorce; and
- (f) neither party to the marriage suffers from mental disorder.

(2) If an application ceases to be one to which this Part applies at any time before final decree, it shall be deemed to be abandoned and shall be dismissed.

(3) In this Part “simplified divorce application” means an application mentioned in paragraph (1).

Form of applications

33.74.—(1) A simplified divorce application in which the facts set out in section 1(2)(d) of the Act of 1976 (no cohabitation for two years with consent of defender to decree) are relied on shall be made in Form F31 and shall only be of effect if—

- (a) it is signed by the applicant; and
- (b) the form of consent in Part 2 of Form F32 is signed by the party to the marriage giving consent.

(2) A simplified divorce application in which the facts set out in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on shall be made in Form F33 and shall only be of effect if it is signed by the applicant.

Lodging of applications

33.75. The applicant shall send a simplified divorce application to the sheriff clerk with—

- (a) an extract or certified copy of the marriage certificate; and
- (b) the appropriate fee.

Citation and intimation

33.76.—(1) This rule is subject to rule 33.77 (citation where address not known).

(2) It shall be the duty of the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application.

- (3) The form of citation—
 - (a) in an application relying on the facts in section 1(2)(d) of the Act of 1976 shall be in Form F34; and
 - (b) in an application relying on the facts in section 1(2)(e) of the Act of 1976 shall be in Form F35.
- (4) The sheriff clerk shall arrange for the citation or intimation required by paragraph (2) to be made—
 - (a) by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);
 - (b) on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or
 - (c) where necessary, in accordance with rule 5.5 (service on persons furth of Scotland).

Citation where address not known

33.77.—(1) In a simplified divorce application in which the facts in section 1(2)(e) of the Act of 1976 (no cohabitation for five years) are relied on and the address of the other party to the marriage is not known and cannot reasonably be ascertained—

- (a) citation shall be executed by displaying a copy of the application and a notice in Form F36 on the walls of court on a period of notice of 21 days; and
- (b) intimation shall be made to—
 - (i) every child of the marriage between the parties who has reached the age of 16 years, and
 - (ii) one of the next-of-kin of the other party to the marriage who has reached that age, unless the address of such person is not known and cannot reasonably be ascertained.

(2) Intimation to a person referred to in paragraph (1)(b) shall be given by intimating a copy of the application and a notice of intimation in Form F37.

Opposition to applications

33.78.—(1) Any person on whom service or intimation of a simplified divorce application has been made may give notice by letter sent to the sheriff clerk that he challenges the jurisdiction of the court or opposes the grant of decree of divorce and giving the reasons for his opposition to the application.

(2) Where opposition to a simplified divorce application is made under paragraph (1), the sheriff shall dismiss the application unless he is satisfied that the reasons given for the opposition are frivolous.

(3) The sheriff clerk shall intimate the decision under paragraph (2) to the applicant and the respondent.

(4) The sending of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.

Evidence

33.79. Parole evidence shall not be given in a simplified divorce application.

Decree

33.80.—(1) The sheriff may grant decree in terms of the simplified divorce application on the expiry of the period of notice if such application has been properly served provided that, when the application has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965⁽⁸¹⁾ applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with.

(2) The sheriff clerk shall, not sooner than 14 days after the granting of decree in terms of paragraph (1), issue to each party to the marriage an extract of the decree of divorce in Form F38.

Appeals

33.81. Any appeal against an interlocutor granting decree of divorce under rule 33.80 (decree) may be made, within 14 days after the date of decree, by sending a letter to the court giving reasons for the appeal.

Applications after decree

33.82. Any application to the court after decree of divorce has been granted in a simplified divorce application which could have been made if it had been made in an action of divorce shall be made by minute.

PART XII

VARIATION OF COURT OF SESSION DECREES

Application and interpretation of this Part

33.83.—(1) This Part applies to an application to the sheriff for variation or recall of any order to which section 8 of the Act of 1966⁽⁸²⁾ (variation of certain Court of Session orders) applies.

(2) In this Part, the “Act of 1966” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966.

Form of applications and intimation to Court of Session

33.84.—(1) An application to which this Part applies shall be made by initial writ.

(2) In such an application there shall be lodged with the initial writ a copy of the interlocutor, certified by a clerk of the Court of Session, which it is sought to vary.

(3) Before lodging the initial writ, a copy of the initial writ certified by the pursuer or his solicitor shall be lodged, or sent by first class recorded delivery post to the Deputy Principal Clerk of Session to be lodged in the process of the cause in the Court of Session in which the original order was made.

(4) The pursuer or his solicitor shall attach a certificate to the initial writ stating that paragraph (3) has been complied with.

(81) Cmnd. 3986 (1969).

(82) 1966 c. 19; section 8 was amended by the Guardianship Act 1973 (c. 29), Schedule 5, the Divorce (Scotland) Act 1976 (c. 39), Schedule 1, the Matrimonial and Family Proceedings Act 1984 (c. 42), Schedule 1, paragraph 7, the Family Law (Scotland) Act 1985 (c. 37), Schedule 1, paragraph 5 and the Family Law Act 1986 (c. 53), Schedule 1, paragraph 8 and Schedule 2.

(5) The sheriff may, on cause shown, prorogate the time for lodging the certified copy of the interlocutor required under paragraph (1).

Defended actions

33.85.—(1) Where a notice of intention to defend has been lodged and no request is made under rule 33.87 (remit of applications to Court of Session), the pursuer shall within 14 days after the date of the lodging of a notice of intention to defend or within such other period as the sheriff may order, lodge in process the following documents (or copies) from the process in the cause in the Court of Session in which the original order was made:—

- (a) the pleadings;
- (b) the interlocutor sheets;
- (c) any opinion of the court; and
- (d) any productions on which he seeks to found.

(2) The sheriff may, on the joint motion of parties made at any time after the lodging of the documents mentioned in paragraph (1)—

- (a) dispense with proof;
- (b) whether defences have been lodged or not, hear the parties; and
- (c) thereafter, grant decree or otherwise dispose of the cause as he thinks fit.

Transmission of process to Court of Session

33.86.—(1) Where decree has been granted or the cause otherwise disposed of—

- (a) and the period for marking an appeal has elapsed without an appeal being marked, or
- (b) after the determination of the cause on any appeal,

the sheriff clerk shall transmit to the Court of Session the sheriff court process and the documents from the process of the cause in the Court of Session which have been lodged in the sheriff court process.

(2) A sheriff court process transmitted under paragraph (1) shall form part of the process of the cause in the Court of Session in which the original order was made.

Remit of applications to Court of Session

33.87.—(1) A request for a remit to the Court of Session under section 8(3) of the Act of 1966 shall be made by motion.

(2) The sheriff shall, in respect of any such motion, order that the cause be remitted to the Court of Session; and, within four days after the date of such order, the sheriff clerk shall transmit the whole sheriff court process to the Court of Session.

(3) A cause remitted to the Court of Session under paragraph (2) shall form part of the process of the cause in the Court of Session in which the original order was made.

PART XIII

CHILD SUPPORT ACT 1991

Interpretation of this Part

33.88.—(1) In this Part—

“the Act of 1991” means the Child Support Act 1991(83);

“child” has the meaning assigned in section 55 of the Act of 1991;

“maintenance assessment” has the meaning assigned in section 55 of the Act of 1991.

Restriction of expenses

33.89. Where the Secretary of State is named as a defender in an action for declarator of nonparentage or illegitimacy, and the Secretary of State does not defend the action, no expenses shall be awarded against the Secretary of State.

Effect of maintenance assessments

33.90. The sheriff clerk shall, on receiving notification that a maintenance assessment has been made, cancelled or has ceased to have effect so as to affect an order of a kind prescribed for the purposes of section 10 of the Act of 1991, endorse on the interlocutor sheet relating to that order a certificate, in Form F39 or F40, as the case may be.

Effect of maintenance assessments on extracts relating to aliment

33.91.—(1) Where an order relating to aliment is affected by a maintenance assessment, any extract of that order issued by the sheriff clerk shall be endorsed with the following certificate:

—
“A maintenance assessment having been made under the Child Support Act 1991 on (insert date), this order, in so far as it relates to the making or securing of periodical payments to or for the benefit of (insert name(s) of child/children), ceases to have effect from (insert date two days after the date on which the maintenance assessment was made).”.

(2) Where an order relating to aliment has ceased to have effect on the making of a maintenance assessment, and that maintenance assessment is later cancelled or ceases to have effect, any extract of that order issued by the sheriff clerk shall be endorsed also with the following certificate:—

“The jurisdiction of the child support officer under the Child Support Act 1991 having terminated on (insert date), this order, in so far as it relates to (insert name(s) of child/children), again shall have effect as from (insert date of termination of child support officer’s jurisdiction).”.

CHAPTER 34

ACTIONS RELATING TO HERITABLE PROPERTY

PART I

SEQUESTRATION FOR RENT

Actions craving payment for rent

34.1.—(1) In an action for sequestration and sale—

- (a) for non-payment of rent,
- (b) for recovery of rent, or
- (c) in security of rent,

whether brought before or after the term of payment, payment of rent may be craved; and decree for payment of such rent or part of it, when due and payable, may be pronounced and extracted in common form.

(2) There shall be served on the defender in such an action, with the initial writ, warrant and citation, a notice in Form H1.

Warrant to inventory and secure

34.2.—(1) In the first deliverance on an initial writ for sequestration and sale, the sheriff may sequestrate the effects of the tenant, and grant warrant to inventory and secure them.

(2) A warrant to sequestrate, inventory, sell, eject or relet shall include authority to open, shut and lockfast places for the purpose of executing such warrant.

Sale of effects

34.3.—(1) In an action for sequestration and sale, the sheriff may order the sequestered effects to be sold by a sheriff officer or other named person.

(2) Where a sale follows an order under paragraph (1), the sale shall be reported within 14 days after the date of the sale and the pursuer shall lodge with the sheriff clerk the roup rolls or certified copies of them and a state of debt.

(3) In the interlocutor approving the report of sale, or by separate interlocutor, the sheriff may grant decree against the defender for any balance remaining due.

Care of effects

34.4. The sheriff may, at any stage of an action for sequestration and sale appoint a fit person to take charge of the sequestered effects, or may require the tenant to find caution that they shall be made available.

PART II

REMOVING

Actions of removing where fixed term of removal

34.5.—(1) Subject to section 21 of the Agricultural Holdings (Scotland) Act 1991⁽⁸⁴⁾ (notice to quit and notice of intention to quit)—

- (a) where the tenant has bound himself to remove by writing, dated and signed—
 - (i) within 12 months after the term of removal, or
 - (ii) where there is more than one lease, after the lease first in date to remove an action of removing may be raised at any time; and
- (b) where the tenant has not bound himself, an action of removing may be raised at any time, but—
 - (i) in the case of a lease of lands exceeding two acres in extent for three years and upwards, an interval of not less than one year nor more than two years shall elapse between the date of notice of removal and the term of removal first in date;
 - (ii) in the case of a lease of lands exceeding two acres in extent, whether written or verbal, held from year to year or under tacit relocation, or for any other

(84) 1991 c. 55.

period less than three years, an interval of not less than six months shall elapse between the date of notice of removal and the term of removal first in date; and

- (iii) in the case of a house let with or without land attached not exceeding two acres in extent, as also of land not exceeding two acres in extent without houses, as also of mills, fishings, shootings, and all other heritable subjects excepting land exceeding two acres in extent, and let for a year or more, 40 days at least shall elapse between the date of notice of removal and the term of removal first in date.

(2) In any defended action of removing the sheriff may order the defender to find caution for violent profits.

(3) In an action for declarator of irritancy and removing by a superior against a vassal, the pursuer shall call as parties the last entered vassal and such heritable creditors and holders of postponed ground burdens as are disclosed by a search for 20 years before the raising of the action, and the expense of the search shall form part of the pursuer's expenses of process.

Form of notice of removal

34.6.—(1) A notice under the following sections of this Act shall be in Form H2:—

- (a) section 34 (notice in writing to remove where lands exceeding two acres held on probative lease),
- (b) section 35 (letter of removal where tenant in possession of lands exceeding two acres), and
- (c) section 36 (notice of removal where lands exceeding two acres occupied by tenant without written lease).

(2) A letter of removal shall be in Form H3.

Form of notice under section 37 of this Act

34.7. A notice under section 37 of this Act (notice of termination of tenancy) shall be in Form H4.

Giving notice of removal

34.8.—(1) A notice under section 34, 35, 36, 37 or 38 of this Act (which relate to notices of removal) may be given by—

- (a) a sheriff officer,
- (b) the person entitled to give such notice, or
- (c) the solicitor or factor of such person,

posting the notice by registered post or the first class recorded delivery service at any post office within the United Kingdom in time for it to be delivered at the address on the notice before the last date on which by law such notice must be given, addressed to the person entitled to receive such notice, and bearing the address of that person at the time, if known, or, if not known, to the last known address of that person.

(2) A sheriff officer may also give notice under a section of this Act mentioned in paragraph (1) in any manner in which he may serve an initial writ; and, accordingly, rule 5.4 (service within Scotland by sheriff officer) shall, with the necessary modifications, apply to the giving of notice under this paragraph as it applies to service of an initial writ.

Evidence of notice to remove

34.9.—(1) A certificate of the sending of notice under rule 34.8 dated and endorsed on the lease or an extract of it, or on the letter of removal, signed by the sheriff officer or the person sending the notice, his solicitor or factor, or an acknowledgement of the notice endorsed on the lease or an extract of it, or on the letter of removal, by the party in possession or his agent, shall be sufficient evidence that notice has been given.

(2) Where there is no lease, a certificate of the sending of such notice shall be endorsed on a copy of the notice or letter of removal.

Applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970

34.10.—(1) An application or counter-application to the sheriff under any of the following provisions of Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970⁽⁸⁵⁾ (which relates to the standard security) shall be made by initial writ where any other remedy is craved:

- (a) section 18(2)⁽⁸⁶⁾ (declarator that obligations under contract performed);
- (b) section 20(3) (application by creditor for warrant to let security subjects);
- (c) section 22(1) (objections to notice of default); and
- (d) section 22(3) (counter-application for remedies under the Act);
- (e) section 24(1) (application by a creditor for warrant to exercise remedies on default);
and
- (f) section 28(1) (decree of foreclosure).

(2) An interlocutor of the sheriff disposing of an application or counter-application under paragraph (1) shall be final and not subject to appeal except as to a question of title or any other remedy granted.

CHAPTER 35

ACTIONS OF MULTIPLEPOINDING

Application of this Chapter

35.1. This Chapter applies to an action of multiplepoinding.

Application of Chapters 9 and 10

35.2. Chapter 10 (additional procedure) and the following rules in Chapter 9 (standard procedure in defended causes) shall not apply to an action of multiplepoinding:—

- rule9.1 (notice of intention to defend),
- rule9.2 (fixing date for Options Hearing),
- rule9.4 (lodging of pleadings before Options Hearing),
- rule9.8 (adjustment of pleadings),
- rule9.9 (effect of sist on adjustment),

⁽⁸⁵⁾ 1970 c. 35.

⁽⁸⁶⁾ Section 18(2) was amended by the Redemption of Standard Securities (Scotland) Act 1971 (c. 45), section 1.

- rule9.10 (open record),
- rule9.11 (record for Option Hearing),
- rule9.12 (Option Hearing),
- rule9.15 (applications for time to pay directions).

Parties

35.3.—(1) An action of multiplepointing may be brought by any person holding, or having an interest in, or claim on, the fund in medio in his own name.

- (2) The pursuer shall call as defenders to such an action—
 - (a) all persons so far as known to him as having an interest in the fund in medio; and
 - (b) where he is not the holder of the fund, the holder of that fund.

Condescence of fund in medio

35.4.—(1) Where the pursuer is the holder of the fund in medio, he shall include a detailed statement of the fund in the condescence in the initial writ.

(2) Where the pursuer is not the holder of the fund in medio, the holder shall, before the expiry of the period of notice—

- (a) lodge in process—
 - (i) a condescence of the fund in medio, stating any claim or lien which he may profess to have on that fund;
 - (ii) a list of all persons known to him as having an interest in the fund; and
- (b) intimate a copy of the condescence and list to any other party.

Warrant of citation in multiplepointings

35.5. The warrant of citation of the initial writ in an action of multiplepointing shall be in Form M1.

Citation

35.6.—(1) Subject to rule 5.6 (service where address of person is not known), citation of any person in an action of multiplepointing shall be in Form M2 which shall be attached to a copy of the initial writ and warrant of citation and shall have appended to it a notice of appearance in Form M4.

(2) The certificate of citation shall be in Form M3 and shall be attached to the initial writ.

Advertisement

35.7. The sheriff may make an order for advertisement of the action in such newspapers as he thinks fit.

Lodging of notice of appearance

- 35.8.** Where a party intends to lodge—
- (a) defences to challenge the jurisdiction of the court or the competency of the action,
 - (b) objections to the condescence of the fund in medio, or
 - (c) a claim on the fund,

he shall, before the expiry of the period of notice, lodge a notice of appearance in Form M4.

Fixing date of first hearing

35.9. Where a notice of appearance, or a condescendence on the fund in medio and a list under rule 35.4(2)(a) has been lodged, the sheriff clerk shall—

- (a) fix a date and time for the first hearing, which date shall be the first suitable court day occurring not sooner than four weeks after the expiry of the period of notice;
- (b) on fixing the date for the first hearing forthwith intimate that date in Form M5 to each party; and
- (c) prepare and sign an interlocutor recording the date of the first hearing.

Hearings

35.10.—(1) The sheriff shall conduct the first, and any subsequent hearing, with a view to securing the expeditious progress of the cause by ascertaining from the parties the matters in dispute.

(2) The parties shall provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this Chapter.

(3) At the first, or any subsequent hearing, the sheriff shall fix a period within which defences, objections or claims shall be lodged, and appoint a date for a second hearing.

(4) Where the list lodged under rule 35.4(2)(a) contains any person who is not a party to the action, the sheriff shall order—

- (a) the initial writ to be amended to add that person as a defender;
- (b) service of the pleadings so amended to be made on that person, with a citation in Form M6; and
- (c) intimation to that person of any condescendence of the fund in medio lodged by a holder of the fund who is not the pursuer.

(5) Where a person to whom service has been made under paragraph (4) lodges a notice of appearance under rule 35.8, the sheriff clerk shall intimate to him in Form M5 the date of the next hearing fixed in the action.

Lodging defences, objections and claims

35.11.—(1) Defences, objections and claims by a party shall be lodged with the sheriff clerk in a single document under separate headings.

(2) Each claimant shall lodge with his claim any documents founded on in his claim, so far as they are within his custody or power.

Disposal of defences

35.12.—(1) Where defences have been lodged, the sheriff may order the initial writ and defences to be adjusted and thereafter close the record and regulate further procedure.

(2) Unless the sheriff otherwise directs, defences shall be disposed of before any further procedure in the action.

Objections to fund in medio

35.13.—(1) Where objections to the fund in medio have been lodged, the sheriff may, after disposal of any defences, order the condescence of the fund and objections to be adjusted; and thereafter close the record and regulate further procedure.

(2) If no objections to the fund in medio have been lodged, or if objections have been lodged and disposed of, the sheriff may, on the motion of the holder of the fund, and without ordering intimation to any party approve the condescence of the fund and find the holder liable only in one single payment.

Preliminary pleas in multiplepoundings

35.14.—(1) A party intending to insist on a preliminary plea shall, not later than 3 days before any hearing to determine further procedure following the lodging of defences, objections or claims, lodge with the sheriff clerk a note of the basis of the plea.

(2) Where a party fails to comply with the provisions of paragraph (1), he shall be deemed to be no longer insisting on the plea and the plea shall be repelled by the sheriff at the hearing referred to in paragraph (1).

(3) If satisfied that there is a preliminary matter of law which justifies a debate, the sheriff shall, after having heard parties and considered the note lodged under this rule, appoint the action to debate.

Consignation of the fund and discharge of holder

35.15.—(1) At any time after the condescence of the fund in medio has been approved, the sheriff may order the whole or any part of the fund to be sold and the proceeds of the sale consigned into court.

(2) After such consignation the holder of the fund in medio may apply for his exoneration and discharge.

(3) The sheriff may allow the holder of the fund in medio, on his exoneration and discharge, his expenses out of the fund as a first charge on the fund.

Further service or advertisement

35.16. The sheriff may at any time, of his own motion or on the motion of any party, order further service on any person or advertisement.

Ranking of claims

35.17.—(1) After disposal of any defences, and approval of the condescence of the fund in medio, the sheriff may, where there is no competition on the fund, rank and prefer the claimants and grant decree in terms of that ranking.

(2) Where there is competition on the fund, the sheriff may order claims to be adjusted and thereafter close the record and regulate further procedure.

Remit to reporter

35.18.—(1) Where several claims have been lodged, the sheriff may remit to a reporter to prepare a scheme of division and report.

(2) The expenses of such remit, when approved by the sheriff, shall be made a charge on the fund, to be deducted before division.

CHAPTER 36

ACTIONS OF DAMAGES

PART I

INTIMATION TO CONNECTED PERSONS IN CERTAIN ACTIONS OF DAMAGES

Application and interpretation of this Part

36.1.—(1) This Part applies to an action of damages in which, following the death of any person from personal injuries, damages are claimed—

- (a) by the executor of the deceased, in respect of the injuries from which the deceased died; or
- (b) by any relative of the deceased, in respect of the death of the deceased.

(2) In this Part—

“connected person” means a person, not being a party to the action, who has title to sue the defender in respect of the personal injuries from which the deceased died or in respect of his death;

“relative” has the meaning assigned to it in Schedule 1 to the Damages (Scotland) Act 1976(87).

Averments

36.2. In an action to which this Part applies, the pursuer shall aver in the condescence, as the case may be—

- (a) that there are no connected persons;
- (b) that there are connected persons, being the persons specified in the crave for intimation;
- (c) that there are connected persons in respect of whom intimation should be dispensed with on the ground that—
 - (i) the names or whereabouts of such persons are not known to, and cannot reasonably be ascertained by, the pursuer; or
 - (ii) such persons are unlikely to be awarded more than £200 each.

Warrants for intimation

36.3.—(1) Where the pursuer makes averments under rule 36.2(b) (existence of connected persons), he shall include a crave in the initial writ for intimation to any person who is believed to have title to sue the defender in an action in respect of the death of the deceased or the personal injuries from which the deceased died.

(2) A notice of intimation in Form D1 shall be attached to the copy of the initial writ where intimation is given on a warrant under paragraph (1).

Applications to dispense with intimation

36.4.—(1) Where the pursuer makes averments under rule 36.2(c) (dispensing with intimation to connected persons), he shall apply by crave in the initial writ for an order to dispense with intimation.

(87) 1976 c. 13; Schedule 1 was amended by the Administration of Justice Act 1982 (c. 53), section 14(4).

- (2) In determining an application under paragraph (1), the sheriff shall have regard to—
 - (a) the desirability of avoiding a multiplicity of actions; and
 - (b) the expense, inconvenience or difficulty likely to be involved in taking steps to ascertain the name or whereabouts of the connected person.
- (3) Where the sheriff is not satisfied that intimation to a connected person should be dispensed with, he may—
 - (a) order intimation to a connected person whose name and whereabouts are known;
 - (b) order the pursuer to take such further steps as he may specify in the interlocutor to ascertain the name or whereabouts of any connected person; and
 - (c) order advertisement in such manner, place and at such times as he may specify in the interlocutor.

Subsequent disclosure of connected persons

36.5. Where the name or whereabouts of a person, in respect of whom the sheriff has dispensed with intimation on a ground specified in rule 36.2(c) (dispensing with intimation to connected persons), subsequently becomes known to the pursuer, the pursuer shall apply to the sheriff by motion for a warrant for intimation to such a person; and such intimation shall be made in accordance with rule 36.3(2).

Connected persons entering process

36.6.—(1) A connected person may apply by minute craving leave to be sisted as an additional pursuer to the action.

(2) Such a minute shall also crave leave of the sheriff to adopt the existing grounds of action, and to amend the craves, condescence and pleas-in-law.

(3) The period within which answers to a minute under this rule may be lodged shall be 14 days from the date of intimation of the minute.

(4) Paragraphs (1) to (4) of rule 14.3 (procedure in minutes) shall not apply to a minute to which this rule applies.

Failure to enter process

36.7. Where a connected person to whom intimation is made in accordance with this Part—

- (a) does not apply to be sisted as an additional pursuer to the action,
- (b) subsequently raises a separate action against the same defender in respect of the same personal injuries or death, and
- (c) would, apart from this rule, be awarded the expenses or part of the expenses of that action,

he shall not be awarded those expenses except on cause shown.

PART II

INTERIM PAYMENTS OF DAMAGES

Application and interpretation of this Part

36.8.—(1) This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.

- (2) In this Part—

“defender” includes a third party against whom the pursuer has a crave for damages;
“personal injuries” includes any disease or impairment of a physical or mental condition.

Applications for interim payment of damages

36.9.—(1) In an action to which this Part applies, a pursuer may, at any time after defences have been lodged, apply by motion for an order for interim payment of damages to him by the defender or, where there are two or more of them, by any one or more of them.

(2) The pursuer shall intimate a motion under paragraph (1) to every other party on a period of notice of 14 days.

(3) On a motion under paragraph (1), the sheriff may, if satisfied that—

- (a) the defender has admitted liability to the pursuer in the action, or
- (b) if the action proceeded to proof, the pursuer would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part, or on the part of any person in respect of whose injury or death the claim of the pursuer arises, and would obtain decree for damages against any defender,

ordain that defender to make an interim payment to the pursuer of such amount as the sheriff thinks fit, not exceeding a reasonable proportion of the damages which, in the opinion of the sheriff, are likely to be recovered by the pursuer.

(4) Any such payment may be ordered to be made in one lump sum or otherwise as the sheriff thinks fit.

(5) No order shall be made against a defender under this rule unless it appears to the sheriff that the defender is—

- (a) a person who is insured in respect of the claim of the pursuer;
- (b) a public authority; or
- (c) a person whose means and resources are such as to enable him to make the interim payment.

(6) Notwithstanding the grant or refusal of a motion for an interim payment, a subsequent motion may be made where there has been a change of circumstances.

(7) Subject to Part IV (management of damages payable to persons under legal disability), an interim payment shall be made to the pursuer unless the sheriff otherwise directs.

(8) This rule shall, with the necessary modifications, apply to a counterclaim for damages for personal injuries made by a defender as it applies to an action in which the pursuer may apply for an order for interim payment of damages.

Adjustment on final decree

36.10. Where a defender has made an interim payment under rule 36.9, the sheriff may, when final decree is pronounced, make such order with respect to the interim payment as he thinks fit to give effect to the final liability of that defender to the pursuer; and in particular may order—

- (a) repayment by the pursuer of any sum by which the interim payment exceeds the amount which that defender is liable to pay to the pursuer; or
- (b) payment by any other defender or a third party, of any part of the interim payment which the defender who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to, or connected with, the claim of the pursuer.

PART III

PROVISIONAL DAMAGES FOR PERSONAL INJURIES

Application and interpretation of this Part

36.11.—(1) This Part applies to an action of damages for personal injuries.

(2) In this Part—

“the Act of 1982” means the Administration of Justice Act 1982⁽⁸⁸⁾;

“further damages” means the damages referred to in section 12(4)(b) of the Act of 1982;

“provisional damages” means the damages referred to in section 12(4)(a) of the Act of 1982.

Applications for provisional damages

36.12. An application under section 12(2)(a) of the Act of 1982 for provisional damages for personal injuries shall be made by including in the initial writ—

- (a) a crave for provisional damages;
- (b) averments in the condescendence supporting the crave, including averments—
 - (i) that there is a risk that, at some definite or indefinite time in the future, the pursuer will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration of his physical or mental condition; and
 - (ii) that the defender was, at the time of the act or omission which gave rise to the cause of action, a public authority, public corporation or insured or otherwise indemnified in respect of the claim; and
- (c) an appropriate plea-in-law.

Applications for further damages

36.13.—(1) An application for further damages by a pursuer in respect of whom an order under section 12(2)(b) of the Act of 1982 has been made shall be made by minute in the process of the action to which it relates and shall include—

- (a) a crave for further damages;
- (b) averments in the statement of facts supporting that crave; and
- (c) appropriate pleas-in-law.

(2) On lodging such a minute in process, the pursuer shall apply by motion for warrant to serve the minute on—

- (a) every other party; and
- (b) where such other party is insured or otherwise indemnified, his insurer or indemnifier, if known to the pursuer.

(3) Any such party, insurer or indemnifier may lodge answers to such a minute in process within 28 days after the date of service on him.

(4) Where answers have been lodged under paragraph (3), the sheriff may, on the motion of any party, make such further order as to procedure as he thinks fit.

PART IV

MANAGEMENT OF DAMAGES PAYABLE TO PERSONS UNDER LEGAL DISABILITY

Orders for payment and management of money

36.14.—(1) In an action of damages in which a sum of money becomes payable, by virtue of a decree or an extra-judicial settlement, to or for the benefit of a person under legal disability, the sheriff shall make such order regarding the payment and management of that sum for the benefit of that person as he thinks fit.

(2) An order under paragraph (1) shall be made on the granting of decree for payment or of absolvitor.

Methods of management

36.15. In making an order under rule 36.14(1), the sheriff may—

- (a) appoint a judicial factor to apply, invest or otherwise deal with the money for the benefit of the person under legal disability;
- (b) order the money to be paid to—
 - (i) the Accountant of Court, or
 - (ii) the guardian of the person under legal disability,as trustee, to be applied, invested or otherwise dealt with and administered under the directions of the sheriff for the benefit of the person under legal disability;
- (c) order the money to be paid to the sheriff clerk of the sheriff court district in which the person under legal disability resides, to be applied, invested or otherwise dealt with and administered, under the directions of the sheriff of that district, for the benefit of the person under legal disability; or
- (d) order the money to be paid directly to the person under legal disability.

Subsequent orders

36.16.—(1) Where the sheriff has made an order under rule 36.14(1), any person having an interest may apply for an appointment or order under rule 36.15, or any other order for the payment or management of the money, by minute in the process of the cause to which the application relates.

(2) An application for directions under rule 36.15(b) or (c) may be made by any person having an interest by minute in the process of the cause to which the application relates.

Management of money paid to sheriff clerk

36.17.—(1) A receipt in Form D2 by the sheriff clerk shall be a sufficient discharge in respect of the amount paid to him under this Part.

(2) The sheriff clerk shall, at the request of any competent court, accept custody of any sum of money in an action of damages ordered to be paid to, applied, invested or otherwise dealt with by him, for the benefit of a person under legal disability.

(3) Any money paid to the sheriff clerk under this Part shall be paid out, applied, invested or otherwise dealt with by the sheriff clerk only after such intimation, service and enquiry as the sheriff may order.

(4) Any sum of money invested by the sheriff clerk under this Part shall be invested in a manner in which trustees are authorised to invest by virtue of the Trustee Investments Act 1961⁽⁸⁹⁾.

PART V

SEX DISCRIMINATION ACT 1975

Causes under section 66 of the Act of 1975

36.18.—(1) In a cause in which a breach of statutory duty under section 66(1) of the Sex Discrimination Act 1975⁽⁹⁰⁾ (proceedings for act of discrimination) is averred, the sheriff may, of his own motion or on the motion of any party, appoint an assessor.

(2) An assessor appointed under paragraph (1) shall be a person who the sheriff considers has special qualifications to be of assistance in determining an action referred to in that paragraph.

(3) In a cause referred to in paragraph (1), the pursuer should send a copy of the initial writ by post by the first class recorded delivery service to the Equal Opportunities Commission.

CHAPTER 37

CAUSES UNDER THE PRESUMPTION OF DEATH (SCOTLAND) ACT 1977

Interpretation of this Chapter

37.1. In this Chapter—

“the Act of 1977” means the Presumption of Death (Scotland) Act 1977⁽⁹¹⁾;

“action of declarator” means an action under section 1(1) of the Act of 1977;

“missing person” has the meaning assigned in section 1(1) of the Act of 1977.

Parties to, and service and intimation of, actions of declarator

37.2.—(1) The missing person shall be named as the defender in an action of declarator and, subject to paragraph (2), service on that person shall be executed in accordance with rule 5.6 (service where address of person is not known).

(2) In the application of rule 5.6(1)(a) (advertisement where address of person not known) to service under paragraph (1) of this rule, for the reference to Form G3 there shall be substituted a reference to Form P1.

(3) Subject to paragraph (5), in an action of declarator, the pursuer shall include a crave for a warrant for intimation to—

(a) the missing person's—

(i) spouse, and

(ii) children, or, if he has no children, his nearest relative known to the pursuer,

(b) any person, including any insurance company, who so far as known to the pursuer has an interest in the action, and

(c) the Lord Advocate,

⁽⁸⁹⁾ 1961 c. 62.
⁽⁹⁰⁾ 1975 c. 65.
⁽⁹¹⁾ 1977 c. 27.

in the following terms:— “For intimation to (name and address) as [husband or wife, child or nearest relative] [a person having an interest in the presumed death] of (name and last known address of the missing person) and to the Lord Advocate.”.

(4) A notice of intimation in Form P2 shall be attached to the copy of the summons where intimation is given on a warrant under paragraph (3).

(5) The sheriff may, on the motion of the pursuer, dispense with intimation on a person mentioned in paragraph (3)(a) or (b).

(6) An application by minute under section 1(5) of the Act of 1977 (person interested in seeking determination or appointment not sought by pursuer) shall contain a crave for the determination or appointment sought, averments in the answers to the condescence in support of that crave and an appropriate plea-in-law.

(7) On lodging a minute under paragraph (6), the minuter shall—

- (a) send a copy of the minute by registered post or the first class recorded delivery service to each person to whom intimation of the action has been made under paragraph (2); and
- (b) lodge in process the Post Office receipt or certificate of posting of that minute.

Further advertisement

37.3. Where no minute has been lodged indicating knowledge of the present whereabouts of the missing person, at any time before the determination of the action, the sheriff may, of his own motion or on the motion of a party, make such order for further advertisement as he thinks fit.

Applications for proof

37.4.—(1) In an action of declarator where no minute has been lodged, the pursuer shall, after such further advertisement as may be ordered under rule 37.3, apply to the sheriff by motion for an order for proof.

(2) A proof ordered under paragraph (1) shall be by affidavit evidence unless the sheriff otherwise directs.

Applications for variation or recall of decree

37.5.—(1) An application under section 4(1) of the Act of 1977 (variation or recall of decree) shall be made by minute in the process of the action to which it relates.

(2) On the lodging of such a minute, the sheriff shall make an order—

- (a) for service on the missing person, where his whereabouts have become known;
- (b) for intimation to those persons mentioned in rule 37.2(3) or to dispense with intimation to a person mentioned in rule 37.2(3)(a) or (b); and
- (c) for any answers to the minute to be lodged in process within such period as the sheriff thinks fit.

(3) An application under section 4(3) of the Act of 1977 (person interested seeking determination or appointment not sought by applicant for variation order) shall be made by lodging answers containing a crave for the determination or appointment sought.

(4) A person lodging answers containing a crave under paragraph (3) shall, as well as sending a copy of the answers to the minuter—

- (a) send a copy of the answers by registered post or the first class recorded delivery service to each person on whom service or intimation of the minute was ordered; and

- (b) lodge in process the Post Office receipt or certificate of posting of those answers.

Appointment of judicial factors

37.6.—(1) The Act of Sederunt (Judicial Factors Rules) 1992⁽⁹²⁾ shall apply to an application for the appointment of a judicial factor under section 2(2)(c) or section 4(2) of the Act of 1977 as it applies to a petition for the appointment of a judicial factor.

(2) In the application of rule 37.5 (applications for variation or recall of decree) to an application under section 4(1) of the Act of 1977 in a cause in which variation or recall of the appointment of a judicial factor is sought, for references to a minute there shall be substituted references to a note.

CHAPTER 38

EUROPEAN COURT

Interpretation of this Chapter

38.1.—(1) In this Chapter—

“appeal” includes an application for leave to appeal;

“the European Court” means the Court of Justice of the European Communities;

“reference” means a reference to the European Court for—

- (a) a preliminary ruling under Article 177 of the E.E.C. Treaty, Article 150 of the Euratom Treaty, or Article 41 of the E.C.S.C. Treaty; or
- (b) a ruling on the interpretation of the Conventions, as defined in section 1(1) of the Civil Jurisdiction and Judgments Act 1982⁽⁹³⁾, under Article 3 of Schedule 2 to that Act.

(2) The expressions “E.E.C. Treaty”, “Euratom Treaty” and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972⁽⁹⁴⁾.

Applications for reference

38.2.—(1) A reference may be made by the sheriff of his own motion or on the motion of a party.

(2) A reference shall be made in the form of a request for a preliminary ruling of the European Court in Form E1.

Preparation of case for reference

38.3.—(1) Where the sheriff decides that a reference shall be made, he shall continue the cause for that purpose and, within 4 weeks after the date of that continuation, draft a reference.

(2) On the reference being drafted, the sheriff clerk shall send a copy to each party.

(3) Within 4 weeks after the date on which copies of the draft have been sent to parties, each party may—

- (a) lodge with the sheriff clerk, and

⁽⁹²⁾ S.I. 1992/272.

⁽⁹³⁾ 1982 c. 27; section 1(1) was amended by section 2 of, and Schedule 2 by section 3 of, and Schedule 2 to, the Civil Jurisdiction and Judgments Act 1991 (c. 12).

⁽⁹⁴⁾ 1972 c. 68.

- (b) send to every other party,
a note of any adjustments he seeks to have made in the draft reference.
- (4) Within 14 days after the date on which any such note of adjustments may be lodged, the sheriff, after considering any such adjustments, shall make and sign the reference.
- (5) The sheriff clerk shall forthwith intimate the making of the reference to each party.

Sist of cause

38.4.—(1) Subject to paragraph (2), on a reference being made, the cause shall, unless the sheriff when making such a reference otherwise orders, be sisted until the European Court has given a preliminary ruling on the question referred to it.

(2) The sheriff may recall a sist made under paragraph (1) for the purpose of making an interim order which a due regard to the interests of the parties may require.

Transmission of reference

38.5.—(1) Subject to paragraph (2), a copy of the reference, certified by the sheriff clerk, shall be transmitted by the sheriff clerk to the Registrar of the European Court.

(2) Unless the sheriff otherwise directs, a copy of the reference shall not be sent to the Registrar of the European Court where an appeal against the making of the reference is pending.

(3) For the purpose of paragraph (2), an appeal shall be treated as pending—

- (a) until the expiry of the time for making that appeal; or
(b) where an appeal has been made, until that appeal has been determined.

SCHEDULE 2

Paragraph 5

Repeal and revocation of enactments

| | Enactment | Extent of repeal or revocation |
|------------------|---|---|
| 1892 c. 17 | Sheriff Courts (Scotland) Extracts Act 1892 | Sections 4, 5, 6 and 11 and the Schedule |
| S.R.&O. 1913/638 | Codifying Act of Sederunt 1913 | Book L, Chapter II (letters of request) |
| S.I. 1982/1432 | Act of Sederunt (Applications under the Matrimonial Homes (Family Protection) (Scotland) Act 1981) 1982 | The whole Act of Sederunt except paragraph 7 (other than the proviso) and paragraph 8 |
| S.I. 1984/255 | Act of Sederunt (Consistorial Causes) 1984 | The whole Act of Sederunt |
| S.I. 1984/667 | Act of Sederunt (Variation and Recall of Consistorial Causes) 1984 | The whole Act of Sederunt |
| S.I. 1993/919 | Act of Sederunt (Child Support Act 1991) (Amendment of | Paragraphs 2 and 3 and the Schedule” |

| Enactment | Extent of repeal or revocation |
|--|--------------------------------|
| Ordinary Cause and Summary Cause Rules) 1993 | |

EXPLANATORY NOTE

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

This Act of Sederunt provides, in paragraph 2, for new Ordinary Cause Rules in the sheriff court. The Rules include, in Chapter 9 (standard procedure in defended causes), a new procedure for securing the expeditious progress of defended causes.

This Act of Sederunt also—

- (a) provides for the application of certain ordinary cause rules to summary causes and small claims (paragraph 3);
- (b) repeals certain provisions of the Sheriff Courts (Scotland) Extracts Act 1892 for which provision is made in Chapter 30 of the new Ordinary Cause Rules (paragraph 5 and Schedule 2); and
- (c) revokes certain Acts of Sederunt dealing with consistorial and matrimonial matters for which provision is made in Chapter 33 of the new Ordinary Cause Rules and revokes part of the Codifying Act of Sederunt 1913 dealing with letters of request for which provision is made in Chapter 28 of the new Ordinary Cause Rules (paragraph 5 and Schedule 2).