

WITHDRAWAL OF ‘POSTAL COPIES’

Purpose

1. To propose withdrawal of the existing obligation on ‘officers of court’ to send out additional ‘postal copies’ following personal service of those same documents.
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Terminology

2. The following terms are relevant for the purposes of this paper:

Term	Meaning
PERSONAL SERVICE	Means - that documents are served by a ‘sheriff officer’ or messenger at arms visiting the intended recipient at their normal dwelling place or place of work and: <ul style="list-style-type: none"> • Handing the documents to the intended recipient, or • Handing the documents to another person at either address; or • Placing the documents through the letter box¹ (<i>at either address</i>); or • Otherwise leaving the documents where they are most likely to be brought to the attention of the intended recipient (<i>at either address</i>).
POSTAL COPIES	Means - the additional copies of the served documents that are sent by ‘ordinary first class mail’ as soon as ‘Personal Service’ has been effected.
“The 1987 Act”	Means - the Debtors (Scotland) Act 1987 (UKSI 1987/18).
“The 2024 Act”	Means - the Bankruptcy and Diligence (Scotland) Act 2024 (SSI 2024/9).

Timing

3. *ROUTINE* – this rules request was lodged in November 2022, and the procedure for serving Schedules of Arrestment² will soon be enabled by the electronic transmission of those documents under the 2024 Act.
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Vire’s

4. The power to amend ‘court procedure’ on the service of documents is in [sections 103 \(1\) and 104 \(1\)](#) of the Courts Reform (Scotland) Act 2014 ([SSI 2014/18](#)):

- (1) *The Court of Session may by act of sederunt make provision for or about—*
- (a) *The **procedure and practice to be followed** in civil proceedings in the sheriff court or in the Sheriff Appeal Court,*
 - (b) *Any matter incidental or ancillary to such proceedings.*

¹ Also referred to as “letterbox service” or “keyhole service”.

² As additional amendments to OCR rule 6.1 are included (to cover the electronic transmission of documents)

Background

The policy objectives

5. The policy objectives in requiring court documents to be served by hand on an intended recipient are:
 - To make defenders aware a civil action has been taken against them; and
 - To provide an opportunity for that defender to respond.
6. To meet those objectives the original drafter would have included the safeguard of sending postal copies as a backup; to cover off the policy gap that would arise if a defender was to remain unaware of a court action despite the fact the documents had been left in a manner likely to gain their attention.

The current procedure

7. These backup postal copies are sent out by “ordinary first class post”. The obligation to do so only arises if the documents were not handed to a person. In other words they were served a) by depositing them in the defenders residence or place of business, or b) by otherwise leaving them in a manner likely to be brought to the defenders attention.

The “rules request”

8. The Society of Messengers at Arms and Sheriff Officers (SMASO) are seeking a change to that obligation to send out Postal Copies of documents. They see that as a costly and unnecessary duplication of effort as:
 - When a sheriff officer signs a *Certificate of Execution* they are attesting to the fact that ‘service’ was effected in line with the primary legislation; and
 - As the name implies each sheriff officer is an officer of the court who is subject to judicial supervision by the sheriffs principal, and will be subject to misconduct proceedings³ if found to have failed in their duty.
9. In addition:
 - Neither the Court of Session Rules⁴ or the Sheriff Appeal Court Rules⁵ make provision for additional copies to be sent, and nor does primary legislation;
 - Charging a regulated fee⁶ of £21.72 to send additional copies unnecessarily increases the ‘judicial expenses’ awarded against a losing party (*or added to the outstanding debt of a debtor*);
 - Many unrepresented parties / debtors will be confused when receiving two sets of the same documents; and
 - The future direction of travel is to serve the majority of documents by electronic means (where a party is willing to accept documents electronically).

³ The rules governing the conduct and discipline of officers of court are regulated by the court

⁴ RCS rule 16.3 does not require postal copies to follow personal service

⁵ SAC rule 16.3 does not require postal copies to follow personal service

⁶ The fee for additional copies is prescribed at line item 1(a) (ii) of the statutory instrument

10. For the purposes of this paper consideration of the normal rules for ‘proof of sending’ is sufficient⁷, without considering ‘proof of delivery’.

The longer term policy position

11. In August 2022 the Rules Rewrite Committee (RCC) published their Procedural Narrative⁸ for drafting the New Civil Procedure Rules. Their policy decision was to exclude any obligation to send postal copies:

*PARAGRAPH 2.22 - A messenger-at-arms or sheriff officer may serve a document on a person by leaving it in the hands of someone at the person's home or place of business. If unable to do that, the messenger-at-arms or sheriff officer must make diligent enquiries about that person's current whereabouts. Where there are reasonable grounds for believing that the person carried on a business, or resides, at the property, the messenger-at-arms or sheriff officer may deposit the document in, or leave it at, the property in such a way that it is likely to come to the attention of the person being served. **There is no requirement to post a further copy of the Summons to the Defender where service is executed by a messenger-at-arms or sheriff officer by the method in this paragraph.***

12. The key question for this Committee is whether to withdraw this obligation now rather than await implementation of the New Civil Procedure Rules?

Should these backup copies be withdrawn now?

13. The arguments in favour of withdrawing this obligation now are:

- To provide “similar” rules across all courts (*given that the Court of Session and the SAC exclude any requirement to send Postal Copies*).
- To provide easier to use rules on the ‘service’ of documents that will improve the “user experience” as:
 - *All parties and their representatives, and officers of court, would be interacting with a simpler procedure when serving documents;*
 - *Those who are unrepresented would no longer be confused by the receipt of a 2nd duplicated set of the same documents; and*
 - *The regulated fee of £21.72 would no longer be charged for ‘copies’ of documents already served.*
- To reduce the costs incurred to send out postal copies:
 - *Withdrawing the obligation now means all sheriff officers could reduce their environmental footprint along with the running costs⁹ they incur for the paper, printing and postage¹⁰ of ‘Postal Copies’.*

⁷ Refer [Cabot Financial v Bell](#) [2023] CSIH 43

⁸ [The New Civil Procedure Rules – Second Report](#) (Aug 2022, SCJC)

⁹ Those potential cost reductions will be offset in part by the reduced fee income

¹⁰ £1.65 for a standard letter or £2.60 large letter: <https://www.royalmail.com/sending/uk>

- To better recognise the duty owed to the court:
 - *As a profession - those holding commissions as sheriff officers will be reassured that their signature on a Certificate of Execution will now be seen by the courts as sufficient 'proof of service'.*

The drafting instructions

14. The drafting instructions to implement that change would be:

- To amend all existing court procedures that require additional copies' to be sent out by post immediately after 'Personal Service' was executed:
 - *Ordinary Cause - rule 5.4 (4), and rules 6.1 & 29.7 (2);*
 - *Simple Procedure – rule 18.3 (3);*
 - *Summary Applications - rule 2.11 (4);*
 - *Summary Cause – rules 5.3 (3), 6.1 and 18.8 (6);*
 - *Actions for removing from heritable property - ss3 (3) & ss4 (1) (b); and*
 - *Sheriff Court Company Insolvency Rules 1986 - r16.4, 16.5b, 19.4 & 19.4b.*
- To ask the Scottish Ministers to amend the Diligence (Scotland) Regulations 2009 ([SSI 2009/68](#)) so that in Form B¹¹ each reference made to: “...sending ... by first class mail to the above mentioned address” is removed.

15. The Committee should:

- **Discuss whether there is any benefit in continuing the historic obligation to send Postal Copies; and if not**
- **Agree that the obligation to send copies should be withdrawn now rather than await implementation of the New Civil Procedure Rules.**

Compatibility with the Guiding Principles

16. Once drafted - the amending rules instrument will be checked for compatibility against the following guiding principles¹² of the Council:

<i>Guiding Principles (of the SCJC)</i>	<i>Compatibility with each principal</i>
<i>The civil justice system should be fair, accessible and efficient.</i>	<i>FAIRNESS</i> – withdrawing the copies now would mean 'judicial expenses' (or the amount of outstanding debt) would no longer be increased by the regulated fee.
<i>Rules relating to practice and procedure should be as clear and easy to understand as possible.</i>	<i>USER EXPERIENCE</i> – withdrawing the copies now would reduce complexity & simplify the procedures used.
<i>Practice and procedure should, where appropriate, be similar in all civil courts.</i>	<i>SIMILAR RULES</i> – withdrawing the copies now would provide a consistent approach across all courts. <i>RULES REWRITE</i> - withdrawing the copies now anticipates the direction of travel as set out in the Procedural Narrative.

¹¹ The “*Sheriff Court certificate of execution of inhibition*”.

¹² As prescribed in section 2 (3) of the 2013 Act

<i>Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted.</i>	<i>NOT APPLICABLE</i> – the documents served provide awareness that there is a dispute, which in many cases will be sufficient to prompt settlement.
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Summary

17. Over recent decades the increasing use of technology has allowed larger creditors to ‘track and trace’ a debtor to a given physical or electronic address. That better supports their decisions the type of diligence most likely to succeed and their choices on whether to instruct sheriff officers to serve documents. That in turn will have increased the probability of a document being hand delivered to the intended recipient, or otherwise left in a manner likely to be brought to their attention. Hence the assurance previously provided by sending postal copies has less relevance in 2025.

18. The overall conclusion of this paper is that, unless there are any strong views to the contrary, the use of Postal Copies should be withdrawn now (*rather than await an unknown date for the introduction of the New Civil Procedure Rules*).

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Recommendations

19. It is recommended that the Committee instructs amended rules that will:

- **Withdraw the obligation on ‘officers of court’ to send out additional Postal Copies after the Personal Service of those same documents.**

**Secretariat to the Scottish Civil Justice Council
May 2025**

BIBLIOGRAPHY

Legislation:

Debtors (Scotland) Act 1987

PART III – Diligence against earnings (s46 to s73T)

PART VI – Messengers at arms and sheriff officers (s75 to s86A)

<https://www.legislation.gov.uk/ukpga/1987/18/contents>

Debt Arrangement and Attachment (Scotland) Act 2002

PART 4 – Abolition of poindings and warrant sales (s58 to s59)

<https://www.legislation.gov.uk/asp/2002/17/contents>

Bankruptcy and Diligence etc. (Scotland) Act 2007

PART 3 – Officers of Court (s50 – s78)

<https://www.legislation.gov.uk/asp/2007/3/contents>

Diligence (Scotland) Regulations 2009

Schedule 3 - Form B - Sheriff Court certificate of execution of inhibition

<https://www.legislation.gov.uk/ssi/2009/68/contents/made>

Public Services Reform (Scotland) Act 2010

Schedule 4 – Regulation of Officers of Court – Modification of enactments

<https://www.legislation.gov.uk/asp/2010/8/contents>

Bankruptcy and Diligence (Scotland) Act 2024

Section 14 - Service of documents and arrestee's duty of disclosure:

Section 16 - Service of documents and employers' etc. duty of disclosure

<https://www.legislation.gov.uk/asp/2024/9/contents>

Legislation – for ‘proof of service’

Citation Amendment (Scotland) Act 1882

<https://www.legislation.gov.uk/ukpga/Vict/45-46/77/contents>

Interpretation and Legislative Reform (Scotland) Act 2010

s26 – Service of Documents

<https://www.legislation.gov.uk/asp/2010/10/contents>

Legislation – for ‘regulating procedure’

Courts Reform (Scotland) Act 2014

<https://www.legislation.gov.uk/asp/2014/18/contents>

- *Power to regulate procedure - Sections 103 (1) & section 104 (1)*
<https://www.legislation.gov.uk/asp/2014/18/part/4/crossheading/procedure>
- *Power to regulate fees - Sections 105 (1) (b) & section 106 (1) (b)*
<https://www.legislation.gov.uk/asp/2014/18/part/4/crossheading/fees-of-solicitors-etc>

Existing Rules:

Sheriff Courts (Scotland) Act 1907

Schedule 1 - Ordinary Cause Rules 1993

<https://www.legislation.gov.uk/ukpga/Edw7/7/51/contents>

BIBLIOGRAPHY...continuedOrdinary Cause Rules (OCR):

- Rule 5.4 (4) (**refer Annex 1**);
- Rule 5.2 (6), 6.1 & 29.7 (2); and
- Forms: 04, 05, 06, & 07.

Simple Procedure:

- Rule 18.3 (3) (**refer Annex 2**)

Summary Applications:

- Rule 2.11 (4):

Summary Cause:

- Rules 5.3 (3), 6.1 & 18.8 (6)

Other Procedural Codes:

- Sheriff Court Company Insolvency Rules 1986 – rules 16.4, 16.5b, 19.4 & 19.4b
- Actions for removing from heritable property¹³ - subsection 3(3) & 4(1) (b)

Rules of the Court of Session (RCS)

- Rule 16.1, 16.3 & 16.4

Existing Rules – on fees:

Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002 (13 pages)
<https://www.legislation.gov.uk/ssi/2002/566/contents/made>

Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002 (15 pages)
<https://www.legislation.gov.uk/ssi/2002/567/contents/made>

The last “amending order” enacted was the:

- Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024 (10 pages)
<https://www.legislation.gov.uk/ssi/2024/41/contents/made>

Other

Cabot Financial v Bell [2023] CSIH 43 (10 pages)
 Postal service under Simple Procedure - requires proof of sending, rather than evidence of delivery
https://www.bailii.org/scot/cases/ScotCS/2023/2023_CSIH_43.html

MacPhail - Sheriff Court Practice – 4th edition

- Para. 1.35 to 1.37 – Sheriff Officers
- Para. 6.24 to 6.29 - Citation by officer of court
- Para. 6.30 to 6.33 – Citation furth of Scotland

The New Civil Procedure: Second Report (Aug 2022, SCJC)

https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/publications/scjc-publications/the-new-civil-procedure-rules---second-report.pdf?sfvrsn=cbab9456_1

¹³ [SSI 2012/136](#)

ANNEX 1 – ‘POSTAL COPIES’ UNDER ‘ORDINARY CAUSE’

For documents sent by “ordinary first class post”

In situations where initial service by post has been unsuccessful; rule 5.4 (3) sets out the options to be used for executing Personal Service if nobody was on site at the address visited by a sheriff officer when executing service:

- **OCR - Rule 5.4 (3)** - *Where a sheriff officer has been unsuccessful in executing service in accordance with paragraph (1), he may, after making diligent enquiries, serve the document in question—*
 - *by depositing it in that person’s dwelling place or place of business; or*
 - *by leaving it at that person’s dwelling place or place of business in such a way that it is likely to come to the attention of that person*

The safeguard added by rule 5.4 (4) requires ‘postal copies’ of those same documents to be sent following that first attempt at ‘personal service’:

- **OCR rule 5.4 (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.*

For documents sent by “registered post or the first class recorded delivery service”

Rule 5.4(4) has been made subject to rule 6.1. In practice that means that “ordinary first class post is insufficient for a ‘schedule of arrestment’ and those particular documents must be sent by “registered post or the first class recorded delivery service”. That rule reads:

- **OCR rule 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-*
 - *the last known place of residence of the arrestee, or*
 - *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.*

ANNEX 2 – ‘POSTAL COPIES’ UNDER ‘SIMPLE PROCEDURE’

For the service of documents under simple procedure

Simple Procedure rules 18.3 (1) to (2) convey the same ‘personal service’ options as the OCR rules but differentiate between a 1st attempt at personal service and a 2nd attempt.

In turn rule 18.3 (3) only mandates ‘postal copies’ being sent following that 2nd attempt at executing ‘personal service’;

Simple Procedure - Rule 18.3 - What if service by post does not work?

(1) If service by post has not worked, a sheriff officer may formally serve a document in one of three ways:

- (a) delivering it personally,
- (b) leaving it in the hands of a resident at the person’s home,
- (c) leaving it in the hands of an employee at the person’s place of business.

(2) If none of those ways has worked, the sheriff officer must make diligent inquiries about the person’s whereabouts and current residence, and **may** then formally serve the document in one of two ways:

- a) depositing it in the person’s home or place of business by means of a letter box or other lawful way of doing so, or
- (b) leaving it at the person’s home or place of business in such a way that it is likely to come to the attention of that person.

(3) If formal service is done in either of those ways, the sheriff officer must also do two more things:

- (a) send a copy of the document to the person **by post** to the address at which the sheriff officer thinks the person is most likely to be found, and
- (b) write or print on the envelope containing the document the following label:

THIS ENVELOPE CONTAINS A [NAME OF DOCUMENT] FROM [NAME OF SHERIFF COURT]