

No.

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SHERIFF COURT

Act of Sederunt (Ordinary Procedure Rules) 2023

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CONTENTS

Part 1

INTRODUCTION

Chapter 1

Purpose and overarching duties

1. The rules
2. Purpose
3. Alternative dispute resolution

Chapter 2

Consequences of not complying

4. Sanctions where a party is in default
5. Relief from failure to comply

Part 2

PROGRESSING A CASE

Chapter 1

Commencing a case

6. Intimation of potential case
7. Response to intimation of potential case
8. Commencing a case
9. Registration of summons
10. Order for service of a summons
11. Service of a summons

Chapter 2

Responding to a case

12. Defences
13. Counterclaim
14. Time to pay application

Chapter 3

Handling an undefended case

15. Undefended cases and decree in absence
16. Recall of decree in absence

Chapter 4

Early decision or disposal of a defended case

17. Summary decree

Chapter 5

Case management

18. Judicial continuity
19. Case management orders: general
20. Case management questionnaire
21. First case management order
22. Case management hearings: purpose
23. Case management hearings: general
24. Case management hearings: procedure
25. Case management hearings: information
26. Case management hearings: options
27. Fixing a substantive hearing

Chapter 6

Substantive hearings

28. General
29. Request for more time to present information or make submissions
30. Expression of decision

Chapter 7

Handling of supporting information

31. Lodging of supporting documents
32. Orders about presenting information
33. Agreeing information
34. Recovery of information (commission and diligence)
35. Disclosure of information
36. Late information

Part 3

MATTERS ANCILLARY TO PROGRESSING A CASE

Chapter 1

Intimation and lodging of things

37. Requirements for intimation
38. Method of intimation
39. Timing of intimation
40. Electronic transmission
41. Intimation by messenger-at-arms or sheriff officer
42. Lodging of documents

Chapter 2

Applications to court during a case

43. Intimation of proposed application and response
44. Lodging of application etc. and late response
45. Content and signing of application
46. Hearings on applications: general
47. Hearings on applications: procedure
48. Application made without proper authorisation or agreement

Chapter 3

Being represented or supported

- 49. Application of Chapter
- 50. Lay representation: application process
- 51. Lay representation: functions, conditions and duties
- 52. Lay representation: withdrawal of permission to act
- 53. Courtroom supporter: application process
- 54. Courtroom supporter: conditions and duties
- 55. Courtroom supporter: withdrawal of permission
- 56. Withdrawal of legal representation

Chapter 4

Dealing with witnesses

- 57. Witness statements
- 58. Child witness notice
- 59. Vulnerable witness applications
- 60. Orders in relation to a child or vulnerable witness
- 61. Presumption against need for written questions for information on commission
- 62. Expert information

Chapter 5

Death or inability of party to continue

- 63. Application for substitution
- 64. Application for transfer
- 65. Death of party: notification

Part 4

OPTIONS TO JOIN OR TRANSFER A CASE

Chapter 1

Request by defender for person to join a case

- 66. Application for order for service of third party notice
- 67. Service of third party notice
- 68. Lodging of answers by a third party
- 69. Application by defender for finding, order or decree against a third party
- 70. Applications by pursuer subject to counterclaim or third party

Chapter 2

Request by person other than defender to join a case

- 71. Application to become a third party to case

Chapter 3

Transfer of a case involving the Court of Session

- 72. Transfer from sheriff where exclusive competence of sheriff court does not apply
- 73. Transfer from sheriff where exclusive competence of sheriff court applies
- 74. Transfer from sheriff under an enactment other than section 92 of the Courts Reform (Scotland) Act 2014
- 75. Transfer from sheriff on ground of contingency
- 76. Referral to the Inner House of the Court of Session
- 77. Transfer from Court of Session to sheriff

Chapter 4

Transfer of a case from simple procedure or between sheriff courts

- 78. Transfer from simple procedure
- 79. Transfer to another sheriff court

Part 5
THINGS TO DO WITH ENFORCING A CASE
Chapter 1

Getting an extract of a decree

- 80. Extract of decree: timings
- 81. Extract of decree: early extract
- 82. Extract of decree: content and authentication

Chapter 2

Interim diligence: online applications

- 83. Interim diligence: online applications

Part 6

**ONLINE APPLICATIONS, FORMS AND OTHER OPTIONS, INTERPRETATION,
ETC.**

- 84. Online applications and forms
- 85. Non-electronic alternatives
- 86. Electronic signature
- 87. Interpretation
- 88. Books of Sederunt
- 89. Commencement
- 90. Citation

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

PART 1
INTRODUCTION

Chapter 1

Purpose and overarching duties

The rules

1.—(1) These rules make provision for and about the procedure and practice to be followed in civil proceedings in the Court of Session and in the sheriff courts, and matters incidental or ancillary to such proceedings.

(2) These rules are to be known as the Ordinary Procedure Rules.

Purpose

2.—(1) The purpose of these rules is to enable parties to obtain a just resolution of their case.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3).
(b) 2014 asp 18.

- (2) A just resolution of a case is one that is—
 - (a) in accordance with the substantive rights of the parties,
 - (b) arrived at within a reasonable time, and
 - (c) conducted in a fair manner, taking account of—
 - (i) economy,
 - (ii) proportionality, and
 - (iii) the efficient use of the resources of the parties and of the court.
- (3) The court must take into account the purpose of these rules when—
 - (a) interpreting and applying these rules, and
 - (b) making orders that relate to the management of the case.
- (4) Parties and representatives must—
 - (a) take into account the purpose of these rules when seeking a case management order, and
 - (b) assist the court with performing the duty in paragraph (3).

Alternative dispute resolution

- 3. A court is to—
 - (a) encourage parties to resolve the dispute between (or among) them by means such as negotiation or mediation, and
 - (b) make such orders as the court considers appropriate to facilitate such resolution.

Chapter 2

Consequences of not complying

Sanctions where a party is in default

- 4.—(1) A party to a case is in default if the party fails—
 - (a) to comply with any timetable ordered by the court in relation to the management of the case or a particular hearing,
 - (b) to comply with a case management order,
 - (c) to appear or be represented at any hearing when required to do so, or
 - (d) otherwise to comply with any requirement imposed on the party by these rules.
- (2) Where a party is in default, the court may—
 - (a) order that the party takes such steps as the court may specify in the order to remedy the situation, or
 - (b) grant decree against the party in default.

Relief from failure to comply

- 5.—(1) The court may relieve a party from the consequence of a failure referred to in rule 4(1) where the party shows that the failure is due to an excusable cause (such as a mistake or oversight).
- (2) Where relief is granted, the court may—
 - (a) impose conditions that must be satisfied before relief is granted,
 - (b) make an order to enable the case to proceed as if the failure had not occurred.

PART 2
PROGRESSING A CASE

Chapter 1

Commencing a case

Intimation of potential case

- 6.—(1) A person intending to commence a case must—
- (a) before lodging a summons, give intimation of their intention to commence a case to any person or persons against whom orders or remedies are to be sought, and
 - (b) not lodge a summons until the period for a response under rule 7 has expired.
- (2) Intimation under paragraph (1) must include—
- (a) a summary of the facts relating to the case,
 - (b) an outline of the legal basis of the case,
 - (c) the remedy sought.
- (3) This rule does not apply if—
- (a) it is inappropriate for the parties to communicate prior to the summons being lodged, or
 - (b) the matters that are to be intimated under this rule and rule 7(b) and (c) have already been discussed by the parties.

Response to intimation of potential case

7. A person to whom intimation is given under rule 6 must, within the period of [] days beginning with the day on which the intimation was given, advise the person who gave the intimation—

- (a) that the recipient has received the intimation,
- (b) whether the case will be defended, and
- (c) whether the recipient will accept service of the summons by electronic transmission.

Commencing a case

- 8.—(1) A summons must be lodged by online application.
- (2) A case commences when a summons is lodged for registration.
- (3) A person must, when lodging a summons—
- (a) confirm that rule 6 has been complied with,
 - (b) explain why it does not apply, or
 - (c) explain why it was not complied with.
- (4) The factual and legal basis of the case set out in the summons must not exceed 5,000 words unless a reason is given for exceeding that limit.

Registration of summons

- 9.—(1) Subject to rule 8 and paragraph (2) of this rule, a court—

- (a) may register a summons if it is—
 - (i) lodged by online application, and
 - (ii) accompanied by the correct fee, and
- (b) may, if registering the summons, assign a case reference number to the case.
- (2) Where the person who lodges the summons is not legally represented and—
 - (a) the court is satisfied that the summons contains an arguable case, the court is to—
 - (i) grant the person permission to proceed, and
 - (ii) register the summons, or
 - (b) the court is not satisfied that the summons contains an arguable case, the court is to issue to the person a written statement explaining why permission to proceed was refused.
- (3) A decision made under paragraph (2) is final and may not be appealed.

Order for service of a summons

10.—(1) When a summons is registered by a court, the court is to issue an order for service to the person who lodged the summons (“the pursuer”).

(2) The order for service must specify the date by which service is required, which date must be 4 months from the date of the order of service.

- (3) The pursuer must, within the period specified in the order for service—
 - (a) serve the summons, a citation in the specified form and a copy of the order for service, on any person named as a defender in the summons, and
 - (b) where the rules require another person to be given intimation of the summons and a warrant for that has been inserted in the summons, give intimation of the summons to that person.
- (4) The court may, on the application of the pursuer—
 - (a) extend the period for service and intimation (unless the period has expired before the application is made), or
 - (b) vary the period for service or dispense with the requirement for service.

Service of a summons

11.—(1) A summons (and associated documents) is to be served—

- (a) by electronic transmission,
- (b) by recorded delivery,
- (c) in a manner described in rule 41 (personal service by messenger-at-arms or sheriff officer), or
- (d) by such other method—
 - (i) as may be competent in law, or
 - (ii) as the court may specify, including service by online publication on the Scottish Courts and Tribunals website.

(2) A court may reorder service if it considers that there was a defect or irregularity with the attempt at service.

(3) A defect or irregularity in the manner of service does not affect the validity of the service if the person upon whom service is required acknowledges or responds to the summons.

(4) After serving the summons (and associated documents), the person who served it must provide to the court—

- (a) the name, address and occupation of the person who carried out service,
- (b) the method of service used,
- (c) the date on which service took place,
- (d) the name and address of the person that the summons was served upon,
- (e) evidence of service (for example, a postal receipt showing that the document was posted or a report by a sheriff officer), and
- (f) a copy of the citation.

Chapter 2

Responding to a case

Defences

12.—(1) A person on whom a summons is served (“a defender”) must, within the period of 28 days beginning with the day on which the summons was served, lodge defences if the person wishes to defend the case (or any part of it) (see also rule 20 (case management questionnaire)).

(2) Defences must be lodged by online application.

(3) Defences must set out—

- (a) the name of the court in which the case has been commenced,
- (b) the case reference number,
- (c) the name and address of each party and the name and address of the defender’s representative (if any),
- (d) the factual and legal basis of the defence, including—
 - (i) a response to the essential facts of the dispute, and
 - (ii) an admission of any facts relating to the case that are included in the summons which are not disputed by the defender.

(4) The factual and legal basis of the defence set out in the defences must not exceed 5,000 words unless a reason is given for exceeding that limit.

(5) Failure to deny a matter contained in the summons does not, of itself, amount to an admission of that matter.

Counterclaim

13.—(1) A court may, on the application of a defender, permit a defender to make a counterclaim.

(2) A counterclaim must be lodged by online application.

(3) A counterclaim may be made—

- (a) at the same time as defences are lodged, or
- (b) at any time during the case after defences have been lodged.

(4) A counterclaim must set out—

- (a) the orders or remedies sought, and
- (b) the factual and legal basis of the counterclaim.

(5) The factual and legal basis of a counterclaim must not exceed 5,000 words unless a reason is given for exceeding that limit.

Time to pay application

14.—(1) This rule applies where—

- (a) a person has received a summons, and
- (b) the Debtors (Scotland) Act 1987 or the Consumer Credit Act 1974 allows the person to apply for a time to pay direction or, as the case may be, a time order.

(2) The person may apply for such a direction or order by online application.

Chapter 3

Handling an undefended case

Undefended cases and decree in absence

15.—(1) This rule applies where a defender has not responded to a summons within the period of 28 days beginning with the day on which the summons (and associated documents) were served.

(2) In a case where the court may grant decree without considering evidence, the pursuer may apply for—

- (a) a decree in absence, and
- (b) any other order as is necessary.

(3) An application for a decree in absence must specify—

- (a) the basis on which decree is sought,
- (b) the orders sought by the party,
- (c) how expenses are to be dealt with.

(4) Where an application under paragraph (2) has been made, a court may—

- (a) subject to paragraph (5), grant the application,
- (b) make an order requiring the pursuer to make further representations (whether at a hearing or in writing),
- (c) dismiss the case if not satisfied by the pursuer's representations.

(5) Where an application under paragraph (2) has not been made by the end of the period of 10 months beginning with the day on which the order of service was issued under rule 10(1), the court may—

- (a) grant a decree in absence only on cause shown,
- (b) dismiss the case if it considers it appropriate to do so.

(6) Where an application has not been made under paragraph (2) by the end of the period of 12 months beginning with the day on which the order of service was issued under rule 10(1), the case is deemed to be dismissed.

Recall of decree in absence

16.—(1) The court may, on the application of a party, recall a decree in absence.

(2) An application recalling a decree in absence must be made before the decree has been fully enforced.

(3) A party may apply only once to recall the same decree in absence.

- (4) While any such application awaits a decision, no action may be taken to enforce the decree.
- (5) Where the decree is recalled, the court may also make a case management order.

Chapter 4

Early decision or disposal of a defended case

Summary decree

17.—(1) At any time after defences have been lodged in a case, a court may, whether on its own initiative or on the application of a party, make an order determining or disposing of a case (or part of a case) if satisfied—

- (a) that the case (or part of it) or defence to the case (or part of it) has no real prospect of success, or
- (b) there is no compelling reason for the case to proceed.

(2) Before making an order under paragraph (1) on its own initiative, a court must give each party to the case an opportunity to make submissions in relation to the determination or disposal.

(3) For the purposes of these rules, an order determining or disposing of a case (or part of it) under paragraph (1) is known as a “summary decree”.

Chapter 5

Case management

Judicial continuity

18. The court must, where practicable and appropriate, ensure that all hearings in respect of a case are to be heard by the judge who issues the first case management order.

Case management orders: general

19.—(1) A court may make any order (“a case management order”) that it considers appropriate to—

- (a) identify and focus the issues in dispute as far as possible,
- (b) ascertain and ensure that the parties are ready for a substantive hearing,
- (c) facilitate the just resolution of the case.

(2) A case management order may, in particular—

- (a) require a party to provide further information or clarification on a matter,
- (b) set a word limit for parties’ written cases,
- (c) arrange a case management hearing,
- (d) arrange a substantive hearing, with or without any other preceding procedure,
- (e) notify the parties that the court is considering granting summary decree under rule 17,
- (f) promote or facilitate parties to reach a resolution to the dispute between (or among) them,
- (g) vary or replace anything set out in a previous case management order.

(3) Without limit to that generality, the court may make a standard case management order (being a case management order which is in a specified form) or make such an order with any adjustments it considers appropriate.

Case management questionnaire

20.—(1) Where a court orders a pursuer to complete a case management questionnaire, the pursuer must lodge a completed case management questionnaire—

- (a) within the period of 7 days beginning with the day on which the period for lodging defences expired (see rule 12), or
- (b) by such other date as the court may specify in the order.

(2) A defender must complete a case management questionnaire and lodge it at the same time as the defender’s defences (see rule 12).

(3) In these rules, a “case management questionnaire”, in relation to a case, is a questionnaire to be completed by online application by a party to the case which is to ascertain, in particular—

- (a) information about any steps taken by the party or any other party to resolve the dispute before the commencement of the case, and
- (b) the party’s views about—
 - (i) the appropriateness of any standard case management orders (see rule 19(3)), and
 - (ii) whether a case management hearing is required and the preferred procedure relating to any such hearing.

First case management order

21.—(1) A court is to make the first case management order within the period of 14 days beginning with the day on which the period for lodging defences expired (see rule 12).

(2) A court may, upon the application of a party, order that the case be dealt with using the expedited procedure.

Case management hearings: purpose

22. The purpose of a case management hearing is to—

- (a) establish what needs to be done to achieve the following aims—
 - (i) identifying and focusing the issues in dispute as far as possible,
 - (ii) ascertaining whether parties are ready for a substantive hearing,
 - (iii) facilitating the just resolution of the case, and
- (b) enable the court to make such orders as are necessary to achieve those aims.

Case management hearings: general

23.—(1) A court may order a case management hearing at any time during a case.

(2) Each party (or the party’s legal or lay representative) must participate in the hearing.

(3) At each case management hearing, the court must make an order—

- (a) fixing a date and specifying a purpose for a further case management hearing, or
- (b) fixing a substantive hearing (see rule 27).

Case management hearings: procedure

24.—(1) It is for the court to determine the form and procedure for each case management hearing.

(2) In particular, the court may, when ordering a case management hearing (or at any time before the hearing) make an order—

- (a) about the practicalities of the hearing (for example, whether parties are to attend court in person or by electronic means),
 - (b) requiring information to be lodged or exchanged between (or among) parties before the hearing (see also Chapter 7 (information management)),
 - (c) requiring a party to take a particular action,
 - (d) specifying the period within which a party must take an action (and the consequences for failure to comply within that period),
 - (e) in relation to any other matter that the court considers appropriate.
- (3) Unless an order is made under paragraph (2) to the contrary, parties are to attend the hearing by electronic means.
- (4) Before making an order under this rule, the court must have regard to—
- (a) any preference expressed by the parties as to the matters listed in paragraph (2) in the case management questionnaire,
 - (b) where the order is made during a hearing (whether or not at the request of a party), any views expressed by the parties as to those matters.

Case management hearings: information

25.—(1) Not later than 7 days before the day on which a case management hearing is to be held, each party must lodge a note setting out—

- (a) the issues that the party considers to require determination at a substantive hearing,
 - (b) the next procedural step that the party is seeking to follow the case management hearing,
 - (c) if the next procedural step sought by the party is a substantive hearing—
 - (i) the party’s estimate of the duration of the substantive hearing,
 - (ii) a list of the information the party intends to present, including the party’s proposed witnesses,
 - (iii) in respect of each witness on the list, a summary of the relevance of the witness to the party’s case,
 - (iv) whether any witness is, or may be, a child witness or a vulnerable witness within the meaning of the Vulnerable Witnesses (Scotland) Act 2004,
 - (v) notice of any intention to instruct a person to provide expert information (in that person’s capacity as an expert).
- (2) For the purposes of paragraph (1), parties may lodge a joint note in respect of any matters that have been agreed.

Case management hearings: options

26. Without limit to the generality of rule 19 or 22, at a case management hearing, the court may make an order—

- (a) requiring a party to adjust its written case to clarify and give fair notice to the other party (or parties),
- (b) requiring specific information to be lodged or exchanged between (or among) the parties before the substantive hearing,
- (c) under section 12 or 13 of the Vulnerable Witnesses (Scotland) Act 2004,
- (d) requiring a party to take a particular action,

- (e) specifying the period within which a party must take a particular action (and the consequences for failure to comply within that period),
- (f) summarily disposing of all or part of a party's case or defence,
- (g) fixing a substantive hearing (see rule 27),
- (h) relating to any other matter that the court considers appropriate.

Fixing a substantive hearing

27. When making an order fixing a substantive hearing, the court is to consider each of the following matters—

- (a) the date and likely length of the hearing,
- (b) what technology will be used (if any),
- (c) the factual and legal issues to be decided at the hearing,
- (d) how long the parties will be given to present information and make submissions,
- (e) how witnesses (if any) are to present information,
- (f) the arrangements for any child or vulnerable witness,
- (g) the timetable for lodging information and witness lists (see also rule 35),
- (h) whether notes of argument are required (and, if so, by what day they must be provided),
- (i) whether a joint list of information is required,
- (j) whether any principal documents are to be lodged,
- (k) whether a core bundle of key information is required (and, if so, what that bundle is to contain).

Chapter 6

Substantive hearings

General

28.—(1) No part of a substantive hearing is to held in private unless the court considers that this is in the interests of justice or the public.

(2) The judge must administer the oath or affirmation to any witness who is to present information at the hearing.

Request for more time to present information or make submissions

29. The court may, on the request of a party during a substantive hearing, vary the length of time given to the party to present information or make submissions.

Expression of decision

30.—(1) The court may inform the parties of the manner in which a decision on a substantive hearing will be expressed.

- (2) The decision may be expressed orally or in writing (or both).
- (3) Where a decision is expressed orally, the court—
 - (a) may append to the order giving effect to the decision a note of—
 - (i) the reasons for the decision, and
 - (ii) the findings in fact or law, and

- (b) must append such a note if a party requests this within a period of 7 days beginning with the day on which the decision was expressed.
- (4) In any appeal against a decision that is expressed orally, where a note of the decision has not been appended to the order giving effect to the decision, the appellant must indicate in the note of appeal whether the appellant—
- (a) has requested that a note of the decision be appended to the order,
 - (b) requests a note of the decision, or
 - (c) considers that an appeal is sufficiently urgent that it should be heard and decided without a note of the decision.

Chapter 7

Handling of supporting information

Lodging of supporting documents

31.—(1) Documents which are to be presented in support of a party's case are to be lodged electronically unless the court is satisfied that physical production of the document is required to ensure a just resolution of the case.

(2) A copy of a document will be sufficient for all purposes unless the court considers it is necessary to see the original to ensure a just resolution of the case.

(3) This rule is subject to any other enactment or rule of law.

Orders about presenting information

32.—(1) A court may, at any time, make an order about the information which is to be presented in a hearing or the manner in which it is to be presented.

(2) In particular, the court may—

- (a) restrict the information presented to specific issues or sources,
- (b) require a party to lodge a specific document or item,
- (c) require a party to present information from a specific witness,
- (d) authorise the use of special measures (within the meaning of section 18 of the Vulnerable Witnesses (Scotland) Act 2008) in relation to a child or vulnerable witness,
- (e) vary an order relating to the use of a special measure in relation to a child or vulnerable witness,
- (f) require parties to lodge a joint list of information,
- (g) require parties to agree the relevant legal authorities (for example, the applicable statutory provisions),
- (h) determine that specific information should be presented in a specific way (for example, by a written statement or using a specific type or piece of electronic equipment),
- (i) require information to be provided within a specific period.

Agreeing information

33.—(1) A party must take all reasonable steps to identify and agree information that is not disputed by the other party (or parties) to a case.

(2) A party may lodge a note to admit information setting out matters which the party considers unlikely to be disputed.

(3) Any other party may lodge a note of objection to a matter set out in a note to admit.

(4) A note of objection must be lodged within the period of 7 days beginning with the day on which the note to admit was lodged.

(5) Where a matter that is contained in a lodged note to admit has not been objected to, the matter is to be treated as agreed (and no further information need be presented on the matter).

Recovery of information (commission and diligence)

34.—(1) A party may lodge an application for the recovery of information held by another person.

(2) The application must specify the information to be recovered and the person who is thought to have it.

(3) In addition to giving intimation of the application to the other party (or parties) (see rule 37), the applicant must give intimation of the application to—

- (a) where necessary, the Lord Advocate and Advocate General for Scotland, and
- (b) any other person the court considers relevant.

(4) Where the court makes an order authorising recovery of the information, the applicant must serve on the person who is thought to have the information a copy of the order and the specification setting out the information to be recovered.

(5) A person who receives an order under paragraph (4) must, within the period of 7 days beginning with the day on which the order was served upon the person (or such other period specified in the order)—

- (a) provide the information to the applicant's solicitor or, if the applicant is not legally represented, the court, or
- (b) notify the applicant's solicitor or, if the applicant is not legally represented, the court, that the person is unable to comply with the order (in whole or in part) and the reason for that.

(6) If the applicant is not satisfied that the order has been complied with (in whole or in part), the applicant may proceed to a commission for the recovery of the information.

(7) A court may, in exceptional circumstances, dispense with—

- (a) the requirement give intimation of the application under rule 37, and
- (b) the requirement to serve an order authorising recovery under paragraph (4) before proceeding to a commission.

Disclosure of information

35.—(1) This rule applies where the court orders that the presentation of specific information is necessary for the purpose of the substantive hearing.

(2) A party must lodge a list of the information it intends to present by the date specified by the court, which date must be not later than 8 weeks before the day on which the substantive hearing is to begin.

(3) A party must, when lodging its list of information, provide copies of any documents listed to the other party (or parties).

(4) A party must lodge the information it intends to present by the date specified by the court, which date must be not later than 2 weeks before the day on which the substantive hearing is to begin.

(5) Irrespective of whether parties are ordered to agree a joint list of information, each party must take reasonable steps to agree such a list with the other party or parties.

Late information

36. Information which has not been listed and lodged in accordance with the requirements in rule 35 may be presented at the substantive hearing only if—

- (a) the other party (or parties) to the case consent to its presentation, or
- (b) the court, on cause shown, allows it to be presented.

PART 3

MATTERS ANCILLARY TO PROGRESSING A CASE

Chapter 1

Intimation and lodging of things

Requirements for intimation

37.—(1) Unless the court orders otherwise, where—

- (a) any provision in these rules requires a party to—
 - (i) lodge any document,
 - (ii) give intimation of any matter, or
- (b) the court orders a party to give intimation of something,

intimation of the matter, thing or the lodging of the document (as the case may be) is to be given to every other party.

(2) Where a party has lodged a document in accordance with these rules, a copy of the document is to be given by the party to every other party at the time of the intimation and by the same method as the intimation.

Method of intimation

38.—(1) For the purposes of rule 37, where the other party is represented by a legal representative, intimation is to be given to the party's legal representative (instead of the party).

(2) Intimation may be given to a party or, as the case may be, the party's legal representative in writing only by—

- (a) electronic transmission,
- (b) personal delivery,
- (c) first class post,
- (d) recorded delivery,
- (e) in the case of intimation to a party, a messenger-at-arms or sheriff officer in manner described in rule 41, or
- (f) in the case of intimation to the party's legal representative, delivery to a document exchange of which the legal representative is a member.

Timing of intimation

39.—(1) Where intimation is given under rule 37 by means of electronic transmission, personal delivery, messenger-at-arms or sheriff officer—

- (a) if it is given not later than 5 p.m. on any day, the date of intimation is that day,
- (b) if it is given after 5 p.m. on any day, the date of intimation is the next day.

(2) Where intimation is given under rule 37 by—

- (a) first class post, the date of intimation is the next working day (within the meaning of section 125(1) of the Postal Services Act 2000),
- (b) delivery to a document exchange, the date of intimation is the next day.

(3) This rule does not apply to the giving of intimation of a proposed application under rule 43(1).

Electronic transmission

40.—(1) Electronic transmission of a document by a party (“the sender”) to another party (or their legal representative) (“the recipient”) must be done in a way that the recipient has indicated to the sender that the recipient is willing to receive the document.

(2) The recipient’s indication of willingness to receive a document in a particular way may be—

- (a) specific to the document in question or generally applicable to documents of that kind,
- (b) expressed specifically to the sender or generally (for example on a website),
- (c) inferred from the recipient having previously been willing to receive documents from the sender in that way and not having indicated unwillingness to do so again.

(3) The sender uploading a document to an electronic storage system from which the recipient is able to download the document may constitute electronic transmission of the document from the sender to the recipient.

Intimation by messenger-at-arms or sheriff officer

41.—(1) A messenger-at-arms or sheriff officer may give intimation on behalf of a party to another party for the purposes of rule 37 by—

- (a) delivering it personally to the other party, or
- (b) giving it personally to—
 - (i) a resident at the other party’s dwelling place, or
 - (ii) an employee at the other party’s place of business.

(2) Where a messenger-at-arms or sheriff officer has been unsuccessful in giving intimation under paragraph (1), the messenger-at-arms or sheriff officer may give intimation by—

- (a) depositing it in the other party’s dwelling place or place of business, or
- (b) leaving it at the other party’s dwelling place or place of business in such a way that it is likely to come to the attention of that party.

Lodging of documents

42.—(1) Where any provision in these rules requires a party to lodge a document, it is to be lodged with the court.

(2) A document may be lodged by—

- (a) electronic transmission (including online application),

- (b) delivering it personally to the court,
- (c) delivering it to a document exchange of which the court in question is a member, or
- (d) first class post.

Chapter 2

Applications to court during a case

Intimation of proposed application and response

43.—(1) Before making an application in relation to a case, a party must give intimation to the other party (or parties) of—

- (a) the applicant's intention to make the application,
- (b) the terms of the proposed application, and
- (c) the applicant's views as to whether a hearing is required to consider the proposed application.

(2) If the intimation under paragraph (1) is not given on or before 5 p.m. on a court day, the intimation is to be treated as having been given by the other party (or parties) on the first court day following the actual giving of the intimation.

(3) Following the giving of intimation under paragraph (1), each other party must respond to the applicant in the specified form by not later than 5 p.m. on the third court day following the giving of the intimation (or, where paragraph (2) applies, by not later than the third court day following the day on which the intimation is to be treated as having been given) stating—

- (a) whether the other party opposes the proposed application,
- (b) the other party's reasons for opposing the application (if any), and
- (c) the other party's views as to whether a hearing is required to consider the proposed application.

Lodging of application etc. and late response

44.—(1) An applicant may lodge an application by not later than 5 p.m. on the fourth court day following the giving of intimation under rule 43(1).

- (2) An application must be lodged by online application.
- (3) At the same time as lodging the application, the applicant must—
 - (a) inform the court of the applicant's views as to whether a hearing is required to consider the application, and
 - (b) if received by the applicant, lodge the response received from each of the other parties under rule 43(3).
- (4) A late response by any other party to intimation given by the applicant under rule 43(1)—
 - (a) must be lodged by the other party, and
 - (b) may not be taken into account in relation to the application without the permission of the court.

Content and signing of application

45.—(1) An application must specify what step or process is being sought including the applicant's views as to how any expenses in connection with the application ought to be dealt with by the court.

(2) An application does not require to be signed by or on behalf of the applicant unless the application is—

- (a) a joint application by each party confirming settlement of the case, or
- (b) an application to abandon the case.

Hearings on applications: general

46. It is for the court to determine whether a hearing is required to consider an application.

Hearings on applications: procedure

47.—(1) It is for the court to determine the form and procedure for a hearing to consider an application.

(2) In particular, the court may, when ordering a hearing to consider an application (or at any time before the hearing), make an order—

- (a) about the practicalities of the hearing (for example, whether parties are to attend court in person or by electronic means),
- (b) requiring information to be lodged or exchanged between (or among) the parties before the hearing,
- (c) requiring a party to take a particular action,
- (d) specifying the period within which a party must take an action (and the consequences for failure to comply within that period),
- (e) in relation to any other matter or aspect of the hearing that the court considers appropriate.

(3) Unless an order is made under paragraph (2) to the contrary, parties are to attend the hearing by electronic means.

Application made without proper authorisation or agreement

48. Where an application is made by or on behalf of a party without proper authorisation or agreement by the party on whose behalf the application is made, the party or any other party to the case may apply to the court for recall of any order made by the court in consequence of the application.

Chapter 3

Being represented or supported

Application of Chapter

49. This Chapter does not limit the application of any other enactment (including these rules) in relation to situations where a party may be represented by a lay representative.

Lay representation: application process

50.—(1) A court may, on the application of a party litigant, permit an individual (who is not a legal representative) to represent the party in relation to one or more hearings.

(2) An application under paragraph (1) may be made—

- (a) prior to a hearing, by online application (incorporating the declarations required in paragraph (3)), or
- (b) during a hearing, if—
 - (i) the information required by the online application is supplied,

- (ii) the individual who is proposed as the lay representative makes the declarations required in paragraph (3), and
 - (iii) the court is satisfied that there are exceptional reasons for the application not having been made before that point.
- (3) The individual must declare—
 - (a) any financial interest the individual has in the outcome of the case,
 - (b) that no remuneration or other reward has been or will be received (directly or indirectly) by the individual from the party litigant in respect of the individual's assistance with the case,
 - (c) that no documents and information provided to the individual on a confidential basis will be disclosed by the individual,
 - (d) any previous convictions,
 - (e) whether a vexatious litigation order has been made in respect of the individual under section 100 of the Courts Reform (Scotland) Act 2014 and, if so, the date on which the order was made.

Lay representation: functions, conditions and duties

- 51.**—(1) A lay representative—
- (a) may do anything in the preparation or conduct of the hearing that the party litigant may do, and
 - (b) is entitled to see the same information (including court documents) as the party litigant.
- (2) A lay representative is subject to the same restrictions and prohibitions on the disclosure of information as the party litigant.
- (3) A lay representative—
- (a) must not receive any remuneration or reward from the represented party in connection with the representation,
 - (b) may receive reimbursement from the represented party for reasonable travel and subsistence expenses incurred in relation to the case.
- (4) No expense incurred by the represented party in connection with lay representation (including any travel or subsistence expense) is recoverable as an expense of the case.

Lay representation: withdrawal of permission to act

- 52.**—(1) The court may, of its own accord or on the motion of another party to the case, withdraw permission for the lay representative to represent the party litigant.
- (2) The court must withdraw a lay representative's permission to represent the party litigant if (or for such time as) the party litigant is represented by a legal representative.

Courtroom supporter: application process

- 53.**—(1) A court may, on the application of a party litigant, permit an individual to assist the party litigant in relation to one or more hearings.
- (2) An application under paragraph (1) may be made—
- (a) by an online application (which must incorporate the declarations in paragraph (4)), or
 - (b) during a hearing, if—
 - (i) the information required by the online application is supplied, and

- (ii) the individual who is to be the courtroom supporter makes the declarations required in paragraph (4).
- (3) The court must grant the application unless it is of the opinion—
 - (a) that the individual in question is an unsuitable person to be a courtroom supporter (whether generally or in the case concerned), or
 - (b) it would be contrary to the efficient administration of justice to grant it.
- (4) The individual must declare—
 - (a) any financial interest the individual has in the outcome of the case,
 - (b) that no remuneration or other reward has been or will be received (directly or indirectly) by the individual from the party litigant in connection with the individual's support with the case,
 - (c) that no documents and information provided to the individual on a confidential basis will be disclosed by the individual.

Courtroom supporter: conditions and duties

54.—(1) A courtroom supporter is subject to the same restrictions and prohibitions on the disclosure of information as the party litigant.

- (2) A courtroom supporter—
 - (a) must not receive any remuneration or reward from the party litigant in connection with the support,
 - (b) may receive reimbursement from the party litigant for reasonable travel and subsistence expenses incurred in relation to the case.
- (3) No expense incurred by the party litigant in connection with being supported by a courtroom supporter (including any travel or subsistence expense) is recoverable as an expense of the case.

Courtroom supporter: withdrawal of permission

55.—(1) The court may, of its own accord or on the motion of a party to the case, withdraw permission for the courtroom supporter to provide support.

(2) The court must withdraw a courtroom supporter's permission to provide support if (or for such time as) the party litigant is represented by a legal representative.

Withdrawal of legal representation

56.—(1) Where a party's legal representative ceases to act for the party, the legal representative must notify the court and every other party to the case as soon as reasonably practicable.

(2) Following notification under paragraph (1), the court must make an order requiring the party whose legal representative has ceased to act to notify the court and every other party, within the period of 14 days beginning with the day on which the order was made, whether the party intends to proceed with the case.

(3) A court may, on cause shown, extend the period for responding to an order under paragraph (2).

(4) If a party does not respond to an order under paragraph (2) (or responds indicating that the case will not be proceeded with), the court may make such decree, order or finding as the court considers appropriate in the circumstances.

(5) Paragraph (4) is subject to rule 4 (sanctions where a party is in default).

Chapter 4
Dealing with witnesses

Witness statements

57.—(1) This rule applies where a court has ordered that a witness statement or a recording of a witness is to be lodged by a specific day.

- (2) Any document or other information referred to in the statement or recording must be—
- (a) lodged at the same time as the statement or recording,
 - (b) accompanied by, or include, a declaration by the person who produced the statement or recording that all the information it contains is true.
- (3) The other party or parties to the case may lodge a note of questions or lines of inquiry to be put to the witness.
- (4) The court may order that the note be lodged by a specific day, which day must be not later than 8 weeks before the day on which the substantive hearing begins.
- (5) A court may authorise a party to lodge more than one note in respect of a witness if the court considers there to be a good reason for doing so.
- (6) A court may by order—
- (a) approve, with or without modification, a note of questions or lines of inquiry, and
 - (b) require the party who prepared the witness statement or recording to lodge the witness's answers to the note by a specific day.

Child witness notice

58.—(1) A child witness notice (within the meaning of section 12(2) of the Vulnerable Witnesses (Scotland) Act 2004) is to be made by online application.

- (2) The online application containing the notice must set out—
- (a) the name of the witness,
 - (b) the date of birth of the witness,
 - (c) the special measure (within the meaning of section 18 of the Vulnerable Witnesses (Scotland) Act 2004) sought or why none is needed,
 - (d) the views of the child's parent or person with parental responsibilities for the child.

Vulnerable witness applications

59.—(1) A vulnerable witness application (within the meaning of section 12(6) of the Vulnerable Witnesses (Scotland) Act 2004) is to be made by online application.

- (2) The online application containing the application must set out—
- (a) the name of the witness,
 - (b) the date of birth of the witness,
 - (c) why the person is considered to be a vulnerable witness,
 - (d) the special measure (within the meaning of section 18 of the Vulnerable Witnesses (Scotland) Act 2004) sought,
 - (e) the views of the witness.

Orders in relation to a child or vulnerable witness

60. A court may order—

- (a) the provision of further information in relation to a child witness notice or vulnerable witness application,
- (b) parties to attend court in person in relation to a child witness notice or vulnerable witness application.

Presumption against need for written questions for information on commission

61. Where a court makes an order that a witness (including a child or vulnerable witness) is to present information on commission, the commission is to proceed without a formal set of written questions being lodged in advance unless the court orders otherwise.

Expert information

62.—(1) Information provided by an expert witness in written form (in that person's capacity as an expert witness) must include a declaration that the information is accurate.

(2) A party, if intending to produce information from an expert (or experts), must lodge a note setting out—

- (a) the identity of the expert (if known),
- (b) why the information is reasonably required for a just resolution of the case,
- (c) whether the parties have considered or agreed to instruct an expert jointly, and
- (d) the date by which the information might reasonably be expected to be provided.

(3) A note under paragraph (2) must be lodged by the date specified by the court under rule 26 or 32, or otherwise not later than 8 weeks before the day on which substantive hearing is due to begin.

(4) If there is more than one expert witness, the court may order the concurrent presentation of the experts' information, and must direct how that information is to be presented.

(5) A court may, following consideration of documentary information provided by an expert, decide that proof is unnecessary on a particular matter.

Chapter 5

Death or inability of party to continue

Application for substitution

63.—(1) Where a party to a case dies or becomes legally incapable while the case is before a court, a person claiming to represent that party or the party's estate may apply to the court to be substituted as a party to the case.

(2) Paragraph (3) applies where—

- (a) a question of liability is the subject of a case before the court, and
- (b) a statutory transfer occurring when a case is pending before the court has the effect of transferring that liability (if proved).

(3) Where this paragraph applies, a party to the case may apply to the court for the case to be transferred in favour of or against (as the case may be) the person to whom the liability is transferred by virtue of the statutory transfer.

Application for transfer

64.—(1) Where a party dies or becomes legally incapable while a case is pending before a court and no application has been made under rule 63(1) in the course of the case, another party may apply to the court for the case to be transferred in favour of or against (as the case may be) a person (“the transferee”) who represents the party or the estate of the party.

(2) Where an application for transfer is made under paragraph (1), the court must make an order—

- (a) granting warrant for service on the transferee of—
 - (i) a copy of the application for transfer,
 - (ii) a copy of the parties’ written cases (including any adjustments and amendments), and
 - (iii) a copy of the order, and
 - (b) allowing the transferee to object to the application for transfer within such period as the court considers appropriate.
- (3) An objection under paragraph (2)(b) must be made in the form of an application.

Death of party: notification

65.—(1) As soon as reasonably practicable after the death of a party to a case, a legal or lay representative who was instructed by (or on behalf of) the party in relation to the case immediately prior to the death must notify the court in writing of the death.

- (2) The notification must—
- (a) include an estimate of the length of time which may be required to obtain confirmation in respect of the deceased party’s estate, and
 - (b) be accompanied by a certified copy of the death certificate in respect of the deceased party.

PART 4

OPTIONS TO JOIN OR TRANSFER A CASE

Chapter 1

Request by defender for person to join a case

Application for order for service of third party notice

66.—(1) A defender to a case may apply to the court for an order for service of a notice on a relevant person for the purpose of the relevant person becoming a third party to the case.

(2) Paragraph (3) applies in relation to a case at a time when any party may adjust their case.

(3) Before making an application under paragraph (1) in relation to a person, the defender must set out in the defences the factual and legal basis on which the defender considers that the person is a relevant person.

(4) In relation to a case at a time when no party may adjust their case, at the time of making an application under paragraph (1) in relation to a person, the defender must also make an application for amendment.

(5) An application for amendment under paragraph (4) must set out the factual and legal basis on which the defender considers that the person is a relevant person (unless that is already set out in the defences).

(6) A defender may not make an application under paragraph (1) after the commencement of the substantive hearing in a case.

(7) In this Chapter, “relevant person” in relation to a defender, means—

- (a) a person against whom the defender claims to have a right of contribution, relief or indemnity in respect of the subject matter of the case but who is not a party to the case, or
- (b) a person whom the pursuer is not bound to call as a defender to the case but whom the defender claims is a person who should be a party to the case in addition to the defender on the basis that the 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 case, 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.

Service of third party notice

67.—(1) Where a court makes an order for service of a third party notice on a relevant person, the defender must serve the notice on the relevant person within such period as the court specifies in the order.

(2) Together with the third party notice, the defender must send the following to the relevant person—

- (a) a copy of the parties’ written cases (including any adjustments and amendments),
- (b) a copy of the order of the court for service of the notice, and
- (c) where the defences have not been amended in accordance with an application to amend, a copy of that application.

(3) Following the service of the third party notice, the defender must lodge—

- (a) a copy of the notice,
- (b) a copy of the court order authorising service of the notice, and
- (c) a certificate of service in respect of the notice.

(4) If the defender fails to serve a third party notice on a relevant person within the period specified in the order for service of the notice, the order ceases to have effect and no notice may be served on the relevant person pursuant to that order.

(5) If the defender serves a third party notice on a relevant person within the period specified in the order for service of the notice, the relevant person becomes a third party to the case.

Lodging of answers by a third party

68.—(1) Where a third party notice is served on a relevant person within the period specified in the order for service of the notice, the relevant person may lodge answers in relation to the notice by not later than the expiry of the relevant period.

(2) In paragraph (1), the “relevant period” means—

- (a) the period of 28 days beginning with the day on which the relevant person receives the notice, or
- (b) such longer period as may be authorised by the court, on cause shown, in the order for service of the notice for the lodging of answers.

(3) Where the relevant person lodges answers within the relevant period, the court may order the defender to within such period as the court considers appropriate—

- (a) make up an open record incorporating the written case of each party, and
- (b) lodge a copy of the record.

Application by defender for finding, order or decree against a third party

69.—(1) This rule applies where a relevant person becomes a third party to a case under rule 67(5) and the relevant person fails to lodge answers in accordance with rule 68(1).

(2) The defender may apply to the court for such finding, order or decree against the relevant person as may be appropriate to give effect to the grounds on which the relevant person became a third party to the case.

(3) Where a defender has made an application for amendment under rule 66(4), the defender may not make an application under paragraph (2) until the defender has amended the defences in accordance with the application for amendment.

(4) Where the court makes a finding, order or decree under paragraph (2) against the relevant person—

- (a) the finding, order or decree (as the case may be) is final and may not be appealed,
- (b) but the relevant person may apply for—
 - (i) recall of the finding, order or decree, and
 - (ii) allowance of the lodging of answers.

Applications by pursuer subject to counterclaim or third party

70.—(1) This Chapter applies in relation to—

- (a) a pursuer against whom a counterclaim has been made, or
- (b) a third party to a case,

as it applies in relation to a defender to a case.

(2) Where an application is made under rule 66(1) (for an order for service of a third party notice) by a pursuer against whom a counterclaim has been made or (as the case may be) a third party to a case, references in this Chapter to a defender are to be read as references to the pursuer against whom a counterclaim has been made or (as the case may be) a third party to the case.

Chapter 2

Request by person other than defender to join a case

Application to become a third party to case

71.—(1) A person who has not been called as a defender to a case may apply to the court for permission—

- (a) to become a third party to the case, and
- (b) to lodge defences.

(2) The application must specify—

- (a) the applicant's title and interest to join the case, and
- (b) the grounds of defence that the applicant proposes to state.

(3) After hearing the applicant, the court may grant the application if it is satisfied—

- (a) that the applicant has title and interest to join the case, and
- (b) where the application was made after the closing of the record, with the applicant's explanation as to why an earlier application was not made.

(4) In granting the application, the court may also make such order as to expenses or otherwise as it considers appropriate.

Chapter 3

Transfer of a case involving the Court of Session

Transfer from sheriff where exclusive competence of sheriff court does not apply

72.—(1) Where a sheriff makes an order under section 92(2) of the Courts Reform (Scotland) Act 2014 (remit of cases from sheriff to the Court of Session where exclusive competence of sheriff court does not apply) remitting a case before a sheriff to the Court of Session, the sheriff clerk must within the period of 4 days beginning with the day on which the order was made—

- (a) notify each party of the remit,
- (b) certify on the interlocutor sheet that sub-paragraph (a) has been complied with, and
- (c) send the documents relating to the case to the Court of Session.

(2) Failure by a sheriff clerk to comply with paragraph (1)(a) or (b) does not affect the validity of a remit.

(3) On receipt of the documents relating to the case under paragraph (1)(c), the Court of Session must—

- (a) write the date of receipt of the documents on the interlocutor sheet, and
- (b) notify each party of that date.

(4) The party who applied for the remit may apply to the Court of Session for an order in relation to such further procedure as the party considers appropriate.

Transfer from sheriff where exclusive competence of sheriff court applies

73.—(1) Where a sheriff receives an application under section 92(4) of the Courts Reform (Scotland) Act 2014 (“2014 Act”) (remit of case from sheriff to Court of Session where exclusive competence of sheriff court applies), the sheriff must—

- (a) record the sheriff’s decision on the application in an order, and
- (b) append a note of the reasons for the decision to the order.

(2) If the sheriff approves the application under section 92(4) of the 2014 Act and requests that the Court of Session allows the case to be remitted to that Court, the request must be made by an order of the sheriff.

(3) Where a sheriff remits a case to the Court of Session under section 92(6) of the 2014 Act, the sheriff clerk must send the documents relating to the case to the Court of Session.

(4) On receipt of the documents relating to the case under paragraph (3), the Court of Session must—

- (a) write the date of receipt of the documents on the interlocutor sheet, and
- (b) notify each party of that date.

(5) The party who applied for the remit may apply to the Court of Session for an order in relation to such further procedure as the party considers appropriate.

Transfer from sheriff under an enactment other than section 92 of the Courts Reform (Scotland) Act 2014

74.—(1) Where a sheriff has ordered remit of a case before the sheriff to the Court of Session under an enactment other than section 92 of the Courts Reform (Scotland) Act 2014 (remit of cases to the Court of Session), the sheriff clerk must within 4 days of the making of the order—

- (a) send written notice of the order to each party,
- (b) certify on the interlocutor sheet that sub-paragraph (a) has been complied with, and
- (c) send the process to the Court of Session.

(2) Failure by a sheriff clerk to comply with paragraph (1)(a) or (b) does not affect the validity of a remit.

Transfer from sheriff on ground of contingency

75.—(1) An application under section 33(1) of the Court of Session Act 1988 (transmission from sheriff to Court of Session on ground of contingency) may be made by online application by—

- (a) a party to the case before the Court of Session, or
- (b) any other person with an interest in the case (including a party to the sheriff court case in question).

(2) A copy of the parties' written cases and decisions in the sheriff court case in question must be certified by the sheriff clerk and lodged with an application under section 33(1) of the Court of Session Act 1988.

(3) A decision on an application under section 33(1) of the Court of Session Act 1988 may not be reclaimed to the Inner House but where an application is refused, a subsequent application may be made under that subsection where there is a change of circumstances.

(4) Within 14 days of the date of receipt of the sheriff court process pursuant to an application under section 33(1) of the Court of Session Act 1988, the party or other person who made the application must lodge with the Court of Session a process incorporating the sheriff court process.

(5) Having complied with paragraph (4), the party or other person who made the application under section 33(1) of the Court of Session Act 1988 may apply to the Court of Session for an order in relation to such further procedure as the party or other person considers appropriate.

Referral to the Inner House of the Court of Session

76.—(1) At any stage of a case before the Outer House, the court may refer the case, or any incidental matter arising in the course of the case, by way of report to the Inner House for a ruling.

- (2) Following the report of the case (or incidental matter) to the Inner House, the court must—
- (a) give written intimation of that to each party to the case, and
 - (b) convene a hearing before a Division of the Inner House to consider the report.

(3) Following a hearing, the Inner House may—

- (a) dispose of the case (or incidental matter) reported to it, or
- (b) remit the case to the Outer House with such directions as it considers appropriate.

(4) A decision of the Inner House on a report made to it under paragraph (1) is final and may not be appealed.

Transfer from Court of Session to sheriff

77.—(1) Where the Court of Session remits a case to a sheriff under section 93(2) or (5) of the Courts Reform (Scotland) Act 2014 (remit of cases from the Court of Session), Court of Session must, within 4 days of the Court's order of remit send the process to the sheriff clerk.

(2) Immediately following receipt of the process under paragraph (1), the Court of Session must—

- (a) give written notice of the receipt to the parties to the proceedings, and
- (b) certify on the interlocutor sheet that written notice has been given.

(3) Failure by the Court of Session to comply with paragraph (2) does not affect the validity of the remit to the sheriff.

(4) On receipt of the process under paragraph (1), the sheriff clerk must—

- (a) record the date of receipt on the interlocutor sheet,
- (b) fix a hearing on the first suitable court day to determine further procedure, and
- (c) immediately send written notice of the date of the hearing fixed under sub-paragraph (b) to each party.

(5) For the purpose of paragraph (4)(b), the first suitable court day occurs no earlier than 14 days after the day on which the process is received under paragraph (1).

Chapter 4

Transfer of a case from simple procedure or between sheriff courts

Transfer from simple procedure

78. Where a sheriff makes a direction under section 80(2) of the Courts Reform (Scotland) Act 2014 that a case subject to simple procedure is no longer subject to that procedure, the direction must specify the procedure that is to apply to the case.

Transfer to another sheriff court

79.—(1) Where there are two or more defenders to a case and the case is commenced in the sheriff court in the sheriff court district in which one of the defenders resides or has a place of business or carries on business, the sheriff may make an order transferring the case to another sheriff court that has jurisdiction over any of the defenders if both conditions specified in paragraph (3) are satisfied.

(2) Where a plea of no jurisdiction is sustained in respect of a case and both conditions specified in paragraph (3) are satisfied, the sheriff may make an order transferring the case to the sheriff court before which it appears to the sheriff that the case ought to have been brought.

(3) The conditions referred to in paragraphs (1) and (2) are—

- (a) a party has applied for transfer of the case to the other sheriff court in question, and
- (b) the sheriff considers it expedient to transfer the case to that sheriff court having regard to the convenience of the parties and their witnesses.

(4) In any case other than one mentioned in paragraph (1) or (2), the sheriff may, on cause shown, make an order transferring a case to another sheriff court.

(5) In making an order to transfer a case to another sheriff under paragraph (1), (2) or (4), the sheriff—

- (a) must state the reasons for making the order in the order, and

- (b) may provide for the order to be subject to any conditions as to expenses or otherwise as the sheriff considers appropriate.
- (6) The sheriff court to which a case is transferred by order made under paragraph (1), (2) or (4) must accept the case.
- (7) Where a case is transferred in accordance with an order under paragraph (1), (2) or (4), the case is to continue for all purposes (including appeal) as if it had originally been commenced in the sheriff court to which the case is transferred.

PART 5 THINGS TO DO WITH ENFORCING A CASE

Chapter 1

Getting an extract of a decree

Extract of decree: timings

- 80.**—(1) The court may, on the request of a party, provide the party with an extract of a decree.
- (2) An extract of a decree in absence may be provided to a party only after the expiry of a period of 14 days beginning with the date of the decree.
 - (3) An extract of a decree in a defended case may be provided to a party only after—
 - (a) if there is no right of appeal against the decree, the expiry of a period of 14 days beginning with the date of the decree,
 - (b) if there is a right of appeal against the decree with leave or permission—
 - (i) where leave or permission is not sought within the period allowed for seeking that leave or permission, the expiry of such period,
 - (ii) where leave or permission is refused and there is no right of appeal against the refusal, the day on which it is refused,
 - (c) if there is a right of appeal against the decree (including where leave or permission is granted)—
 - (i) where no appeal is made within the period allowed for making the appeal, the expiry of such period,
 - (ii) where an appeal is made within the period allowed, the day on which the appeal is finally disposed of or abandoned.
 - (4) But if the court reserved the question of expenses in relation to the decree, an extract of the decree may be provided to a party only after the expiry of a period of 14 days beginning with the day on which the question of expenses was finally disposed of.
 - (5) For the purposes of paragraph (3)(c), where an appeal is made and then withdrawn within the period allowed, the appeal is to be disregarded.

Extract of decree: early extract

- 81.**—(1) The court may, on the application of a party, provide the party with an extract of a decree before the expiry of the appropriate period under rule 80.
- (2) The application may be granted only where every party was present at a hearing on the application.
 - (3) The condition in paragraph (2) does not apply where the application relates to a decree in absence.

Extract of decree: content and authentication

- 82.**—(1) An extract of a decree must set out—
- (a) the name of the court issuing the extract,
 - (b) the case reference number,
 - (c) the name and address of the parties,
 - (d) the date of the decree,
 - (e) whether the decree was a decree in absence,
 - (f) the terms of the court’s decision, including any expenses.
- (2) The extract must be authenticated by the court.

Chapter 2

Interim diligence: online applications

Interim diligence: online applications

83.—(1) Applications under the following sections of the Debtors (Scotland) Act 1987 are to be in the form of an online application—

- (a) section 15D(1) (application for diligence on the dependence),
- (b) section 15K(2) (recall or restriction of diligence on the dependence),
- (c) section 15L(1) (variation of orders and variation or recall of conditions).

(2) Applications under the following sections of the Debt Arrangement and Attachment (Scotland) Act 2002 are to be in the form of an online application—

- (a) section 9C(1) (application for warrant for interim diligence),
- (b) section 9H(1) (order for security of attached articles),
- (c) section 9L(4) (extension of duration of interim attachment),
- (d) section 9M(2) (application for recall etc. of interim diligence),
- (e) section 9N(1) (variation of orders and variation or recall of conditions).

PART 6

ONLINE APPLICATIONS, FORMS AND OTHER OPTIONS, INTERPRETATION, ETC.

Online applications and forms

84.—(1) This rule applies if these rules require or authorise something to be done by online application or in a specified form.

(2) To be done by “online application” the thing must be completed and transmitted to court using such electronic means as the Scottish Courts and Tribunals Service makes available for the purposes of the provision in which the expression occurs.

(3) To be in the “specified form”, the thing must—

- (a) be in a form specified by the Lord President for the purpose of the provision in which the expression occurs,
- (b) be given in accordance with any requirements specified by the Lord President for the purpose.

Non-electronic alternatives

85. A court may permit a party to do anything that the party is otherwise required to do electronically by suitable alternative means (for example by lodging a document containing all the relevant information required by an online application).

Electronic signature

86. An electronic signature fulfils any requirement (however expressed and for whatever purpose).

Interpretation

87. In these rules—

“application”, except in the case of an online application or an application under rule 50(1) or 64(1), means an application under rule 43(1); and related expressions are to be construed accordingly,

“case management order” is to be construed in accordance with rule 19(1),

“case management questionnaire” has the meaning given in rule 20(3),

“court” means—

- (a) in relation to a case or matter in the Court of Session, that court,
- (b) in relation to a case or matter before a sheriff, the sheriff or a sheriff clerk acting under the sheriff’s direction,

“court day” means—

- (a) in a case in the Court of Session, a day on which the Office of the Court is open,
- (b) in a case in a sheriff court, a day on which the office of the clerk is open,

“courtroom supporter” means an individual who is permitted by a court under rule 53(1) to assist a party litigant in relation to one or more hearings,

“defender” is to be construed in accordance with rule 12,

“document”, subject to rule 31(2) and except where the context otherwise requires, includes a copy of a document,

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document,

“electronic transmission” is to be construed in accordance with rule 40,

“first class post” means a postal service which seeks to deliver documents or other things by post no later than the next working day (within the meaning of section 125(1) of the Postal Services Act 2000) in all or the majority of cases,

“hearing” means a hearing before a court in whatever form the court considers appropriate (including in person, by electronic means or by exchange of correspondence),

“information” includes items and oral evidence,

“intimation” and related expressions are to be construed in accordance with Chapter 1 of Part 3,

“judge” means—

- (a) in relation to a case or matter in the Court of Session, the judge dealing with that case or matter,
- (b) in relation to a case or matter before a sheriff, the sheriff,

“lay representative” means an individual who is permitted by the court under rule 50(1) to represent a party litigant in relation to one or more hearings,

“legal representative” means—

- (a) a solicitor (within the meaning of section 4 of the Solicitors (Scotland) Act 1980),
- (b) a practising member of the Faculty of Advocates,
- (c) an individual having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,

“lodge” and related expressions are to be construed in accordance with rule 42,

“online application” is to be construed in accordance with rule 84(2),

“party litigant” means an individual who is conducting their case without a legal representative,

“pursuer” is to be construed in accordance with rule 10(1),

“recorded delivery” means a postal service which provides for the delivery of documents or other things by post to be recorded,

“sheriff clerk” means, in relation to sheriff, a sheriff clerk of the sheriff court in which the sheriff sits,

“specified form” is to be construed in accordance with rule 84(3),

“substantive hearing” means a hearing the purpose of which is to determine all or part of the substantive dispute between (or among) the parties, and includes a debate, proof or proof before answer,

“summary decree” has the meaning given in rule 17(3),

“third party notice” means a notice the service of which is authorised by an order made under rule 66(1).

Books of Sederunt

88. This Act of Sederunt is to be inserted in the Books of Sederunt.

Commencement

89. This Act of Sederunt comes into force on [].

Citation

90. This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Procedure Rules) 2023.