



SHERIFF COURT RULES COUNCIL

CONSULTATION

Proposals

for Procedural Rules for Personal Injury Actions

in the Sheriff Court

Consultation Arrangements

The Ordinary Cause Committee ("Committee") of the Sheriff Court Rules Council ("Council") has recommended to the Council that the Court of Session Rules for actions for Personal Injury, suitably adapted, should be adopted for use in the sheriff court.

This paper sets out these rules as might be appropriately adapted for use in the sheriff court. The Council is asking for your views and comments on them. Views and comments should be made before **18 October 2006**:

by e mail to: SCRCPI@scotland.gsi.gov.UK

in writing to: The Secretariat
Sheriff Court Rules Council
Scottish Executive Justice Department
Civil Court Procedure & Sheriff Court Jurisdiction
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Edinburgh
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Please note comments by e mail would be preferred as this aids in the analysis process. It would be helpful if, in responding, comments could be cross referred to the question numbers in the paper although you do not need to respond to all the questions.

If you would like your responses to be treated as confidential please indicate this clearly. Responses from those who reply in confidence will only be included in numerical totals and names and text will not appear in the list of respondents.

All respondents should be aware that the Sheriff Court Rules Council is a statutory body and is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Further copies of this paper and the Respondent Information Form can be downloaded from:

http://www.scotcourts.gov.uk/sheriff/rules_council/consultation/index.asp.

Requests for the paper in different formats will be considered

INDIVIDUALS AND ORGANISATIONS ARE INVITED TO SUBMIT VIEWS AND COMMENTS BY 18 OCTOBER 2006

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The Sheriff Court Rules Council

The Sheriff Court Rules Council ("Council") was set up by section 33 of the Sheriff Courts (Scotland) Act 1971 to keep under review the procedure and practice in civil proceedings in the sheriff court. It regularly prepares draft rules of procedure and submits them to the Court of Session for approval and enactment as an Act of Sederunt.

To assist it in the discharge of its functions, the Council may invite representations on any aspect of the procedure or practice in civil proceedings in the sheriff court. Representations may also be made by members of the public on any matter within the Council's remit. The Council considers any representations received.

Background to Consultation

In the discharge of its functions, the Council is supported by a number of Committees charged with specific aspects of work. The Ordinary Cause Committee is a standing Committee of the Council and is established to scrutinise the Sheriff Court Ordinary Cause Rules and issues of practice and procedure arising therefrom. The minutes of Committee meetings can be viewed and downloaded at www.scotcourts.gov.uk

The current membership of the Committee is set out in **Annex A**.

The Committee reported to the Council that it may be appropriate to introduce rules providing for specific procedures for personal injury actions in the sheriff court, based on those which were introduced into the Court of Session in April 2003.

Although the Committee presented its report to the Council in December 2005, the Council decided to hold off its detailed consideration of the recommendations contained in the report until consultation had been carried out.

The proposed new Chapter XX for incorporation in the Ordinary Cause Rules is set out in **Annex B**.

Consultation Questionnaire

Please now respond to the questions posed and indicate any other general comments or suggestions you would wish to make.

Note: *Even if you answer 'no' to questions 1a ,2a and 3a it would be very helpful to have your views on all remaining questions on the assumption it is decided at the end of the day that the Court of Session rules for personal injury actions should be imported into sheriff court procedure subject to suitable adaptation.*

Part 1 General proposition

Q 1a – Do you consider that the Court of Session rules for personal injury actions, suitably adapted for use in the sheriff court, should be adopted into the Sheriff Court Ordinary Cause Rules?

Q 1b – Please provide reasons for supporting or rejecting the general proposition.

Q 2a – Do you consider that the Court of Session rules for personal injury actions, suitably adapted for use in the sheriff court, should be adopted into the Sheriff Court Summary Cause Rules in place of the existing Chapter 34 of the Summary Cause Rules 2002?

Q 2b – Please provide reasons for your answer.

Note: *The Scottish Executive has indicated an intention to change the law to exclude personal injury actions from small claims procedure. Questions 3a and 3b are asked to cover the possibility that this does not happen.*

Q 3a – Do you consider that the Court of Session rules for personal injury actions, suitably adapted for use in the sheriff court, should be adopted into the Sheriff Court Small Claim Rules?

Q 3b – Please provide reasons for your answer.

Part 2 Proposed new Chapter XX of the Sheriff Court Ordinary Cause Rules.

The various time limits within the Court of Session Rules have been replicated but respondents may wish to consider whether they should be altered for the purposes of the sheriff court. Please make any comment on time-limits in the relevant question relating to the specific draft rule.

Q 4a – Application of Chapter XX

Is the proposed new rule XX.1 satisfactory?

Yes/No

Under reference to subparagraph (4) of this proposed rule respondents may wish to consider paragraphs 4.7 and 4.8 of the Scottish Law Commission's Discussion Paper No 132 entitled *Personal Injury Actions: Limitation and Prescribed Claims*. A copy of this Paper can be viewed or downloaded at http://www.scotlawcom.gov.uk/downloads/dp132_limitation.pdf.

Q 4b – If not please provide further comment.

Q 5a – XX.2 Form of initial writ

Is the proposed form P1 suitable for this type of action in the sheriff court? Yes/No

Q 5b – If not, please provide further comment.

Q 6a – XX.3 Citation, service and intimation of initial writ

Are the citation, service and intimation of the action proposed in this rule suitable for this type of action in the sheriff court? Yes/No

Q 6b – If not, please provide further comment.

Q 7a – XX.4 Inspection and recovery of documents

Is the proposed procedure for inspection and recovery of documents suitable for this type of action in the sheriff court? Yes/No

Q 7b – If not, please provide further comment.

Q 8a – XX.5 Motions to dispense with timetable

Is the proposed procedure for dispensing with the timetable set out in draft rule XX.6 suitable for this type of action in the sheriff court? Yes/No

Q 8b – If not, please provide further comment.

Q 8c – Please comment on the 28 day timescale proposed.

Q 9a – XX.6 Allocation of diets and timetables

Is the proposed overall procedure suitable for this type of action in the sheriff court? Yes/No

Q 9b – If not, please provide further comment.

Q 10a – XX.7 Incidental hearings

Is the procedure proposed for incidental hearings suitable for this type of action in the sheriff court? Yes/No

Q 10b – If not, please provide further comment.

Q 10c – Please comment on the 7 day time-scale proposed.

Q 11a – XX.8 Applications for sist or for variation of timetable

Is the procedure proposed for applications for sist or variation of the timetable suitable for this type of action in the sheriff court? Yes/No

Q 11b – If not, please provide further comment.

Q 12a – XX.9 Statements of valuation of claim

Is the procedure for statements of valuation of claim suitable for this type of action in the sheriff court? Yes/No

Q 12b – If not, please provide further comment.

Q 12c – Please comment on the 14 day time-scale applied.

Q 13a – XX.10 Pre-proof meetings

Is the procedure for pre-proof meetings suitable for this type of action in the sheriff court? Yes/No

Q 13b – If not, please comment further.

Q 13c – Please comment on the suggested 4 week time-scale applied.

Q 14a – XX.11 Applications for interim payments of damages

Is the proposed procedure for applications for interim payment of damages suitable for this type of action in the sheriff court? Yes/No

Q 14b – If not, please comment further.

Q 14c – Please comment on the suggested 14 day time-scale applied.

Q 15a – XX.12 Adjustment on final decree

Is the proposed provision for adjustment on final decree where interim payment ordered suitable for this type of action in the sheriff court? Yes/No

Q 15b – If not, please comment further.

Q 16a – XX.13 Application for further damages

Is the proposed procedure for an application for further damages suitable for this type of action in the sheriff court? Yes/No

Q 16b – If not, please comment further.

Q 16c – Please comment on the 28 day time-scale applied.

Q 17a – XX.14 Actions by connected persons

Is the proposed procedure for actions by connected persons suitable for this type of action in the sheriff court? Yes/No

Q 17b – If not, please comment further.

Q 18a – XX.15 Warrants for intimation in actions by connected persons

Is the proposed procedure for warrants for intimation in actions by connected persons suitable for this type of action in the sheriff court? Yes/No

Q 18b – If not, please comment further.

Q 19a – XX.16 Applications to dispense with intimation in actions by connected persons

Is the proposed procedure for applications to dispense with intimation in actions by connected persons suitable for this type of action in the sheriff court? Yes/No

Q 19b – If not, please comment further.

Q 20a – XX.17 Subsequent disclosure of connected persons

Is the proposed procedure for subsequent disclosure of connected persons suitable for this type of action in the sheriff court? Yes/No

Q 20b – If not, please comment further.

Q 21a – XX.18 Connected persons entering the process

Is the proposed procedure for connected person entering the process suitable for this type of action in the sheriff court ? Yes/No

Q 21b – If not, please comment further.

Q 22a – XX.19 Failure by connected persons to enter process

Is the proposed procedure for failure by connected persons to enter the process suitable for this type of action in the sheriff court ? Yes/No

Q 22b – If not, please comment further.

Q 23 – Please make any additional comments on any of these draft rules, referring to the numbered rule where appropriate in your comments.

ANNEX A

Membership of the Ordinary Cause Committee

Sir Stephen S T Young Bt QC, Sheriff Principal of Grampian, Highland & Islands (Chairman)

William Holligan, Sheriff of Tayside Central & Fife at Kirkcaldy

Mr Joseph d'Inverno, Solicitor-Advocate, Edinburgh

Mr John McCormick, Solicitor, Glasgow

Mr Stephen Brand, Solicitor, Dundee

Mr Alan Johnston, Sheriff Clerk, Kilmarnock

Mr Paul Cackette, Head of the Civil Justice and International Division, Scottish Executive Justice Department

ANNEX B

Proposed Draft Rules

“CHAPTER XX PERSONAL INJURIES ACTIONS

Application and interpretation of this Chapter

XX.1.—(1) This Chapter applies to a personal injuries action.

(2) In this Chapter—

“connected person” means a person, not being a party to the action, who has title to sue the defender in respect of the personal injuries from which a deceased died or in respect of his death;

“personal injuries” includes any disease or impairment, whether physical or mental;

“personal injuries action” means an action of damages for, or arising from, personal injuries or death of a person from personal injuries; and

“relative” has the meaning assigned to it in Schedule 1 to the Damages (Scotland) Act 1976⁽¹⁾.

(3) The following rules are the only rules in Chapter 9 (standard procedure in defended causes) as apply to an action to which this Chapter applies:—

(a) rule 9.1 (notice of intention to defend);

(b) rule 9.5 (process folder);

(c) subject to paragraph (4), rule 9.6 (defences); and

(d) rule 9.7 (implied admissions).

(4) It shall not be necessary to append a note of the pleas-in-law of the defender to defences in a personal injuries action.

Form of initial writ

XX.2.—(1) The initial writ shall be in Form P1 and there shall be annexed to it a brief statement containing—

(a) averments in numbered paragraphs relating only to those facts necessary to establish the claim; and

(b) the names of every medical practitioner from whom, and every hospital or other institution in which, the pursuer or, in an action in respect of the death of a person, the deceased received treatment for the personal injuries.

(2) An application for an order under section 12(2)(a) of the Administration of Justice Act 1982 (provisional damages for personal injuries)⁽²⁾ shall be made by including in the initial writ a crave for provisional damages; and, where such an application is made, averments as to the matters referred to in paragraphs (a) and (b) of section 12(1) of that Act shall be included in the statement made under paragraph (1)(a).

(3) In paragraph (2), “provisional damages” means the damages referred to in section 12(4)(a) of the Administration of Justice Act 1982.

(1) 1976 c.13.

(2) 1982 c.53.

(4) An initial writ may include—

- (a) warrants for intimation in so far as permitted under these Rules; and
- (b) a specification of documents in Form P2.

(5) In relation to an action to which this Chapter applies, any references to the condescendence of an initial writ and to articles of the condescendence shall be construed as references to the statement required under paragraph (1) above and numbered paragraphs of that statement.

Citation, service and intimation of initial writ

XX.3. Where an initial writ in an action to which this Chapter applies is to be executed, a copy of the initial writ in respect of which a warrant for citation has been signed shall be—

- (a) served on the defender with a citation in Form P3 attached to it; and
- (b) intimated to any person named in a warrant for intimation.

Inspection and recovery of documents

XX.4.—(1) This rule applies where the initial writ contains a specification of documents by virtue of rule XX.2(4)(b).

(2) On the granting of a warrant for citation, an order granting commission and diligence for the production and recovery of the documents mentioned in the specification shall be deemed to have been granted and the sheriff clerk shall certify Form P2 to that effect.

(3) An order which is deemed to have been made under paragraph (2) shall be treated for all purposes as an interlocutor of the sheriff granting commission and diligence signed by the sheriff.

(4) The pursuer may serve an order under paragraph (2) and the provisions of Chapter 28 (recovery of evidence) shall thereafter apply, subject to any necessary modifications, as if the order were an order obtained on an application under rule 28.2.

(5) Nothing in this rule shall affect the right of a party to apply under rule 28.2 for a commission and diligence for recovery of documents or for an order under section 1 of the Administration of Justice (Scotland) Act 1972⁽³⁾ in respect of any document or other property [whether or] not mentioned in the specification annexed to the initial writ.

Motions to dispense with timetable

XX.5.—(1) Any party to an action may, within [28] days of the lodging of defences, by motion apply to have the action withdrawn from the procedure in this Chapter and to be appointed to proceed as an ordinary action.

(2) No motion under paragraph (1) shall be granted unless the sheriff is satisfied that there are exceptional reasons for not following the procedure in this Chapter.

(3) In determining whether there are exceptional reasons justifying the granting of a motion made under paragraph (1), the sheriff shall have regard to—

- (a) the likely need for detailed pleadings;
- (b) the length of time required for preparation of the action; and
- (c) any other relevant circumstances.

(3) 1972 c.59.

(4) Where the sheriff appoints the cause to proceed as an ordinary action under paragraph (1)–

- (a) the sheriff clerk shall fix a date and time for an Options Hearing; and
- (b) the cause shall thereafter proceed in accordance with Chapter 9 (standard procedure in defended causes).

Allocation of diets and timetables

XX.6.—(1) The sheriff clerk shall, on the lodging of defences or, where there is more than one defender, the first lodging of defences–

- (a) allocate a diet for proof of the action;
- (b) issue a timetable stating the date mentioned in sub-paragraph (a) and calculated by reference to periods specified from time to time by the sheriff principal, in accordance with which–
 - (i) an application for a third party notice under rule 20.1 may be made;
 - (ii) the pursuer may execute a commission for recovery of documents under rule XX.4;
 - (iii) parties may adjust their pleadings;
 - (iv) the pursuer shall lodge a statement of valuation of claim in process;
 - (v) the pursuer shall lodge a record;
 - (vi) the defender (and any third party to the action) shall lodge a statement of valuation of claim in process;
 - (vii) the parties shall each lodge in process a list of witnesses together with any productions upon which they wish to rely; and
 - (viii) the pursuer shall lodge in process the minute of the pre-trial meeting.

(2) A timetable issued under paragraph (1) shall be in Form P4 and shall be treated for all purposes as an interlocutor of the sheriff signed by the sheriff; and so far as the timetable order is inconsistent with any provision in these rules which relates to a matter to which the timetable relates, the timetable shall prevail.

(3) Where a party fails to comply with any requirement of a timetable other than that referred to in paragraph (7) the sheriff clerk may fix a date and time for the parties to be heard by the sheriff.

(4) The pursuer shall lodge two copies of the record, which shall consist of the pleadings of the parties, in process by the date specified in the timetable and shall at the same time send one copy to the defender and any other parties.

(5) The pursuer shall, on lodging the copies of the record as required by paragraph (4), make a motion craving the sheriff–

- (a) to allow to parties a preliminary proof on specified matters;
- (b) to allow a proof; or
- (c) to make some other specified order.

(6) In the event that any party proposes to crave the sheriff to make any order other than an order allowing a proof under sub-paragraph (b) of paragraph (5), that party shall, on making or opposing (as the case may be) the pursuer's motion, specify the order to be sought and give full notice in the motion or the notice of opposition of the grounds thereof.

(7) Where a pursuer fails to lodge a record by the date specified in the timetable issued under paragraph (1), the sheriff clerk shall fix a date and time for the parties to be heard by the sheriff.

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

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

(9) In a cause which is one of more than one cause arising out of the same cause of action, the sheriff may—

- (a) on the motion of a party to that cause; and
- (b) after hearing parties to all those causes,

appoint that cause or any part of those causes to be the leading cause and to sist the other causes pending the determination of the leading cause.

(10) In this rule, “pursuer” includes additional pursuer or minuter as the case may be.

Incidental hearings

XX.7.—(1) Where the sheriff clerk fixes a date and time for a hearing under paragraphs (3) or (7) of rule XX.6 or paragraph (3) of rule XX.10 he shall—

- (a) fix a date not less than seven days after the date of the notice referred to in sub-paragraph (b);
- (b) give notice to the parties to the action—
 - (i) of the date and time of the hearing; and
 - (ii) requiring the party in default to lodge in process a written explanation as to why the timetable has not been complied with and to intimate a copy to all other parties, no less than two clear working days before the date of the hearing.

(2) At the hearing, the sheriff—

- (a) shall consider any explanation provided by the party in default;
- (b) may award expenses against that party; and
- (c) may make any other appropriate order; including decree of dismissal.

(3) Expenses awarded under paragraph (2)(b) shall not exceed the expenses of the process before the date of the hearing.

Applications for sist or for variation of timetable

XX.8.—(1) The action may be sisted or the timetable varied by the sheriff on an application by any party to the action by motion.

(2) An application under paragraph (1)—

- (a) shall be placed before the sheriff; and
- (b) shall be granted only on special cause shown.

(3) Where a timetable issued under rule XX.6 is varied under this rule, the sheriff clerk shall issue a revised timetable in Form P4.

(4) A revised timetable issued under paragraph (4) shall have effect as if it were a timetable issued under rule XX.6 and any reference in this Chapter to any action being taken in accordance with the timetable shall be construed as a reference to its being taken in accordance with the timetable as varied under this rule.

Statements of valuation of claim

XX.9.—(1) Each party to an action shall make a statement of valuation of claim in Form P5.

(2) A statement of valuation of claim (which shall include a list of supporting documents) shall be lodged in process.

(3) Each party shall, on lodging a statement of valuation of claim, give written intimation to every other party of the list of documents included in the statement of valuation of claim.

(4) A party who has received intimation of a list of documents under paragraph (3) may on written request made within 14 days after the receipt of the list, inspect those documents which—

- (a) have not be lodged in process; and
- (b) are in the possession or control of the party intimating the list.

(5) A party inspecting documents under paragraph (4) shall have the right to obtain a copy or copies of any such document on payment of a copying fee of not more than that prescribed under section 40 of the Sheriff Courts (Scotland) Act 1907 for solicitors in the sheriff court.

(6) Nothing in paragraphs (3) to (5) shall affect—

- (a) the law relating to, or the right of a party to object to the inspection of a document on the ground of privilege or confidentiality; or
- (b) the right of a party to apply under rule 35.2 for a commission and diligence for recovery of documents or an order under section 1 of the Administration of Justice (Scotland) Act 1972.

(7) Without prejudice to paragraph (2) of rule XX.7 (incidental hearings), where a party has failed to lodge a statement of valuation of claim in accordance with a timetable issued under paragraph (2) of rule XX.6 (allocation of diets and timetables) the sheriff may, at any hearing under paragraph (3) of that rule—

- (a) where the party in default is the pursuer, dismiss the action; or
- (b) where the party in default is the defender, grant decree against the defender for an amount not exceeding the pursuer's valuation.

Pre-proof meetings

XX.10.—(1) For the purposes of this rule, a pre-proof meeting is a meeting between the parties, which shall be held not later than [four weeks] before the date assigned for the proof—

- (a) to discuss settlement of the action; and
- (b) to agree, so far as is possible, the matters which are not in dispute between them.

(2) A joint minute of a pre-proof meeting, made in Form P6, shall be lodged in process by the pursuer not less than [three weeks] before the date assigned for proof.

(3) Where a joint minute in Form P6 has not been lodged in accordance with paragraph (2) and by the date specified in the timetable order the sheriff clerk shall fix a date and time for the parties to be heard by the sheriff.

(4) During the pre-proof meeting, the representative of each party to the action shall have access to the party or another person who has authority to commit the party in the settlement of the action.

Applications for interim payments of damages

XX.11.—(1) A pursuer may, at any time after defences have been lodged, apply by motion for an order for interim payment of damages to him by the defender or, where there are two or more of them, by any one or more of them.

(2) The pursuer shall give written intimation of a motion under paragraph (1) to every other party not less than 14 days before the date on which the motion is made.

(3) On a motion under paragraph (1), the sheriff may, if satisfied that—

- (a) the defender or, where there are two or more of them, any one or more of them, has admitted liability to the pursuer in the action; or
- (b) if the action proceeded to proof, the pursuer would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part, or on the part of any person in respect of whose injury or death the claim of the pursuer arises, and would obtain decree for damages against the defender,

ordain that defender to make an interim payment to the pursuer of such amount as the sheriff thinks fit, not exceeding a reasonable proportion of the damages which, in the opinion of the sheriff, are likely to be recovered by the pursuer.

(4) Any such payment may be ordered to be made in one lump sum or otherwise as the sheriff thinks fit.

(5) No order shall be made against a defender under this rule unless it appears to the sheriff that the defender is—

- (a) a person who is insured in respect of the claim of the pursuer;
- (b) a person who is not insured but in respect of whose liability the Motor Insurers' Bureau will be liable to make payment;
- (c) a public authority; or
- (d) a person whose means and resources are such as to enable him to make the interim payment.

(6) Notwithstanding the grant or refusal of a motion for an interim payment, a subsequent motion may be made where there has been a change of circumstances.

(7) Subject to [Part XV of Chapter 33 (management of money payable to children)] any interim payment shall be made to the pursuer unless the sheriff otherwise directs.

(8) This rule shall, with the necessary modifications, apply to a counterclaim for damages for personal injuries made by a defender.

(9) In this rule "defender" includes a third party against whom the pursuer has a conclusion for damages.

Adjustment on final decree

XX.12. Where the defender has made an interim payment order under rule XX.11(3), the sheriff may make such order, when final decree is pronounced with respect to the interim payment as it thinks fit to give effect to the final liability of that defender to the pursuer; and in particular may order—

- (a) repayment by the pursuer of any sum by which the interim payment exceeds the amount which that defender is liable to pay to the pursuer; or
- (b) payment by any other defender or a third party of any part of the interim payment which the defender who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to, or connected with, the claim of the pursuer.

Application for further damages

XX.13.—(1) An application for further damages by a pursuer in respect of whom an order under section 12(2)(b) of the Administration of Justice Act 1982 has been made shall be by minute and shall include—

- (a) a crave in Form P7; and
- (b) averments in the statement of facts supporting that crave.

(2) On lodging such a minute in process, the pursuer shall apply by motion for warrant to serve the minute on—

- (a) every other party; and
- (b) where such other party is insured or otherwise indemnified, his insurer or indemnifier, of known to the pursuer.

(3) A notice of intimation in Form P8 shall be attached to the copy of the minute served on a warrant granted on a motion under paragraph (2).

(4) Any such party, insurer or indemnifier may lodge answers to such a minute in process within 28 days after the date of service on him.

Actions by connected persons

XX.14.—(1) In an action of damages in which, following the death of any person from personal injuries, damages are claimed—

- (a) by the executor of the deceased, in respect of the injuries from which the deceased died; or
- (b) by any relative of the deceased, in respect of the death of the deceased,

the pursuer shall make the averments specified in paragraph (2).

(2) The pursuer in an action to which paragraph (1) applies shall aver in the condescendence, as the case may be—

- (a) that there are no connected persons;
- (b) that there are connected persons, being persons specified in the warrant for intimation; or
- (c) that there are connected persons in respect of whom intimation should be dispensed with on the ground that—
 - (i) the names or whereabouts of such persons are not known to, and cannot reasonably be ascertained by, the pursuer; or
 - (ii) such persons are unlikely to be awarded more than the sum of [£200] each.

Warrants for intimation in actions by connected persons

XX.15.—(1) Where the pursuer makes averments under rule XX.14(2)(b) (existence of connected persons), he shall insert a warrant for intimation in the initial writ in the following terms:—

“Warrant to intimate to (*name and address*) as a person who is believed to have title to sue the defender in an action in respect of the personal injuries from which the late (*name and last place of residence*) died [or the death of the late (*name and last place of residence*)].”

(2) A notice of intimation in Form P8 shall be attached to the copy of the summons where intimation is given on a warrant under paragraph (1).

Applications to dispense with intimation in actions by connected persons

XX.16.—(1) Where the pursuer makes averments under rule XX.14(2)(c) (dispensing with intimation to connected persons), he shall apply by motion for an order to dispense with intimation.

(2) In determining a motion under paragraph (1), the sheriff shall have regard to—

- (a) the desirability of avoiding multiplicity of actions; and
- (b) the expense, inconvenience or difficulty likely to be involved in taking steps to ascertain the name or whereabouts of the connected person.

(3) Where the sheriff is not satisfied that intimation to a connected person should be dispensed with, the sheriff may—

- (a) order intimation to a connected person whose name and whereabouts are known;
- (b) order the pursuer to take such further steps as the sheriff may specify [in the interlocutor] to ascertain the name or whereabouts of any connected person; and
- (c) order that such advertisement be made in such manner, in such place and at such times as the sheriff may specify [in the interlocutor].

Subsequent disclosure of connected persons

XX.17. Where the name or whereabouts of a person, in respect of whom the sheriff has dispensed with intimation on a ground specified in rule XX.14(2)(c) (dispensing with intimation to connected persons), subsequently becomes known to the pursuer while the action is pending before the sheriff, the pursuer shall apply by motion for a warrant for intimation to such person; and such intimation shall be made in accordance with rule XX.15(2).

Connected persons entering the process

XX.18.—(1) A connected person may apply to the sheriff by minute in the process of the action craving leave to be sisted as an additional pursuer to the action.

(2) Any such minute shall be placed before the sheriff who may grant the minute and shall make such order as he considers appropriate, having regard to the provisions in this Chapter.

Failure by connected person to enter process

XX.19.—(1) Where a connected person to intimation is made—

- (a) does not apply to be sisted as an additional pursuer to the action;
- (b) subsequently brings a separate action against the same defender in respect of the same personal injuries or death; and
- (c) would, apart from this rule, be awarded the expenses or part of the expenses of that action,

he shall not be awarded those expenses except on cause shown.”.

ANNEX C

List of Consultees

Centre for Scottish Public Policy
Citizens Advice Scotland
Scottish Consumer Council
Welfare Rights Service
Which?
Association of British Insurers
Community Business Scotland
Confederation of British Industry (Scotland)
Institute of Directors Scotland
Scottish Chambers of Commerce
Scottish Council of Development and Industry
Scottish Federation of Small Businesses
Society of Law Accountants in Scotland
British Energy
Scottish and Southern Energy plc
Scottish Gas
Scottish Power
BT Scotland
Scottish Water
SACRO
Scottish Enterprise
Highland and Islands Enterprise
All Unitary Councils
CoSLA
SOLAR
All Local Faculties of Solicitors
Court of the Lord Lyon
Court of Session Rules Council
Judicial Studies Committee
Lord President of the Court of Session
Faculty of Advocates
In Court Advice Service
Law Society of Scotland
Legal Services Agency Ltd
Scottish Association of Law Centres
Scottish Law Agents Society
Scottish Law Commission

Scottish Legal Action Group
Scottish Legal Aid Board
Sheriff Court Users Group
All Sheriffs in Scotland
Part time Sheriffs' Association
Sheriffs' Principal
Sheriffs' Association
Society of Solicitors Advocates
SSC Society
WS Society
Advisory Council for Messengers-at-Arms and
Sheriff officers
Scottish Mediation Network
Core Mediation
Centre for Effective Dispute Resolution (CEDR)
Association of Personal Injury Lawyers
Forum of Insurance Lawyers
Forum of Scottish Claim Managers
Clerks to the individual Committees of the Scottish
Parliament
All Members of the Scottish Parliament
Scottish Parliament Information Centre
Faculties of Law and Business, Universities
Catholic Bishop's Parliamentary Office
Scottish Churches Parliamentary Office
Scottish Interfaith Council
Relevant Scottish Executive and United Kingdom
Government Departments and Agencies

FOR REFERENCE PURPOSES

Advocates Library
House of Commons Library
House of Lords Library
Mitchell Library
National Library of Scotland