

CHAPTER 4

THE PROCESS

Form, size, etc., of documents forming the process

4.1.- (1) In an action or petition, the principal summons or petition, as the case may be, shall be on a printed form approved by the court, completed in writing, typescript or print and backed with a printed backing approved by the court.

(2) A writ, other than a principal summons or petition, bringing a cause before the court shall be in writing, typescript or print, on paper of a texture and size approved by the court and backed with cartridge paper or paper of similar durability.

(3) A step of process lodged in a cause shall be in writing, typescript or print, on paper of a texture and size approved by the court and, except in the case of a motion, backed with cartridge paper or paper of similar durability.

(4) A step of process other than a motion shall be securely fastened, folded and backed lengthwise and shall bear, on the first page and on the backing, a delimited square for the cause reference number assigned to the principal writ on being lodged.

Signature of documents

4.2.- (1) Subject to paragraph (5), each page of a summons and the condescendence and pleas-in-law annexed to it shall be signed by an agent.

(2) Subject to paragraph (5), a letter passing the signet shall be signed by an agent.

(3) Subject to paragraphs (5) and (9), a petition, note, application or minute shall be signed by counsel or other person having a right of audience, except that-

(a) a petition for the sequestration of the estates of the petitioner, or for recall of his sequestration, may be signed by the petitioner or an agent;

(b) a petition for suspension, suspension and interdict or suspension and liberation may be signed by an agent;

(bza) an application in Form 26A.5 or Form 26A.8 may be signed by the applicant or an agent;

(ba) an application in Form 40.2 or Form 41A.2 may be signed by the applicant or an agent;

(c) a simplified divorce application under rule 49.73 shall be signed by the applicant;

(ca) a petition in Form 58.3 which requires to be lodged urgently and where counsel or other person having a right of audience, as the case may be, is unavailable to sign, may be signed by an agent if—

(i) the agent adds a docquet to the petition providing the name of the agent and confirming that the agent signed the petition on behalf of and with the authority of that counsel, or other person having a right of audience; and

(ii) there is lodged with the petition a declaration by counsel or other person having a right of audience that he or she authorised the agent named to sign the petition as it required to be lodged urgently and that counsel or other person having a right of audience was unavailable to sign;

(cc) a petition in Form 61.2 shall be signed only by the Accountant of Court;

(d) an application for registration under Chapter 62 (recognition, registration and enforcement of foreign judgments etc.) may be signed by the petitioner or an agent;

(dd) a petition by the Council of the Law Society of Scotland for a person's admission as (either or both) -

(i) a solicitor;

(ii) a notary public,

may be signed by any officer of the Society who is authorised by the Council to do so; and

(e) a minute for variation of custody may be signed by a party litigant.

(4) Subject to paragraphs (9) and (10), defences, answers and other writs (other than appeals) not referred to in paragraphs (1), (2) and (3), shall be signed by counsel or other person having a right of audience, or, in the case of a party litigant, the party litigant.

(5) Where a party litigant is unable to obtain the signature of counsel or other person having a right of audience or an agent on a document as required by paragraph (1), (2) or (3), he may request the Deputy Principal Clerk to place the document before the Lord Ordinary for leave to proceed without such signature; and the decision of the Lord Ordinary shall be final and not subject to review.

(6) Where the Lord Ordinary grants leave to proceed under paragraph (5), the interlocutor granting leave shall be written and signed on the face of the document and the party litigant shall sign the document.

(7) Where an agent signs a document under this rule, he shall append to his signature his business address-

(a) in the case of a summons, at the end of the first page and on the last page after the pleas-in-law; and

(b) in the case of any other document, at the end of the last page.

(8) Where a writ has been signed—

(a) by counsel;

(b) by a person having a right of audience; or

(c) on behalf of and with the authority of counsel or other person having a right of audience in accordance with paragraph (3)(ca),

he or she is to be regarded as the drawer of it and answerable for what it contains.

(9) The following documents shall not require any signature:-

(a) a minute of amendment;

(b) answers to a minute of amendment;

(c) a minute of sist;

(d) a minute of transference;

(e) a minute of objection to a minute of transference;

(f) a note of objection.

(10) Paragraph (3)(ca) applies in respect of answers requiring to be lodged under rule 58.6(1), subject to the following modifications—

- (a) the reference to “petition in Form 58.3”; and
- (b) the references to “petitions”,

are to be read as references to “answers requiring to be lodged under rule 58.6(1).

Applications for leave under section 1 of the Vexatious Actions (Scotland) Act 1898

4.2ZA.—(1) This rule applies where a person (“the applicant”) who is the subject of an order under section 1 (power of Court of Session to prohibit institution of action without leave) of the Vexatious Actions (Scotland) Act 1898(1) seeks leave under that section to institute legal proceedings.

(2) The applicant must apply for leave by letter addressed to the Deputy Principal Clerk.

(3) The letter must—

- (a) state the full name and address of the applicant;
- (b) be accompanied by a copy of the document by which it is proposed to institute legal proceedings;
- (c) set out briefly why the applicant considers that leave should be granted;
- (d) set out details of any previous application for leave which relates to any extent to the same matter (including, in particular, the outcome of such applications).

(4) The Deputy Principal Clerk must—

- (a) in a case where the applicant has previously submitted an application for leave in relation to the same matter and that application has been refused, reject the application and notify the applicant accordingly;
- (b) otherwise, place the application before a Lord Ordinary.

(5) The Lord Ordinary may, without a hearing, make an order granting or refusing the leave sought.

(6) The interlocutor of the Lord Ordinary is to be sent to the applicant by letter at the address given in the application.

(7) An interlocutor of a Lord Ordinary granting leave to institute legal proceedings constitutes permission to proceed without a signature under rule 4.2(5) (signature of documents).

Applications under section 100 (vexatious litigation orders) of the Courts Reform (Scotland) Act 2014

(1) 1898 c. 35. The Vexatious Actions (Scotland) Act 1898 (“1898 Act”) was repealed by paragraph 27 of schedule 5 of the Courts Reform (Scotland) Act 2014 (“2014 Act”). Paragraph 27 of schedule 5 of the 2014 Act was given effect on 28th November 2014 by article 2 of the Courts Reform (Scotland) Act 2014 (Commencement No. 7, Transitional and Savings Provisions) Order 2016 (S.S.I. 2016/291). Article 4 of the Order made savings as regards the 1898 Act.

4.2A.- (1) This rule applies where a person (“the applicant”) who is the subject of an order under section 100 (vexatious litigation orders) of the 2014 Act seeks permission under section 101(4) of the 2014 Act to-

- (a) institute civil proceedings; or
 - (b) take a specified step in specified ongoing civil proceedings (within the meaning of section 100 of the 2014 Act).
- (2) The applicant may apply for permission only by letter addressed to the Deputy Principal Clerk.

(3) The application must-

- (a) state the full name and address of the applicant;
- (b) where permission is sought to institute civil proceedings, be accompanied by a copy of the document by which it is proposed to institute proceedings;
- (c) where permission is sought to take a step in ongoing proceedings-
 - (i) state the step the applicant wishes to take;
 - (ii) be accompanied by copies of any documents in the process of those proceedings which the applicant considers relevant to the permission sought;
- (d) state briefly why the applicant considers that permission should be given;
- (e) include details of any previous application under section 101 of the 2014 Act which relates to any extent to the same matter (including, in particular, the outcome of such applications).

(4) The Deputy Principal Clerk must-

- (a) in a case where the applicant has previously submitted an application under section 101 of the 2014 Act in relation to the same matter and that application has been refused, reject the application and notify the applicant accordingly;
- (b) otherwise, place the application before a Lord Ordinary.

(5) The Lord Ordinary may, without a hearing, make an order granting or refusing the permission sought.

(6) The interlocutor of the Lord Ordinary is to be sent to the applicant by letter at the address given in the application.

(7) An interlocutor of a Lord Ordinary granting permission to initiate proceedings constitutes permission to proceed without a signature under rule 4.2(5) (signature of documents).

Lodgings of processes

4.3. A process shall be lodged in every cause commenced by summons or petition when-

- (a) in the case of a summons, the summons is presented for signeting; and
- (b) in the case of a petition, the petition is presented to the Petition Department.;

except that the foregoing provisions of this rule shall not apply where the petition is in form 61.2.

Steps of process

4.4.- (1) A process shall include the following steps of process:-

- (a) an inventory of process;
- (b) the principal writ;
- (c) an interlocutor sheet;
- (d) a motion sheet; and
- (e) a minute of proceedings.

(2) A step of process referred to in paragraph (1), other than the principal writ, shall contain at least two pages.

(3) A step of process shall be assigned a number of process which shall be marked on the backing with the cause reference number of the principal writ and recorded in the inventory of process.

Productions

4.5.- (1) On each occasion a production is lodged in process-

- (a) an inventory of productions shall be lodged in process; and
- (b) a copy of the inventory of productions shall be sent to every other party.

(2) A production shall be-

- (a) marked with a number of process with the cause reference number assigned to the principal writ; and
- (b) if consisting of more than one sheet, securely fastened together.

Intimation of steps of process

4.6.- (1) A party lodging a step of process shall-

- (a) give written intimation of the lodgement of it to every other party; and
- (b) subject to any other provision in these Rules, send a copy of the step of process lodged to every such party.

(2) A clerk of session shall not mark a step of process as received until a certificate of intimation has been endorsed on it.

Lodging of documents in Inner House causes

4.7.- (1) A party, on lodging in a cause in the Inner House-

- (a) a petition or note,
- (b) an appeal, stated case, special case, case, reference or submission,
- (c) answers,
- (d) a reclaiming print required under rule 38.5(2) (reclaiming prints for reclaiming motions),

- (e) a print of the whole pleadings and other documents required under rule 39.1(4) (print of pleadings etc. for motion for new jury trial),
- (f) an appeal print required under rule 40.7(2)(b) (appeal print in appeal from inferior court), or
- (g) an appendix required under rule 38.19 (lodging of appendices in reclaiming motions), 39.8 (lodging of appendix in application for new trial) or 40.19 (lodging of appendices in appeals from inferior court),

shall lodge in process three copies of the document.

(1A) A party, on lodging an application for leave to appeal in the Inner House, must-

- (a) lodge in process a copy of the application; and
- (b) unless otherwise agreed, send a copy to every other party.

(1B) A party who has lodged an application for leave to appeal in the Inner House must, if notified by a clerk of session that the application will be dealt with by a Division of the Inner House under rule 37A.2(3), lodge in process two additional copies of the application within the period of 7 days beginning with the date of notification.

(2) Where a party intends to refer to a document, other than one mentioned in paragraph (1) at a hearing before a Division of the Inner House, he shall lodge three copies of it in process by 12 noon on the second sitting day before the hearing.

(3) Unless rule 37A.2(3) applies, where a party intends to refer to a document (other than the application itself) at a hearing on the application for leave to appeal, the party shall lodge a copy of it in process by 12 noon on the second sitting day before the hearing.

Copies of documents for use of court

4.8.- (1) A clerk of session shall refuse to accept a copy of a document for the use of the court which does not conform to a standard approved by the court in size, spacing, lettering, legibility, quality of paper or otherwise.

(2) A party tendering a document which is refused by a clerk of session shall have the right to appeal in writing to the Deputy Principal Clerk.

(3) Where the Deputy Principal Clerk refuses an appeal under paragraph (2), he may extend the time for lodging the document.

(4) A decision of the Deputy Principal Clerk under this rule shall be final and not subject to review.

Documents ordered or allowed to be lodged

4.9.- (1) Where the court pronounces an interlocutor ordering or allowing a document to be lodged in process, it shall specify a time within which the document shall be lodged.

(2) The time for lodging a document referred to in paragraph (1) may be prorogated by the court on an application by motion enrolled before the time for lodging has expired.

(3) A document lodged in process, in terms of an interlocutor ordering or allowing it to be lodged, shall have marked on it-

- (a) the date of the interlocutor ordering or allowing it to be lodged;

- (b) the date of any interlocutor prorogating the time originally allowed; and
- (c) the time allowed for lodging it.

Receipt of documents

4.10.- (1) Subject to paragraph (2), a clerk of session shall mark the date of receipt on every document lodged in process other than a production.

(2) A clerk of session shall not accept, or mark as received, a document after the day on which it is due to be lodged.

Documents not to be borrowed

4.11.- (1) Subject to paragraph (2), a writ shall remain in the Office of Court and shall not be borrowed from process, but may be inspected by any person having an interest.

(2) Paragraph (1) shall not apply to-

- (b) a party borrowing his principal writ for the purposes of service or intimation; or
- (c) a party borrowing his writ for the purpose of writing on it and authenticating an amendment which has been made.

(3) The following steps of process shall not be borrowed from process:-

- (a) the inventory of process;
- (b) the interlocutor sheet;
- (c) the motion sheet;
- (d) the minute of proceedings;
- (e) any inventory of productions;
- (f) the principal copy of a report ordered by the court and lodged in process;
- (g) the principal or any copy of a bond of caution or a consignment receipt lodged in process; and
- (h) the principal copy of any other document by which an order of the court to find caution or give security is satisfied and lodged in process until the order is recalled.

Borrowing and returning documents

4.12.- (1) A party borrowing a document which may be borrowed shall give a receipt for it, dated and signed, on the inventory of process.

(2) Subject to paragraph (3), before a clerk of session accepts a document for return to process, he shall-

- (a) compare it with the inventory of process and receipt in the presence of the person returning it, delete the receipt and initial and date the deletion; or
- (b) in the case of a partial return, mark on the inventory of process the document so returned and initial and date the entry.

(3) Where the document being returned is bulky so that it cannot be examined conveniently at the time-

- (a) a clerk of session shall not accept the document without a separate slip accompanying it, dated and signed by the party returning it, specifying the number of process so returned; and
- (b) the clerk of session receiving it shall examine it before the close of the following business day and give written intimation to the party returning it of any inaccuracy in the slip accompanying it.

(4) Where written intimation is not given under paragraph (3)(b), the accuracy of the slip shall be presumed and the party returning the document shall be exonerated as if the receipt had been deleted under paragraph (2)(a) or marked under paragraph (2)(b), as the case may be.

(5) A party returning more than one document shall ensure that the documents returned are arranged in consecutive order according to the inventory of process; and a clerk of session may refuse to accept documents which are not so arranged.

(6) The court may, on the motion of a party, ordain any other party who has borrowed a document to return that document within such period as the court thinks fit.

Finally extracted processes not to be borrowed

4.13. No step of process may be borrowed after a final extract has been issued.

Lost documents

4.14.- (1) Where-

- (a) a principal writ,
- (b) other pleadings, or
- (c) an interlocutor sheet,

is lost or destroyed, a copy of it may be substituted which is proved in the cause to the satisfaction of the court and authenticated in such manner as the court thinks fit.

(2) A copy of a document substituted under paragraph (1) shall be equivalent to the original for the purposes of the cause and the process of which it forms a part, including the use of diligence.

Outer House interlocutors

4.15.- (1) This rule applies to interlocutors pronounced in the Outer House.

(2) Subject to paragraphs (3) and (3A), an interlocutor pronounced by the Lord Ordinary may be written by the clerk of court and shall be signed by the Lord Ordinary.

(3) Subject to any direction he may be given by the Lord Ordinary, a depute clerk of session may sign an interlocutor, other than a final interlocutor, in respect of a motion which is not starred; and that interlocutor shall be treated for all purposes as if it had been signed by the Lord Ordinary.

(3A) Subject to any direction he may be given by the Lord Ordinary, an assistance clerk of session may sign an interlocutor, other than a final interlocutor, in respect of a motion which is intimated and enrolled in accordance with Part 2 of Chapter 23 and which is not starred; and that interlocutor shall be treated for all purposes as if it had been signed by the Lord Ordinary.

(4) An interlocutor may be signed during session or in vacation.

(5) An extract of an interlocutor which is not signed in accordance with the provisions of this rule shall be void and of no effect.

(6) An interlocutor may, on cause shown, be corrected or altered at anytime before extract by-

(a) the Lord Ordinary who signed it or on whose behalf it was signed; or

(b) in the event of the death, disability or absence of the Lord Ordinary, any other judge of the court.

Inner House interlocutors

4.16.- (1) This rule applies to interlocutors pronounced in the Inner House, except interlocutors mentioned in rule 4.16A (Inner House interlocutors relating to procedural business).

(2) Subject to paragraph (3), an interlocutor of the Inner House may be written by the clerk of court and shall be adjusted and signed by-

(a) the judge who presided in the Division of the Inner House when the matter to be dealt with in the interlocutor was determined, or

(b) in the event of the death, disability or absence of that judge, the next senior judge who sat in that Division when the matter to be dealt with in the interlocutor was determined,

as soon as reasonably practicable and after such consultation as may be necessary with the other members of the Division who sat.

(3) An interlocutor of the Inner House in respect of a motion which is not starred shall be adjusted and signed by the judge presiding at the time when the motion was brought before the Division of the Inner House.

(4) An interlocutor may be signed during session or in vacation.

(5) The judge signing an interlocutor of the Inner House shall append the letters "I.P.D." to his signature as conclusive evidence that the requirements of the preceding paragraphs of this rule have been complied with.

(6) An extract of an interlocutor which is not signed in accordance with the provisions of this rule shall be void and of no effect.

(7) An interlocutor may, on cause shown, be corrected or altered at any time before extract by-

(a) the judge who signed it; or

(b) in the event of the death, disability or absence of that judge, the next senior judge of the same Division of the Inner House.

Inner House interlocutors relating to procedural business

4.16A.—(1) This rule applies to interlocutors pronounced in the Inner House in relation to procedural business dealt with by a procedural judge within the meaning of rule 37A.1 (quorum of Inner House for certain business) and rule 37A.2 (procedural judges in the Inner House).

(2) An interlocutor may be written by the clerk of court and shall be adjusted and signed by the procedural judge who determined the matter dealt with in the interlocutor.

(3) An interlocutor may be signed during session or in vacation.

(4) An extract of an interlocutor which is not signed in accordance with the provisions of this rule shall be void and of no effect.

(5) An interlocutor may, on cause shown, be corrected or altered at any time before extract by—

(a) the judge who signed it; or

(b) in the event of the death, disability or absence of that judge, any other procedural judge.