

**SHERIFFDOM OF NORTH STRATHCLYDE**

**ACT OF COURT (CONSOLIDATION ETC) 2017**

**AS AMENDED BY ACT OF COURT 2017 ISSUED 20 OCTOBER 2017**

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**CIVIL PROCEDURE**

**Introduction**

This practice note applies generally to all civil cases in the Sheriff Court (actions, summary applications etc.) unless otherwise stated.

**Process**

- 1.01 No process or any part thereof may be borrowed within the period from 12 noon on the second working day preceding any diet until after the said diet.
- 1.02 All processes must be returned to the sheriff clerk not later than 12 noon on the second working day preceding any diet or the date on which they appear on the rolls of the court.
- 1.03 Where an ordinary cause or summary application process is required for a court diet, that process will not be available for inspection during the period from 12 noon on the second working day preceding the ordinary court diet in question until after that diet.

**Citation**

- 1.04 No document shall be served on or transmitted to the defender or respondent along with the service document other than such notice as is prescribed or required by law.

**Legal representation**

- 1.05 The name, address, telephone number, any email address, and the reference of the principal agent(s) shall be stated on each part of process lodged in court by any party.

**Ordinary Cause Motions**

- 1.06 Where a motion is to be heard in terms of rule 15.5(5) of the Ordinary Cause Rules ("the Rules"), any document referred to in the motion or to which a party intends to refer at the hearing of the motion and which is not already lodged in process shall be lodged as a production and a copy thereof intimated to every other party by a solicitor or officer of court not later than noon on the working day before the date assigned for the hearing of the motion. A document which is not so lodged and intimated shall not be used at the hearing unless with leave of the sheriff on cause shown and on such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.

**Interlocutors**

- 1.07 For the purpose of rules 12.1 and 15.5(2) of the Rules, it is hereby directed as follows: "the sheriff clerk" shall not include a sheriff clerk below the rank of higher executive

officer save that, in any sheriff court within the Sheriffdom where the senior resident sheriff clerk holds the rank of executive officer, it shall include that sheriff clerk.

- 1.08 The classes of unopposed motion which a sheriff clerk may determine in terms of the said rule 15.5(2) are as undernoted. However, if the granting of any such motion might also involve any order relating to expenses, it shall be referred to the sheriff who shall deal with it in accordance with rule 15.5(1).
- (a) A motion to recall a sist and to re-enrol a cause for further procedure.
  - (b) A motion, made under rule 10.3(1) to close the record before the expiry of the adjustment period provided by rule 10.1(1).
  - (c) A motion to allow an amendment of a kind specified in rule 18.1.
  - (d) A motion to allow a minute of amendment to be received and answered within a specified period in terms of rule 18.3(1)(a) and (b)(ii).
  - (e) A motion for an order for service of a third party notice, made under rule 20.1(1) and (2).
  - (f) A motion for the fixing of a peremptory diet following withdrawal from agency under rule 24.2 (1).
  - (g) A motion to allow the late lodging of a notice of intention to defend or a motion to allow the late lodging of defences, provided that in both cases the notice of intention to defend is or the defences are, as the case may be, not more than three working days overdue.

### **Child Welfare Hearings**

- 1.9 Where a date for a Child Welfare Hearing is fixed in terms of rule 33.22A(1) of the Ordinary Cause Rules, any document to which a party intends to refer at the Child Welfare Hearing and which is not already lodged in process shall be lodged as a production and a copy thereof intimated to every other party not later than noon on the working day before the date fixed for the Child Welfare Hearing. A document which is not so lodged and intimated shall not be used at the hearing unless with leave of the sheriff on cause shown and on such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.

### **Interim Hearings**

- 1.10 Where the court has fixed a date, time and place for parties to be heard on an application for an interim order:-
- (a) the initial writ, if borrowed, shall be returned to the sheriff clerk, and
  - (b) any document to which a party intends to refer at the hearing and which is not already lodged in process, shall be lodged as a production and a copy thereof intimated to every other party, not later than noon on the working day before the date fixed for the hearing.

A document which is not so lodged and intimated shall not be used at the hearing unless with leave of the sheriff on cause shown and on such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.

### **Productions**

1.11 All productions and copies thereof shall be clearly marked with their process number by the party lodging same. Where copies of productions are lodged with the sheriff clerk he shall forthwith docquet the inventory of productions to show that copies have been lodged and the date of lodging.

### **Records**

1.13 When records are prepared, the answers for the defender and any third party shall be inset from the margin used for the pleadings for the pursuer. Lines shall be double spaced and pages shall be numbered with every fifth line on each page given a number e.g. 1, 2, 3...

### **Notice of Authorities for proofs or debates**

1.14 Not later than 2 clear working days before the diet the solicitor for each party to an action in which a proof or debate has been fixed shall lodge with the sheriff clerk and intimate to all other parties to the action a list of all authorities with copies of the authorities to which reference is to be made in the course of the argument for the party whom the solicitor represents.

1.14a Where an authority is made available in copy form, and it consists of an excerpt from a textbook, the copy shall clearly show at the top of the page the number, author and edition of the textbook concerned.

1.14b Where a bundle of authorities is being made available in photocopy they shall be paginated and secured together with an index at the front, listing the authorities in the order in which they are secured together.

### **Summary applications Recording of Evidence**

1.15 In any summary application the sheriff in any interlocutor allowing a proof may appoint evidence to be recorded either *ex proprio motu* or on the motion of a party. At the first or subsequent hearing parties shall be prepared to indicate the nature and extent of the evidence likely to be adduced, and to state whether or not they consider it desirable to have the evidence recorded. The provisions of rule 29.15 and rule 29.18 of the rules with regard to the ordering and payment of shorthand writers shall apply.

### **Settlement of actions**

- 1.16 When a settlement has been reached in any case and as a result of that settlement a proof or debate or hearing will not proceed on the date which has been listed, the solicitors acting in the case shall forthwith intimate the position by telephone or email to the sheriff clerk.

## **PART 2**

### **AFFIDAVITS AND FAMILY ACTIONS**

#### **When affidavits may be lodged**

- 2.01 Once the period within which a notice of intention to defend requires to be lodged has expired without such notice having been lodged, affidavits may be prepared and lodged without any order of the court.

#### **Person before whom sworn or affirmed**

- 2.02 An affidavit is admissible if it is sworn (or affirmed) before a notary public, justice of the peace, or any person having authority to administer oaths for the place where the affidavit is sworn, such as a commissioner for oaths or a British diplomatic officer or consul abroad. A solicitor acting for a party to the action may act in a notarial capacity when an affidavit is sworn. Any person before whom an affidavit is sworn (referred to below as "the notary") must observe all the normal rules in this connection and must satisfy himself or herself as to the capacity of the witness to swear an affidavit.

#### **Importance of affidavits**

- 2.03 The witness shall be made aware of the importance of the affidavit and that the affidavit constitutes his or her sworn evidence in the case. The possible consequences of giving false evidence shall be explained to the witness. Before the witness signs the affidavit he or she must have read it or the notary must have read it over to the witness.

#### **Oath or affirmation**

- 2.04 The witness must be placed on oath or must affirm.

#### **Form and signature of affidavits**

- 2.05 The document should be on A4 paper. The affidavit should commence with the words "At the day of 20 , in the presence of I having been solemnly sworn/having affirmed give evidence as follows:". The affidavit shall be drafted in the first person and shall take the form of numbered paragraphs. The full name, age, address and occupation of the witness shall be given in the first

paragraph. The affidavit shall end with the words “All of which is the truth as I shall answer to God” or “All of which is affirmed by me to be true”, as appropriate. Any blanks in the affidavit must be filled in. Any insertion, deletion or other amendment to the affidavit requires to be initialed by the witness and the notary. Each page must be signed by both the witness and the notary. It is not necessary for the affidavit to be sealed by the notary.

### **Drafting an affidavit**

- 2.06 An affidavit shall be based on a reliable and full precognition of the witness.
- 2.07 The drafter of an affidavit shall provide himself or herself, before drawing it, with an up to date copy of the pleadings, a copy of the appropriate precognition and the relative productions. The affidavit shall be drawn so as to follow the averments in the pleadings to the extent that these are within the knowledge of that particular witness and in the same order.
- 2.08 Affidavits shall be expressed in the words of the person whose affidavit it is, should be accurate as at the date of the affidavit and shall not consist of a repetition of passages in the pleadings. It shall be clear from the terms of the affidavit as to whether the witness is speaking from his or her own knowledge, as when the witness was present and saw what happened, or whether the witness is relying on what he or she was told by a particular person.

### **Productions**

- 2.09 Productions already lodged in process must be borrowed up, and put to the party or to the witness who refers to them in his or her affidavit. Each production will require to be referred to in the affidavit by its number of process and must be docqueted and signed by the witness and the notary. If a production has not yet been lodged when the affidavit is sworn, it will require to be identified by the witness in the affidavit, shall be docqueted with regard to the affidavit and signed by the witness and the notary. It must then be lodged as a production. Some productions will necessarily be docqueted with regard to more than one affidavit.
- 2.10 In consent cases, the defender’s written consent form will have to be put to the pursuer in his or her affidavit, and be identified, docqueted and signed in the same way as other productions.
- 2.11 In adultery cases, photographs shall be put to the appropriate witnesses and be identified, docqueted and signed in the manner already described.

### **Date of Affidavit**

2.12 All affidavits lodged must be of recent date. This factor is particularly important in cases involving children, cases in which financial craves are involved and in any other circumstances where the evidence of a witness or circumstances to which the witness speaks are liable to change through the passage of time. The notary must take particular care in such cases to ensure that the affidavit evidence as to such matters is correct as at the time the affidavit is sworn. Affidavits relating to the welfare of children which have been sworn more than three months prior to lodging a minute for decree are likely to be rejected by the court as out of date.

**Applications relating to parental responsibilities and rights (see rule 33.28)**

2.13 In actions in which an application in terms of section 11 of the Children (Scotland) Act 1995 is before the court no fewer than two affidavits dealing with the welfare of the child(ren) shall be provided, at least one of them from a person who is neither a parent nor a party to the action. These affidavits shall present the court with a full picture of the arrangements for the care of the child(ren) along the lines set out in rule 2.15 below, adapted to suit the circumstances of the particular case. The affidavits shall set out reasons why it is better that the section 11 order be made than not. The pursuer's affidavit shall deal fully with the arrangements which have been made for the care of the child(ren), so far as within his or her knowledge. If the pursuer cannot give substantial evidence as to that it is likely to be necessary to obtain such evidence from the person who is responsible for their care.

2.14 In actions of divorce or separation in which there are children of the marriage or children treated by the parties as a child of their family but in which no order in terms of section 11 in terms of the Children (Scotland) Act 1995 is sought, the court, in terms of section 12, requires to consider whether to exercise the powers set out in sections 11 or 54 of that Act in light of the information before it as to the arrangements for the child(ren)'s upbringing. Information accordingly requires to be before the court as to these arrangements. As a minimum, the affidavits of the witnesses shall include the information set out in rule 2.15 (a) to (g) below.

2.15 An affidavit dealing with the arrangements for the care of children shall, where relevant, include the following:

- (a) the qualifications of the witness, if not a parent, to speak about the child; how often, and in what circumstances the witness normally sees the child;
- (b) the ability of those with whom the child lives to provide proper care for him or her;
- (c) observations as to the relationship between the child and the other members of the household, the child's general appearance, interests, state of health and well-being;
- (d) a description of the home conditions in which the child lives;

- (e) the arrangements for contact between the child and any parent (and siblings) who do not live in the same household as the child;
- (f) information about the school the child attends; whether the child attends school regularly; and
- (g) details of child care arrangements during working hours, including the arrangements for such care outwith school hours.

### **Affidavit relating to disclosure of the whereabouts of children**

2.16 An affidavit sworn or affirmed in compliance with an order to disclose the whereabouts of children (in terms of section 33 of the Family Law Act 1986 and rule 33.23) will require to be drafted in such a way as to meet the requirements of the court in the circumstances of the particular case. The form of the affidavit shall be as above.

### **Financial and other ancillary craves**

2.17 Affidavit evidence in support of financial craves is necessary in an undefended action. Where financial orders are craved, the evidence shall be as full, accurate and up-to-date as possible. If the evidence is insufficient the court may require supplementary evidence to be provided. If, after an affidavit has been sworn and the solicitor concerned has parted with it, a material change of circumstances occurs before decree has been granted, the court must be informed forthwith. A further affidavit may have to be sworn.

2.18 The pursuer shall give evidence as to his or her own financial position at the date of the affidavit. Where the pursuer gives evidence in an affidavit as to the financial position of the defender, the affidavit shall state the date, as precisely as possible, at which the information was valid. The court must be provided with information which is as up-to-date as possible as to the defender's ability to pay the sums the pursuer is seeking. Where the pursuer cannot obtain recent information as to the defender's means the affidavit shall state that that is the case, but shall contain as much material information relating to the defender's means as possible. If the pursuer is unable to provide sufficient evidence to justify the orders craved in full, in the minute for decree, after the words "in terms of crave(s) (number(s)...) of the initial writ", there may be added words such as "or such other sum (or sums) as the court may think proper".

2.19 Where the pursuer has craved a capital sum, an order for the sale of the matrimonial home, a periodical allowance, interdict or expenses, for example, and in the minute for decree does not seek decree for one or more of these, the reasons for that shall be given in his or her affidavit.

### **Joint Minutes**

2.20 When parties record their agreement in a joint minute as to how financial and other ancillary craves shall be dealt with by the court, the pursuer's affidavit shall refer to

the joint minute and indicate that he or she is content that the agreement set out in it shall be given effect.

### **Minute for decree**

2.21 The minute for decree must be signed by a solicitor who has examined the affidavits and other documents. That solicitor takes responsibility therefor, whether or not he or she is the person who drew the initial writ or affidavits. The minute for decree shall not contain any proposed amendment to the Initial Writ. The minute for decree shall not be signed seeking decree of divorce or separation unless the evidence consists of or includes evidence other than that of a party to the marriage (Civil Evidence (Scotland) Act 1988, section 8(3)).

## **PART 3**

### **ADULTS WITH INCAPACITY**

#### **Applications under the Adults with Incapacity (Scotland) Act 2000**

3.01 This Part applies to all applications lodged under the Adults with Incapacity (Scotland) Act 2000, lodged on and after 31 July 2017.

3.02 In all summary applications under the Adults with Incapacity (Scotland) Act 2000 (“2000 Act”) –

- (a) The crave of the initial writ must specify the current address and date of birth of the adult;
- (b) Where application is made for the grant of both welfare and financial powers, these should be sought in separate craves;
- (c) When an application is lodged, to assist with the drafting of any order granted by the court, the craves of the initial writ must also be emailed (in Word format) to the relevant court as follows:  
[campbeltown@scotcourts.gov.uk](mailto:campbeltown@scotcourts.gov.uk); [dumbarton@scotcourts.gov.uk](mailto:dumbarton@scotcourts.gov.uk);  
[dunoon@scotcourts.gov.uk](mailto:dunoon@scotcourts.gov.uk); [greenock@scotcourts.gov.uk](mailto:greenock@scotcourts.gov.uk);  
[kilmarnock@scotcourts.gov.uk](mailto:kilmarnock@scotcourts.gov.uk) ; [paisley@scotcourts.gov.uk](mailto:paisley@scotcourts.gov.uk); and  
[oban@scotcourts.gov.uk](mailto:oban@scotcourts.gov.uk)
- (d) Where application is being made for the appointment of Joint Guardians, the initial writ must contain averments which satisfy the requirements of section 62(2) of the 2000 Act, or enable the court to be so satisfied;
- (e) The initial writ must contain details of the names and addresses of all known next of kin of the adult, or, if there are no known next of kin, averments to that effect;

- (f) Where application is being made for the grant of financial powers, the initial writ must contain averments as to the known existence or otherwise of any existing Power of Attorney granted by the adult;
- (g) Where application is being made for the grant of financial powers, the initial writ must contain details of the extent and value, if known, of all heritable and moveable property belonging to the adult;
- (h) Where an application seeks powers in relation to heritable property, a reference to the property's Land Register title number, failing which a full conveyancing description of the property, must be provided in the crave of the initial writ;
- (i) Where interim powers are being sought, the initial writ must contain averments specifying the reasons therefor;
- (j) Except in cases where the application seeks appointment of the chief social work officer of a local authority, the initial writ (and accompanying reports) must contain such details as to the character, background, and, where appropriate, any relevant financial or investment experience of, any person whose appointment is sought as a guardian or substitute guardian, accompanied by such letters of reference as may be considered appropriate or which may be required by the court, in order that the court can be satisfied as to suitability for appointment;
- (k) Except in cases where the application seeks appointment of the chief social work officer of a local authority, the initial writ shall be accompanied by a covering letter from or on behalf of the applicant specifying whether any proposed guardian or substitute guardian has at any time (1) been formally barred from working with vulnerable adults or (2) been convicted of a criminal offence in Scotland or elsewhere and, if so, providing full details thereof for consideration by the court prior to warranting;
- (l) Where application is being made for the grant of financial powers, the initial writ must contain averments as to whether or not any proposed financial guardian or substitute guardian (1) is or has ever been sequestrated or been made subject to a bankruptcy restriction order, (2) has ever signed a trust deed for creditors, (3) is or ever has been subject to or applied for a debt payment programme, (4) is or has ever been subject to an order pursuant to the Company Directors Disqualification Act 1986, (5) is or ever has been subject to an inhibition or arrestment, or (6) has been made subject to any similar order or taken such similar steps in Scotland or elsewhere and, if so, to include details thereof;
- (m) The issues of the duration of any order sought, whether caution is to be found and, if so, in what amount, or if caution is to be dispensed with and the basis of any award of expenses sought, shall all be dealt with in the initial writ;
- (n) A schedule setting out the full names, addresses and designations of all those upon whom intimation of the application is sought shall be lodged with the initial writ;

- (o) Where intimation of an application, or any other step in process, is made by signed for post, the applicant shall lodge in process copies of the signed for signatures from the Royal Mail website showing receipt;
- (p) In relation to service of an application, or any other step in process, upon an interested party, the interested party or a solicitor on their behalf, may intimate acceptance of service thereof or agreement to dispense with any period of notice relative thereto;

## PART 4 MISCELLANEOUS

### Commissary Business

- 4.01 The inventories of the estates of deceased persons shall be presented to the sheriff court of the sheriff court district in which they were last ordinarily resident, or if presented elsewhere, forwarded to that court for issue of confirmation and recording. In respect of the sheriff court districts of Dunoon, Oban and Campbeltown, inventories of the estates of deceased persons who resided in the sheriff court districts of Dunoon shall be lodged at Greenock Sheriff Court; inventories of the estates of deceased persons who resided in the sheriff court districts of Campbeltown and Oban shall be lodged at Dumbarton Sheriff Court, or, if such inventories are presented elsewhere, forwarded to the appropriate court as above for issue of confirmation and recording.
- 4.02 Petitions for appointment of executors-dative shall be lodged and published in the sheriff court of the district in which the deceased last ordinarily resided.
- 4.03 Subject to the following provisions of practice note, all additional and corrective inventories, inventories *ad non executata*, inventories *ad omissa* and additional oaths shall be considered as steps in the original confirmation and shall be lodged in the sheriff court in the commissariat in which the confirmation was granted, or the sheriff court which holds the records of the original application for confirmation.
- 4.04 The sheriff of any court in which a commissary application is made may (a) remit that application to another court, and (b) require an applicant who has applied as executor in any other court within the sheriffdom to produce an extract decree of the appointment.
- 4.05 In the oath to an inventory or in a petition for appointment of executor it shall be sufficient to refer to the deceased's domicile as being within the Sheriffdom of North Strathclyde in Scotland.

- 4.06 Where intimation of an application, or any other step in process, is made by signed for post, the sheriff clerk shall lodge in process copies of the signed for signatures from the Royal Mail website showing receipt.

## **PART 5**

### **ADMINISTRATION**

#### **Wearing of gowns and representation**

- 5.01 Any solicitor appearing professionally at the Bar of any sheriff court or in the Sheriffdom shall wear a gown unless otherwise directed by the Sheriff.
- 5.02 Any party not personally present or represented at any diet shall be deemed to be absent.

#### **Avoidance of congestion in corridors**

- 5.03 In courts where interview rooms are provided, interviews between solicitors and clients shall take place there and not in the halls and corridors of the sheriff court.
- 5.04 Members of the public attending court must not loiter in corridors, but shall proceed to court rooms.
- 5.05 Witnesses must proceed as directed by court staff to the witness room allocated and must remain there unless authorised to leave by a court official.

#### **No smoking areas**

- 5.06 All persons attending court must obey the "no smoking" signs as displayed within the court precincts.

#### **Sheriff Court car parks**

- 5.07 Where car parking has been provided for public use at any of the sheriff courts within the sheriffdom, such car parks will be under the day to day management of the sheriff clerk or an officer appointed by the sheriff clerk.
- 5.8 Vehicles may be left in the car park only while the occupant is in attendance within the sheriff court house.
- 5.9 The sheriff clerk or the officer nominated by the sheriff clerk may at their discretion
- (a) admit or deny access to the car park to any vehicle;
  - (b) require any vehicle to be removed;
  - (c) reserve space for any vehicle; and
  - (d) regulate where, when and for how long any vehicle may be parked.

## **PART 6**

## **EXTENT**

### **Extent**

- 6.01 The foregoing rules shall apply in all the sheriff courts within the sheriffdom.
- 6.02 The Act of Court (Consolidation etc) 1992 and The Act of Court (Consolidation etc) 1998 as amended by the Act of Court 2003 issued 13 May 2003 are hereby repealed

## **PART 7**

### **INTERPRETATION**

- 7.1 References in this Act of Court to the Ordinary Cause Rules are to the Ordinary Cause Rules 1993 set out in the First Schedule to the Sheriff Courts (Scotland) Act 1907.

## **SCHEDULE**

I appoint this Act of Court to be inserted in the Act Books of all the sheriff courts in the Sheriffdom of North Strathclyde and to be posted on the notice boards in said sheriff courts for publication.

Sheriff Principal of North Strathclyde

20 October 2017