

CHAPTER 64

APPLICATIONS UNDER SECTION 1 OF THE ADMINISTRATION OF JUSTICE (SCOTLAND) ACT 1972

Application of this Chapter

64.1. This Chapter applies to an application for an order under section 1 of the Administration of Justice (Scotland) Act 1972 made where a cause is not depending before the court in which the application may be made.

Form and content of application

64.2-(1) An application to which this Chapter applies shall be made by petition.

- (2) The statement of facts shall set out –
- (a) a list of documents and other property (in this Chapter and in Form 64.6 referred to as the “listed items”) which the petitioner wishes to be made the subject of the order;
 - (b) the address of the premises within which the petitioner believes the listed items are to be found;
 - (c) the facts which give rise to the petitioner’s belief that were the order not to be granted the listed items or any of them would cease to be available for the purposes of the said section 1.

Accompanying documents

64.3 The petitioner shall lodge with the application –

- (a) an affidavit supporting the averments in the petition;
- (b) an undertaking by the petitioner that he –
 - (i) will comply with any order of the court as to payment of compensation if it is is subsequently discovered that the order, or the implementation of the order, has caused loss to the respondent or, where the haver is not the respondent, to the haver; and
 - (ii) will bring within a reasonable time of the execution of the order any proceedings which he decides to bring; and
 - (iii) will not, without leave of the court, use any information, documents or other property obtained as a result of the order, except for the purpose of any proceedings which he decides to bring and to which the order relates.

Modification of undertakings

64.4 The court may, on cause shown, modify, by addition, deletion or substitution, the undertaking mentioned in rule 64.3(b).

Intimation and service of application

64.5-(1) Before granting the application, the court may order such intimation and service of the petition to be given or executed, as the case may be, as it thinks fit.

(2) Any person receiving intimation or service of the petition by virtue of an order under paragraph (1) may appear and oppose the application

Form of order

64.6 An order made under this Chapter shall be in Form 64.6.

Caution and other security

64.7 On granting, in whole or in part, the application the court may order the petitioner to find such caution or other security as it thinks fit.

Execution of order

64.8 The order of the court shall be served by the Commissioner in person and it shall be accompanied by the affidavit referred to in rule 64.3(a).

Duties of commissioner

64.9 The Commissioner appointed by the court shall, on executing the order –

- (a) give to the haver a copy of the notice in Form 64.9;
- (b) explain to the haver –
 - (i) the meaning and effect of the order;
 - (ii) that he may be entitled to claim that some or all of the listed items are confidential or privileged;
- (c) inform the haver of his right to seek legal advice and to ask the court to vary or discharge the order;
- (d) enter the premises and take all reasonable steps to fulfil the terms of the order;
- (e) where the order has authorised the recovery of any of the listed items, prepare an inventory of all the listed items to be recovered before recovering them;
- (f) send any recovered listed items to the Deputy Principal Clerk of Session to await the further order of the court.

Confidentiality

64.10-(1) Where confidentiality is claimed for any listed item, that listed item shall, where practicable, be enclosed in a sealed envelope.

(2) A motion to have such a sealed envelope opened may be made by the party who obtained the order and he shall intimate the terms of the motion, by registered post or first class delivery, to the person claiming confidentiality.

(3) A person claiming confidentiality may oppose a motion made under paragraph (2).

Restrictions on service

64.11.-(1) Except on cause shown, the order may be served on Monday to Friday only, between the hours of 9a.m. and 5.p.m. only.

(2) The order shall not be served at the same time as a search warrant granted in the course of a criminal investigation.

(3) The Commissioner may be accompanied only by –

- (a) any person whom he considers necessary to assist him to execute the order;
- (b) such representatives of the petitioner as are named in the order

and if it is likely that the premises will be occupied by an unaccompanied female and the Commissioner is not herself female, one of the people accompanying the Commissioner shall be female.

(4) If it appears to the Commissioner when he comes to serve the order that the premises are occupied by an unaccompanied female and the Commissioner is neither female nor accompanied by a female, the Commissioner shall not enter the premises.

Right of haver to consult

64.12.-(1) The haver may seek legal or other professional advice of his choice.

(2) Where the purpose of seeking this advice is to help the haver to decide whether to ask the court to vary or discharge the order, the haver may ask the Commissioner to delay starting the search for up to 2 hours or such other longer period as the Commissioner may permit.

(3) Where the haver is seeking advice under this rule, he or she must-

- (a) inform the Commissioner and the petitioner's agent of that fact;
- (b) not disturb or remove any listed items;
- (c) permit the Commissioner to enter the premises, but not to start the search.

Return of documents etc. to haver

64.13. The Deputy Principal Clerk of Session shall return the recovered listed items to the haver if the petitioner has taken no further action within 8 weeks of the date on which they are sent to him under rule 64.9(f).