

**ACT OF SEDERUNT (SHERIFF COURT ORDINARY CAUSE RULES) 1993
No.1956 (S.223)**

SCHEDULE 1

Initiation and progress of causes

CHAPTER 9 STANDARD PROCEDURE IN DEFENDED CAUSES

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Notice of intention to defend

9.1. (1) Subject to rules 33.34 (notice of intention to defend and defences in family action), 33A.34 (notice of intention to defend and defences in civil partnership action) and 35.8 (lodging of notice of appearance in action of multiplepounding), where the defender intends to-

- (a) challenge the jurisdiction of the court,
- (b) state a defence, or
- (c) make a counterclaim,

he shall, before the expiry of the period of notice, lodge with the sheriff clerk a notice of intention to defend in Form O7 and, at the same time, send a copy to the pursuer.

(2) The lodging of a notice of intention to defend shall not imply acceptance of the jurisdiction of the court.

(3) This Chapter shall not apply to a commercial action within the meaning of Chapter 40.

Fixing date for Options Hearing

9.2. (1) Subject to paragraph (1A), on the lodging of a notice of intention to defend, the sheriff clerk shall fix a date and time for an Options Hearing which date shall be on the first suitable court day occurring not sooner than 10 weeks after the expiry of the period of notice.

(1A) Where in a family action or a civil partnership action-

(i) the only matters in dispute are an order in terms of section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.); or

(ii) the matters in dispute include an order in terms of section 11 of that Act,

there shall be no requirement to fix an Options Hearing in terms of paragraph (1) above insofar as the matters in dispute relate to an order in terms of section 11(2) of the Children (Scotland) Act 1995.

(1B) In paragraph (1A) above-

(a) "family action" has the meaning given to it in rule 33.1(1); and

(b) "civil partnership action" has the meaning given in rule 33A.1(1)

(2) On fixing the date for the Options Hearing, the sheriff clerk shall

(a) forthwith intimate to the parties in Form G5

(i) the last date for lodging defences;

(ii) the last date for adjustment; and

(iii) the date of the Options hearing; and

(b) prepare and sign an interlocutor recording those dates.

(3) The fixing of the date for the Options Hearing shall not affect the right of a party to make any incidental application to the court.

Alteration of date for Options Hearing

9.2A. (1) Subject to paragraph (2), at any time before the date and time fixed under rule 9.2 (fixing date for Options Hearing) or under this rule, the sheriff-

(a) may, of his own motion or on the motion of any party-

(i) discharge the Options Hearing; and

(ii) fix a new date and time for the Options Hearing; or

(b) shall, on the joint motion of the parties-

(i) discharge the Options Hearing; and

(ii) fix a new date and time for the Options Hearing.

(2) The date and time to be fixed-

(a) under paragraph (1)(a)(ii) may be earlier or later than the date and time fixed for the discharged Options Hearing;

(b) under paragraph (1)(b)(ii) shall be earlier than the date and time fixed for the discharged Options Hearing.

(3) Where the sheriff is considering making an order under paragraph (1)(a) of his own motion and in the absence of the parties, the sheriff clerk shall—

(a) fix a date, time and place for the parties to be heard; and

(b) inform the parties of that date, time and place.

(4) The sheriff may discharge a hearing fixed under paragraph (3) on the joint motion of the parties.

(5) On the discharge of the Options Hearing under paragraph (1), the sheriff clerk shall forthwith intimate to all parties—

(a) that the Options Hearing has been discharged under paragraph (1)(a) or (b), as the case may be;

(b) the last date for lodging defences, if appropriate;

(c) the last date for adjustment, if appropriate; and

(d) the new date and time fixed for the Options Hearing under paragraph (1)(a) or (b), as the case may be.

(6) Any reference in these Rules to the Options Hearing or a continuation of it shall include a reference to an Options Hearing for which a date and time has been fixed under this rule.

Return of initial writ

9.3. Subject to rule 9.4 (lodging of pleadings before Options Hearing), the pursuer shall return the initial writ, unbacked and unfolded, to the sheriff clerk within 7 days after the expiry of the period of notice.

Lodging of pleading before Options Hearing

9.4. Where any hearing, whether by motion or otherwise, is fixed before the Options Hearing, each party shall lodge in process a copy of his pleadings, or, where the pleadings have been adjusted, the pleadings as adjusted, not later than 2 days before the hearing.

Process folder

9.5. (1) On receipt of the notice of intention to defend, the sheriff clerk shall prepare a process folder which shall include—

(a) interlocutor sheets;

(b) duplicate interlocutor sheets;

(c) a production file;

(d) a motion file; and

(e) an inventory of process.

(2) Any production or part of process lodged in a cause shall be placed in the process folder.

Defences

9.6. (1) Where a notice of intention to defend has been lodged, the defender shall (subject to paragraph (3)) lodge defences within 14 days after the expiry of the period of notice.

(2) Subject to rule 19.1(3) (form of defences where counterclaim included), defences shall be in the form of answers in numbered paragraphs corresponding to the articles of the condescendence and shall have appended a note of the pleas-in-law of the defender.

(3) In a family action (within the meaning of rule 33.1(1)) or a civil partnership action (within the meaning of rule 33A.1(1), neither a crave nor averments need be made in the defences which relate to any order under section 11 of the Children (Scotland) Act 1995.

Implied admissions

9.7. Every statement of fact made by a party shall be answered by every other party, and if such a statement by one party within the knowledge of another party is not denied by that other party, that other party shall be deemed to have admitted that statement of fact.

Adjustment of pleadings

9.8. (1) Parties may adjust their pleadings until 14 days before the date of the Options Hearing or any continuation of it.

(2) Any adjustments shall be exchanged between parties and not lodged in process.

(3) Parties shall be responsible for maintaining a record of adjustments made during the period for adjustment.

(4) No adjustments shall be permitted after the period mentioned in paragraph (1) except with leave of the sheriff.

Effect of sist on adjustment

9.9. (1) Where a cause has been sisted, any period for adjustment before the sist shall be reckoned as a part of the period for adjustment.

(2) On recall of the sist of a cause, the sheriff clerk shall-

(a) fix a new date for the Options Hearing;

(b) prepare and sign an interlocutor recording that date; and

(c) intimate that date to each party.

Open record

9.10. The sheriff may, at any time before the closing of the record in a cause to which this Chapter applies, of his own motion or on the motion of a party, order any party to lodge a copy of the pleadings in the form of an open record containing any adjustments and amendments made as at the date of the order.

Record for Options Hearing

9.11. (1) The pursuer shall, at the end of the period for adjustment referred to in rule 9.8(1) and before the Options Hearing, make a copy of the pleadings and any adjustments and amendments in the form of a record.

(2) Not later than 2 days before the Options Hearing, the pursuer shall lodge a certified copy of the record in process.

(3) Where the Options Hearing is continued under rule 9.12(5), and further adjustment or amendment is made to the pleadings, a copy of the pleadings as adjusted or amended, certified by the pursuer, shall be lodged in process not later than 2 days before the Options Hearing so continued.

Options Hearing

9.12. (1) At the Options Hearing the sheriff shall seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about any other matter referred to in paragraph (3).

(2) It shall be the duty of the parties to provide the sheriff with sufficient information to enable him to conduct the hearing as provided for in this rule.

(3) At the Options Hearing the sheriff shall, except where the cause is ordered to proceed under the procedure in Chapter 10 (additional procedure), close the record and

(a) appoint the cause to a proof and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit;

(b) after having heard parties and considered any note lodged under rule 22.1 (note of basis of preliminary plea), appoint the cause to a proof before answer and make such orders as to the extent of proof, the lodging of a joint minute of admissions or agreement, or such other matter as he thinks fit; or

(c) after having heard parties and considered any note lodged under rule 22.1, appoint the cause to a debate if satisfied that there is a preliminary matter of law which if established following debate would lead to decree in favour of any party, or to limitation of proof to any substantial degree;

(d) consider any child witness notice or vulnerable witness application that has been lodged where no order has been made, or

(e) ascertain whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the Act of 2004 who is to give evidence at any proof or hearing and whether any order under section 12(1) of the Act of 2004 requires to be made.

(4) At the Options Hearing the sheriff may, having heard parties-

(a) of his own motion or on the motion of any party, and

(b) on being satisfied that the difficulty or complexity of the cause makes it unsuitable for the procedure under this Chapter,

order that the cause proceed under the procedure in Chapter 10 (additional procedure).

(5) The sheriff may, on cause shown, of his motion or on the motion of any party, allow a continuation of the Options Hearing on one occasion only for a period not exceeding 28 days or to the first suitable court day thereafter.

(6) On closing the record-

(a) where there are no adjustments made since the lodging of the record under rule 9.11.(2), that record shall become the closed record; and

(b) where there are such adjustments, the sheriff may order that a closed record including such adjustments be lodged within 7 days after the date of the interlocutor closing the record.

(7) For the purposes of rules 16.2 (decrees where party in default), 33.37 (decree by default in family action) and 33A.37 (decree by default in civil partnership action) an Options Hearing shall be a diet in accordance with those rules.

(8) Where the cause is appointed, under paragraph (3), to a proof or proof before answer, the sheriff shall consider whether a pre-proof hearing should be fixed under rule 28A.1.