

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

SCHEDULE 1

Initiation and progress of causes

CHAPTER 18 AMENDMENT OF PLEADINGS

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Alteration of sum sued for

18.1. (1) In a cause in which all other parties have lodged defences or answers, the pursuer may, before the closing of the record, alter any sum sued for by amending the crave of the initial writ, and any record.

(2) The pursuer shall forthwith intimate any such amendment in writing to every other party.

Powers of sheriff to allow amendment

18.2. (1) The sheriff may, at any time before final judgment, allow an amendment mentioned in paragraph (2).

(2) Paragraph (1) applies to the following amendments:-

(a) an amendment of the initial writ which may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that in consequence of such amendment-

(i) the sum sued for is increased or restricted after the closing of the record; or

(ii) a different remedy from that originally craved is sought;

(b) an amendment which may be necessary-

(i) to correct or supplement the designation of a party to the cause;

(ii) to enable a party who has sued or has been sued in his own right

to sue or be sued in a representative capacity;

(iii) to enable a party who has sued or has been sued in a representative capacity to sue or be sued in his own right or in a different representative capacity;

(iv) to add the name of an additional pursuer or person whose concurrence is necessary;

(v) where the cause has been commenced or presented in the name of the wrong person, or it is doubtful whether it has been commenced or presented in the name of the right person, to allow any other person to be sisted in substitution for, or in addition to, the original person; or

(vi) to direct a crave against a third party brought into an action under Chapter 20 (third party procedure);

(c) an amendment of a condescendence, defences, answers, pleas-in-law or other pleadings which may be necessary for determining the real question in controversy between the parties; and

(d) where it appears that all parties having an interest have not been called or that the cause has been directed against the wrong person, an amendment inserting in the initial writ an additional or substitute party and directing existing or additional craves, averments and pleas-in-law against that party.

Applications to amend

18.3. (1) A party seeking to amend shall lodge a minute of amendment in process setting out his proposed amendment and, at the same time, lodge a motion-

(a) to allow the minute of amendment to be received; and

(b) to allow-

(i) amendment in terms of the minute of amendment and, where appropriate, to grant an order under rule 18.5(1)(a) (service of amendment for additional or substitute party); or

(ii) where the minute of amendment may require to be answered, any other person to lodge answers within a specified period.

(2) Where the sheriff has pronounced an interlocutor allowing a minute of amendment to be received and answered, he may allow a period for adjustment of the minute of amendment and answers and, on so doing, shall fix a date for parties to be heard on the minute of amendment and answers as adjusted.

(3) Any adjustment to any minute of amendment or answers shall be exchanged between parties and not lodged in process.

(4) Parties shall be responsible for maintaining a record of adjustment made and the date of their intimation.

(5) No adjustments shall be permitted after the period of adjustment allowed, except with leave of the sheriff.

(6) Each party shall, no later than 2 days before the hearing fixed in terms of paragraph (2), lodge in process a copy of their minute of amendment or answers with all adjustments made thereto in italic or bold type, or underlined.

Applications for diligence on amendment

18.4. (1) Where a minute of amendment is lodged by a pursuer under rule 18.2(2)(d) (all parties not, or wrong person, called), he may apply by motion for warrant to use any form of diligence which could be used on the dependence of a separate action.

(2) A copy certified by the sheriff clerk of the interlocutor granting warrant for diligence on the dependence applied for under paragraph (1) shall be sufficient authority for the execution of that diligence.

Service of amended pleadings

18.5. (1) Where an amendment under rule 18.2(b)(iv), (v) or (vi) (additional or substitute defenders added by amendment) or rule 18.2(2)(d) (all parties not, or wrong person, called) has been made-

(a) the sheriff shall order that a copy of the initial writ or record, as the case may be, as so amended be served by the party who made the amendment on that additional or substitute party with-

(i) in a cause in which a time to pay direction under the Debtors (Scotland) Act 1987 or a time order under the Consumer Credit Act 1974 may be applied for, a notice in Form O8 specifying the date by which a notice of intention to defend must be lodged in process, a notice in Form O3 and a notice of intention to defend in Form O7; or

(ii) in any other cause, a notice in Form O9 specifying the date by which a notice of intention to defend must be lodged in process and a notice of intention to defend in Form O7; and

(b) the party who made the amendment shall lodge in process-

(i) a copy of the initial writ or record as amended;

(ii) a copy of the notice sent in Form O8 or Form O9; and

(iii) a certificate of service.

(2) When paragraph (1) has been complied with, the cause as so amended shall proceed in every respect as if that party had originally been made a party to the cause.

(3) Where a notice of intention to defend is lodged by virtue of paragraph (1)(a), the sheriff clerk shall fix a date and time for a hearing under rule 9.12 (Options Hearing).

Expenses and conditions of amendment

18.6. The sheriff shall find the party making an amendment liable in the expenses occasioned by the amendment unless it is shown that it is just and equitable that the expenses occasioned by the amendment should be otherwise dealt with, and may attach such other conditions as he thinks fit.

Effect of amendment on diligence

18.7. Where an amendment has been allowed, the amendment-

(a) shall not validate diligence used on the dependence of a cause so as to prejudice the rights of creditors of the party against whom the diligence has been executed, who are interested in defeating such diligence; and

(b) shall preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.

Preliminary pleas inserted on amendment

18.8 (1) Where a party seeks to add a preliminary plea by amendment or answers to an amendment, or by adjustment thereto, a note of the basis for the plea shall be lodged at the same time as the minute, answers or adjustment, as the case may be.

(2) If a party fails to comply with paragraph (1), that party shall be deemed to be no longer insisting on the preliminary plea and the plea shall be repelled by the sheriff.