

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

SCHEDULE 1

Initiation and progress of causes

CHAPTER 20 THIRD PARTY PROCEDURE

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Application for third party notice

20.1. (1) Where, in an action, a defender claims that-

(a) he has in respect of the subject-matter of the action a right of contribution, relief or indemnity against any person who is not a party to the action, or

(b) a person whom the pursuer is not bound to call as a defender should be made a party to the action along with the defender in respect that such person is-

(i) solely liable, or jointly or jointly and severally liable with the defender, to the pursuer in respect of the subject-matter of the action, or

(ii) liable to the defender in respect of a claim arising from or in connection with the liability, if any, of the defender to the pursuer,

he may apply by motion for an order for service of a third party notice on that other person in Form O10 for the purpose of convening that other person as a third party to the action.

(2) Where-

(a) a pursuer against whom a counterclaim has been made, or

(b) a third party convened in the action,

seeks, in relation to the claim against him, to make against a person who is not a party, a claim mentioned in paragraph (1) as a claim which could be made by a defender against a third party, he shall apply by motion for an order for service of a third party notice in Form O10 in the same manner as a defender under that

paragraph; and rules 20.2 to 20.6 shall, with the necessary modifications, apply to such a claim as they apply in relation to such a claim by a defender.

Averments where order for service of third party notice sought

20.2. (1) Where a defender intends to apply by motion for an order for service of a third party notice before the closing of the record, he shall, before lodging the motion, set out in his defences, by adjustment to those defences, or in a separate statement of facts annexed to those defences-

(a) averments setting out the grounds on which he maintains that the proposed third party is liable to him by contribution, relief or indemnity or should be made a party to the action; and

(b) appropriate pleas-in-law.

(2) Where a defender applies by motion for an order for service of a third party notice after the closing of the record, he shall, on lodging the motion, lodge a minute of amendment containing-

(a) averments setting out the grounds on which he maintains that the proposed third party is liable to him by contribution, relief or indemnity or should be made a party to the action, and

(b) appropriate pleas-in-law,

unless those grounds and pleas-in-law have been set out in the defences in the closed record.

(3) A motion for an order for service of a third party notice shall be lodged before the commencement of the hearing of the merits of the cause.

Warrants for diligence on third party notice

20.3. (1) A defender who applies for an order for service of a third party notice may apply for –

(a) a warrant for arrestment to found jurisdiction;

(b) a warrant for interim diligence,

which would have been permitted had the warrant been sought in an initial writ in a separate action.

(2) Averments in support of the application for a warrant under paragraph (1) (a) shall be included in the defences or the separate statement of facts referred to in rule 20.2(1).

(3) An application for a warrant under paragraph (1) (a) shall be made by motion-

(a) at the time of applying for the third party notice; or

(b) if not applied for at that time, at any stage of the cause thereafter.

(4) A certified copy of the interlocutor granting warrant for diligence applied

for under paragraph (2) shall be sufficient authority for execution of the diligence.

Service on third party

20.4. (1) A third party notice shall be served on the third party within 14 days after the date of the interlocutor allowing service of that notice.

(2) Where service of a third party notice has not been made within the period specified in paragraph (1), the order for service of it shall cease to have effect; and no service of the notice may be made unless a further order for service of it has been applied for and granted.

(3) There shall be served with a third party notice-

(a) a copy of the pleadings (including any adjustments and amendments); and

(b) where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, a copy of that minute.

(4) A copy of the third party notice, with a certificate of service attached to it, shall be lodged in process by the defender.

Answers to third party notice

20.5. (1) An order for service of a third party notice shall specify 28 days, or such other period as the sheriff on cause shown may specify, as the period within which the third party may lodge answers.

(2) Answers for a third party shall be headed "Answers for [E.F.], Third Party in the action at the instance of [A.B.], Pursuer against [C.D.], Defender" and shall include-

(a) answers to the averments of the defender against him in the form of numbered paragraphs corresponding to the numbered articles of the condescence in the initial writ and incorporating, if the third party so wishes, answers to the averments of the pursuer; or

(b) where a separate statement of facts has been lodged by the defender under rules 20.2(1), answers to the statement of facts in the form of numbered paragraphs corresponding to the numbered paragraphs of the statement of facts; and

(c) appropriate pleas-in-law.

Consequences of failure to amend pleadings

20.5A. Where the pleadings have not been amended in accordance with the minute of amendment referred to in rule 20.2, no motion for a finding, order or decree against a third party may be enrolled by the defender unless, at or before the date on which he enrolls the motion, he enrolls a motion to amend the pleadings in accordance with that minute.

Procedure following answers

20.6. (1) Where a third party lodges answers, the sheriff clerk shall fix a date and time under rule 9.2 for a hearing under rule 9.12 (Options Hearing) as if the third party had lodged a notice of intention to defend and the period of notice had expired on the date for lodging answers.

(2) At the Options Hearing, or at any time thereafter, the sheriff may grant such decree or other order as he thinks fit.

(3) A decree or other order against the third party shall have effect and be extractable in the same way as a decree or other order against a defender.