

CHAPTER 13

SUMMONSES, NOTICE, WARRANTS AND CALLING

Initiation of causes by summons

13.1 Subject to any other provision in these Rules, all causes originating in the court shall be commenced in the Outer House by summons.

Form of summonses

13.2.(1) Subject to any other provision in these Rules, a summons shall be in Form 13.2-A.

(2) A conclusion in a summons shall be stated in accordance with the appropriate style, if any, in Form 13.2-B.

(3) Subject to rule 46.6(3) (no condescendence or pleas-in-law in ship collision actions), there shall be annexed to a summons-

- (a) a statement, in the form of numbered articles of the condescendence, of the averments of fact which form the grounds of the claim; and
- (b) appropriate pleas-in law.

(4) A condescendence shall include averments stating-

- (a) in an action to which the Civil Jurisdiction and Judgments Act 1982 (a) applies, the domicile of the defender (to be determined in accordance with the provisions of that Act) so far as known to the pursuer;
- (b) the ground of jurisdiction of the court, unless jurisdiction would arise only if the defender prorogated the jurisdiction of the court without contesting jurisdiction;
- (c) unless the court has exclusive jurisdiction, whether or not there is an agreement prorogating the jurisdiction of a court in another country;
- (d) whether or not there are proceedings involving the same cause of action in subsistence between the parties in a country to which the convention in Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982 (b) applies and the date any such proceedings commenced; and
- (e) if applicable, any special capacity in which the pursuer is suing or any special capacity in which the defender is being sued.

(5) A summons may include warrants and intimation in so far as permitted under these Rules.

(6) A summons may include a draft interlocutor in Form 43.1A (actions based on clinical negligence: authority to raise as ordinary action).

Address of defender

13.3. In a summons, the pursuer shall-

- (a) set out in the instance the known residence, registered office, other official address or place of business of the defender where he is to be served; or
- (b) where that residence, office, address or place, as the case may be, is not known and cannot reasonably be ascertained, set out in the instance that the whereabouts of the defender are not known and aver in the condescendence what steps have been taken to ascertain his present whereabouts.

(a) 1982 c.27.

(b) Schedule 1 to the Act of 1982 was substituted by S.I. 1990/2591 and Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c.12), section 1(3).

Period of notice in summonses

13.4.-(1) Subject to any other provision in these Rules, the period of notice in a summons shall be-

- (a) in the case of service within Europe, 21 days from whichever is the later of the date of execution of service or the giving of intimation before calling on a warrant for intimation;
- (b) in the case of service furth of Europe under rule 16.2(2) (d) or (e) (service by an *huissier* etc. or personally), 21 days from whichever is the later of the date of execution of service or the giving of intimation before calling on a warrant for intimation;
- (c) in the case of service furth of Europe other than under sub-paragraph (b), 42 days from whichever is the later of the date of execution of service or the giving of intimation before calling on a warrant for intimation; and
- (d) in the case of service by advertisement under rule 16.5 (service where address of person is not known), other than in an action to which rule 49.12 (notice of family actions by advertisement) applies, 6 months from the date of publication of the advertisement.

(2) An application may be made by motion to shorten or extend the period of notice in a summons.

(3) Where a motion under paragraph (2) is made after signeting of the summons but before service-

- (a) the summons shall be produced to the court; and
- (b) the decision of the Lord Ordinary on the motion shall be final and not subject to review.

Signeting

13.5.-(1) A summons shall pass the signet.

(2) No summons shall bear any date but the date of signeting, which date shall be treated as the date of the summons.

(3) A summons shall be signeted and registered by a clerk of session acting under authority from the Principal Clerk (by virtue of a commission granted to him by the Keeper of the Signet).

(4) Subject to paragraph (5), a summons shall be presented to the General Department during its normal office hours for signeting and registration.

(5) In an emergency, a summons may be signeted and registered outwith the normal office hours.

Authority for service and intimation on signeting

13.6. When signeted, a summons shall be authority for-

- (a) service on the defender designed in the instance;
- (b) intimation of the summons on any person on whom intimation is required in these Rules where a warrant for that purpose has been inserted in the summons.

Authority for diligence etc. before calling

13.6.A.-(1) Before the calling of a summons, the pursuer may apply by motion for authority for-

- (a) arrestment to found jurisdiction; or
- (b) diligence by-
 - (iii) arrestment *in rem*; or
 - (iv) dismantling a ship,

where a warrant in the appropriate form in Form 13.2-A has been inserted in the summons.

- (2) Where a Lord Ordinary pronounces an interlocutor granting a motion under paragraph (1)-
 - (a) he shall record his interlocutor by signing the warrant in the summons; and
 - (b) the signed warrant shall be sufficient authority for execution of the arrestment to found jurisdiction or, as the case may be, the diligence.

Service and intimation of summonses

13.7.-(1) Where a summons is to be executed, a copy of the summons which has passed the signet shall be-

- (a) served on the defender with a citation in Form 13.7 attached to it; and
- (b) intimated to any person named in a warrant for intimation.

(2) Where service of a summons is not executed within a year and a day after the date of signeting, the instance shall fall.

Authority for intimation after signeting

13.8. Where a warrant for intimation referred to in rule 13.6(b) is not obtained when the summons is signeted, the pursuer may apply by motion for authority for intimation of the summons on any person on whom intimation is required in these Rules.

Authority for diligence etc. after calling

13.8A.-(1) After the calling of a summons, a pursuer may apply by motion for authority for-

- (a) arrestment to found jurisdiction; or
- (b) diligence by-
 - (iii) arrestment *in rem*; or
 - (iv) dismantling a ship,

(2) A certified copy of an interlocutor granting a motion under paragraph (1) shall be sufficient authority for execution of the arrestment to found jurisdiction or, as the case may be, the diligence.

Movement of arrested property

13.11.-(1) Any person having an interest may apply by motion for a warrant authorising the movement of a vessel or cargo which is the subject of an arrestment mentioned in rule 13.6A.

(2) Where the court grants a warrant sought under paragraph (1), it may make such further order as it thinks fit to give effect to that warrant.

(3) A warrant granted on a motion under paragraph (1) shall be without prejudice to the validity and subsistence of the arrestment.

Intimation of actions relating to heritable property

13.12.-(1) In an action relating to heritable property, it shall not be necessary to call a person as a defender by reason only of any interest he may have as the holder of a heritable security over the heritable property; but intimation of the summons shall be given to that person by notice of intimation in Form 13.12 attached to a copy of the summons.

(2) A warrant for intimation under paragraph (1) shall be inserted in the summons by the pursuer in the following terms:- "Warrant to intimate to (*name and address*) as a person who is believed to be a heritable creditor of the defender."

(3) A person on whom intimation has been made under this rule may apply by motion for leave to be sisted as a party and to lodge defences.

Calling

13.13.- (1) A summons shall not be called earlier than the day on which the period of notice expires.

(2) A summons shall be lodged for calling not later than 12.30 p.m. on the second day before that on which it is to be called.

(3) A summons may be called-

- (a) during session, on a sederunt day; or
- (b) in vacation, on a calling day of which notice has been given in the rolls.

(4) A summons lodged for calling shall be accompanied by a typewritten slip containing the instance, subject to the following provisions:-

- (a) where there is more than one pursuer or defender, the slip shall contain only the name and designation of the first pursuer or defender, as the case may be, followed by the words "and Another [*or Others, as the case may be*]"; and
- (b) in naming and designing a pursuer or defender who is a body of persons (such as a trust or a partnership), whether individual members are also parties or not, it shall be sufficient to use the collective name of that body.

(5) The calling of a summons shall be published in the rolls on the date on which the summons calls.

(6) Where a summons has not called within a year and a day after the expiry of the period of notice, the instance shall fall.

Protestation for not calling summons

13.14.- (1) Where the pursuer does not lodge the summons for calling within 7 days after the date on which the period of notice expires, the defender, on production of the service copy summons, may apply by motion for an order ordaining the pursuer to lodge the summons for calling within 7 days, or such other period as the court thinks fit, after the date of the order.

(2) Where the court pronounces an interlocutor under paragraph (1), the defender shall serve a certified copy of that interlocutor on the pursuer.

(3) Where the pursuer fails to lodge the summons within the period ordered by the court under paragraph (1), the defender may apply by motion-

- (a) for declarator that the instance has fallen;
- (b) for recall of any diligence mentioned in rule 13.6(c) which has been executed; and
- (c) for payment to the defender of his expenses of process under this rule.

(4) An interlocutor granting a motion under paragraph (3) shall be final and not subject to review.