

CHAPTER 26

THIRD PARTY PROCEDURE

Applications for third party notice

26.1.-(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 26.1-A 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 26.1-B (notice by pursuer) or Form 26.1-C (notice by third party), as the case may be, in the same manner as a defender under that paragraph; and rules 26.2 to 26.7 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

26.2.-(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 enrolling 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 enrolling 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.

Authority for diligence etc. on third party notices

26.3.-(1) A defender who applies for an order for service of a third party notice may apply by motion for authority for-

- (a) arrestment to found jurisdiction; or

- (b) diligence by-
 - (i) inhibition on the dependence of the action;
 - (ii) arrestment on the dependence of the action where there is a conclusion for the payment of money;
 - (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.

(3) A certified copy of an interlocutor granting authority for inhibition under this rule may be registered with a certificate of execution in the Register of Inhibitions and Adjudications.

(4) A notice of a certified copy of an interlocutor granting authority for inhibition under this rule may be registered under section 155 of the Titles to Land Consolidation (Scotland) Act 1868; and such registration shall have the same effect as registration of a notice under that section.

Service on third party

26.4.-(1) A third party notice shall be served on the third party within such period as the court shall specify in the interlocutor allowing service of that notice.

(2) Where service of a third party notice has not been made within the period specified by virtue of 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);
- (b) a copy of the interlocutor allowing service of the notice; and
- (c) where the pleadings have not been amended in accordance with the minute of amendment, a copy of that minute.

(4) The defender who served the third party notice shall lodge in process-

- (a) a copy of the third party notice;
- (b) a copy of the interlocutor allowing service of it; and
- (c) a certificate of service.

Answers to third party notice

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

(2) Answers for a third party 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 condescendence annexed to the summons 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 rule 26.2(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 lodge answers

26.6.- (1) Where a third party fails to lodge answers, the defender may apply by motion for such finding, order or decree against the third party as may be appropriate to give effect to the claim in the third party notice.

(1A) Where a minute of amendment under rule 26.2(2) has been lodged, the defender may not apply by motion under paragraph (1) unless, at or before the date on which he makes that application, he applies by motion to amend the pleadings in terms of the minute of amendment.

(2) Where such a finding, order or decree is pronounced by the court, rule 19.2 (recall of decrees in absence) shall, with the necessary modifications, apply to that finding, order or decree as it applies to recall of a decree in absence by a defender.

Procedure following answers

26.7.-(1) Within 14 days after the date on which answers are lodged by the third party, the defender who has served the third party notice shall-

- (a) make up an open record incorporating the pleadings of all parties;
- (b) deliver four copies of that record to every other party; and
- (c) lodge two copies of that record in process.

(2) When an open record is lodged in process under paragraph (1), the action shall be put out on the Adjustment Roll and the court shall pronounce an interlocutor continuing the action on that roll for 6 weeks.

(3) Where a proof or jury trial is necessary between parties to the action, the court may allow the action so far as directed against the third party to proceed to proof or jury trial, as the case may be, before, at the same time as or after, the action between the pursuer and the defender as the court thinks fit.

(4) Where a third party challenges the case pled by the pursuer, he may appear at the proof or jury trial of the pursuer's case and lead evidence as if he were a defender; and such evidence, so far as competent and relevant, shall be evidence for or against the pursuer or for or against the defender, as the case may be, and shall be available to all the parties in the action.

(5) Subject to the preceding provisions of this Chapter and unless the context otherwise requires, the other provisions of these Rules in relation to actions shall, with the necessary modifications, apply as between the defender and a third party or the pursuer and a third party, as the case may be, as they apply to the action between the pursuer and defender.