

## CHAPTER 33

### CAUTION AND SECURITY

#### Application of this Chapter

**33.1.** Subject to any other provisions in these Rules, this Chapter applies to-

- (a) any cause in which the court has power to order a person to find caution or give other security; and
- (b) security for expenses ordered to be given under section 136 of the Representation of the People Act 1983(a) in an election petition.

#### Form of applications

**33.2.**-(1) An application for an order for caution or other security, or for variation or recall of such an order, shall be made by motion.

- (2) The grounds on which such an application is made shall be set out in the motion.

#### Orders to find caution or other security

**33.3.** Subject to section 726(2) of the Companies Act 1985(b) (order on company to find caution), an order to find caution or give other security shall specify the period within which such caution is to be found or such security given.

#### Methods of finding caution or giving security

**33.4.**-(1) A person ordered-

- (a) to find caution, shall do so by obtaining a bond of caution; or
- (b) to consign a sum of money into court, shall do so by consignment under the Court of Session Consignations (Scotland) Act 1895(c) in the name of the Accountant of Court.

(2) The court may approve a method of security other than one mentioned in paragraph (1), including a combination of two or more methods of security.

(3) Subject to paragraph (4), any document by which an order to find caution or give other security is satisfied shall be lodged in process.

(4) Where the court approves a security in the form of a deposit of a sum of money in the joint names of the agents of parties, a copy of the deposit receipt, and not the principal, shall be lodged in process.

(5) A bond of caution or consignment receipt lodged in process shall be accompanied by a copy of it.

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(a) 1983 c.2; section 136 was amended by the Representation of the People Act 1985 (c.50), Schedule 4, paragraph 48.

(b) 1985 c.6.

(c) 1895 c.19

## **Cautioners and guarantors**

**33.5.** A bond of caution or other security shall be given only by a person authorised to carry on a regulated activity under section 31 of the Financial Services and Markets Act 2000.

## **Form of bonds of caution and other securities**

**33.6.**-(1) A bond of caution shall oblige the cautioner, his heirs and executors to make payment of the sums for which he has become cautioner to the party to whom he is bound, as validly and in the same manner as the party and his heirs and successors, for whom he is cautioner, are obliged.

## **Sufficiency of caution or security and objections**

**33.7.**-(1) The Deputy Principal Clerk shall satisfy himself that any bond of caution or other document, lodged in process under rule 33.4(3), is in proper form.

(2) A party who is dissatisfied with the sufficiency or form of the caution or other security offered in obedience to an order of the court may apply by motion for an order under rule 33.10 (failure to find caution or give security).

## **Juratory caution**

**33.8.**-(1) Where a pursuer in an action with a conclusion for suspension is ordered to find caution or give other security, he may offer to do so by juratory caution.

(2) Such an offer shall be made-

- (a) at the time the order for caution or other security is made; or
- (b) by enrolling a motion within the period allowed for finding caution or giving other security, as the case may be, or any prorogation of it, for the appointment of a commissioner.

(3) Where such an offer is made, the court shall-

- (a) appoint a commissioner to take the deposition of the pursuer at a time and place to be fixed by the commissioner;
- (b) ordain the pursuer to give notice of at least seven days of the time and place so fixed by the commissioner to every other party to the action; and
- (c) where the offer has been made by motion under paragraph (2)(b), prorogate the time for finding caution or giving other security, as the case may be, by such period as it thinks fit.

(4) At the time and place fixed by the commissioner in accordance with paragraph (3)(a), the pursuer shall be examined as to the nature and extent of his whole estate wheresoever situated and the other parties to the action shall be entitled to cross-examine him.

(5) After his examination, the pursuer shall send to the Deputy Principal Clerk-

- (a) a bond of caution;
- (b) a full inventory of his whole estate;
- (c) a declaration attached to the inventory, stating that he will not dilapidate or dispose of any of his property or uplift any of the debts due to him, without the authority of the court (under pain of imprisonment or being otherwise punished as being guilty of fraud) or the consent of the party entitled to the benefit of the caution until the interlocutor disposing of the subject-matter of the action has become final and, where he has been found liable to pay any sum, including expenses, 12 weeks (and any further period that the court, on the motion of any party, may grant) have passed since the interlocutor became final;
- (d) the vouchers of any debts due to the pursuer;
- (e) the title deeds of any heritable property belonging to the pursuer, so far as in his possession or under his control; and

- (f) where required by the party entitled to the benefit of the caution-
  - (i) a standard security in favour of such party over any heritable property belonging to the pursuer, and
  - (ii) as assignation of all debts or other rights due to the pursuer, prepared at the expense of the pursuer.

(6) Subject to rule 33.12(1) (bond of caution or consignment receipt transmitted to Accountant of Court), the Deputy Principal Clerk shall retain any documents lodged under paragraph (5) of this rule until further order of the court.

### **Insolvency or death of cautioner or guarantor**

**33.9.** Where caution has been found by bond of caution or security has been given by guarantee and the cautioner or guarantor, as the case may be-

- (a) becomes apparently insolvent within the meaning assigned by section 16 of the Bankruptcy (Scotland) Act 2016 (meaning of apparent insolvency),
- (b) calls a meeting of his creditors to consider the state of his affairs,
- (c) dies unrepresented, or
- (d) is a company and-
  - (i) an administration order, bank administration order, building society special administration order, winding up order, bank insolvency order or building society insolvency order has been made, or a resolution for a voluntary winding up has been passed, with respect to it,
  - (ii) a receiver of all or any part of its undertaking has been appointed, or
  - (iii) a voluntary arrangement (within the meaning assigned by section 1(1) of the Insolvency Act 1986<sup>(b)</sup>) has been approved under Part I of that Act,

the party entitled to benefit from the caution or guarantee may apply by motion for a new security or further security to be given.

### **Failure to find caution or give security**

**33.10.** Where a party fails to find caution or give other security (such a party being in this rule referred to as "the party in default"), any other party may apply by motion-

- (a) where the party in default is a pursuer, for decree of absolvitor; or
- (b) where the party in default is a defender or a third party, for decree by default or for such other finding or order as the court thinks fit.

### **Interlocutors authorising uplifting of consignment receipts**

**33.11.** An interlocutor authorising a party to uplift a consignment receipt from the Accountant of Court shall state the name of the person entitled to any interest which has accrued on the sum consigned.

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<sup>(a)</sup> 1985 c.66; section 7 was amended by the Criminal Justice (Scotland) Act 1987 (c.41), section 45(5)(b) and by the Criminal Justice Act 1988 (c.33), Schedule 15, paragraph 108.

<sup>(b)</sup> 1986 c.45.

### **Accountant of Court**

**33.12.-** (1) A bond of caution or a consignment receipt lodged in any process shall be transmitted by the party lodging it, after the Deputy Principal Clerk has complied with rule 33.7(1), to the Accountant of Court.

(2) A bond of caution may be uplifted from the Accountant of Court on exhibition to him of the interlocutor granting discharge.

(3) A consignment receipt may be uplifted from the Accountant of Court on exhibition to him of a certified copy of the interlocutor authorising it.

(4) The form of book to be kept by the Accountant of Court under section 4 of the Court of Session Consignations (Scotland) Act 1895 (consignations to be entered in books kept by Accountant of Court) shall be in Form 33.12.