

SCHEDULE 1

The Simple Procedure Rules

Part 10: Documents and other evidence

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10.1 What is this Part about?

- (1) This Part is about how parties should lodge documents and other evidence with the court before a hearing.
- (2) This Part is also about how parties can apply for orders to recover documents from other people.

Lodging documents and other evidence

10.2 How can you lodge documents and other evidence with the court?

- (1) Parties must send each other and the court a List of Evidence Form at least 2 weeks before the hearing.
- (2) The List of Evidence Form must set out the documents and other evidence that they are lodging with the court.
- (3) All documents and other evidence must be lodged with the court at least 2 weeks before the hearing.
- (4) Documents and other evidence may be lodged with the court by sending them to the sheriff clerk.
- (5) If a party considers that there would be practical difficulties involved in sending evidence to the sheriff clerk, that party must contact the sheriff clerk.
- (6) In that situation, the sheriff clerk may give that party permission to lodge only a brief description of the evidence. The party must bring the evidence to any hearing.

10.3 What documents and other evidence can a party bring to a hearing?

- (1) A party may bring to a hearing documents and other evidence which have not been lodged with the court.
- (2) The sheriff may refuse to consider these.

10.4 How can other parties borrow or inspect documents and other evidence lodged with the court?

- (1) A solicitor, or the authorised assistant of a solicitor, may borrow any documents or other evidence which have been lodged with the court.
- (2) Any documents or other evidence borrowed must be returned to the court before midday (1200 hours) on the last day the court is open before the hearing.
- (3) A party who is not represented by a solicitor may, during normal business hours, inspect documents or other evidence at the sheriff clerk's office.

- (4) Where it is possible to do so, that party may take copies or photographs of documents or other evidence.

10.5 How long will the court keep documents and other evidence for?

- (1) The court must keep the documents and other evidence for at least 4 weeks after the sheriff has made a decision.
- (2) If a party has appealed the sheriff's decision, the court must keep the documents and other evidence until that appeal has been decided.
- (3) Each party must collect the documents or other evidence which that party lodged with the court within 2 weeks of:
 - (a) the end of the 4 week period, or
 - (b) if the decision is appealed, the date of the appeal decision.
- (4) If a party has not collected the documents and other evidence by the end of that 2 weeks, the sheriff clerk must send the party a warning that if the documents and other evidence is not collected within 2 weeks of the warning, then it will be destroyed or disposed of.
- (5) If the documents and other evidence are not collected by the end of that further 2 weeks, the sheriff must order it to be destroyed or disposed of.

Orders to recover documents

10.6 How can a party recover documents to lodge them with the court?

- (1) Where a party wants to lodge a document which they do not possess, the sheriff may make an order to recover a document from the person who possesses it.
- (2) A party may ask the sheriff to make an order to recover documents by sending a Recovery of Documents Application to the court and the other party.
- (3) A party may object to the proposed recovery of documents by returning that Recovery of Documents Application to the court within 10 days of it being sent, setting out that objection.
- (4) After considering the Recovery of Documents Application, and any objection that may have been sent, the sheriff may do one of 4 things:

- (a) grant the application, and make an order to recover documents,
- (b) grant the application in part, and make an order to recover documents,
- (c) refuse the application,
- (d) order the parties to appear at a discussion in court, where the sheriff will consider whether to make an order to recover documents.

10.7 What happens when an order to recover documents is made?

- (1) A party who has been granted an order to recover documents must formally serve it on the person who is named in the order.
- (2) When the sheriff clerk receives documents in response to an order to recover documents, the sheriff clerk must lodge them and send the parties a notice indicating that the documents have been received and lodged.

10.8 What happens if the person who has the documents claims they are confidential?

- (1) A person who has documents mentioned in an order to recover documents must tell the court if that person believes them to be confidential.
- (2) This is done by:
 - (a) sealing the confidential documents in an envelope, marked as confidential,
 - (b) completing the confidential documents part of the order to recover documents, and
 - (c) sending these to the court.
- (3) If the party who obtained the order to recover documents wishes to open the sealed envelope containing the confidential document, the party must send an Application to Open Confidential Document to the court, the other party and the person who sent the document to the court.
- (4) If a person who has been sent the Application to Open Confidential Document objects to the confidential document being seen by the parties, that party must send that Application to Open Confidential Document to the court within 10 days of it being sent, setting out that objection.
- (5) After considering the Application to Open Confidential Document, and any objection that may have been sent, the sheriff may do one of three things:

- (a) grant the application, and allow the sealed envelope containing the confidential document to be opened,
 - (b) refuse the application,
 - (c) order the parties and the person who sent the document to the court to appear at a discussion in court, where the sheriff will consider whether to allow the sealed envelope containing the confidential document to be opened.
- (6) When granting an application, the sheriff may order parts of the document to be redacted.

10.9 What happens if an order to recover documents has not been complied with?

- (1) The party who obtained the order to recover documents can ask the sheriff to make a special order to recover documents by sending a Special Recovery of Documents Application to the court and the other party.
- (2) If the party who has been sent the Special Recovery of Documents Application objects to the proposed recovery of documents, that party must send that Special Recovery of Documents Application to the court within 10 days of it being sent, setting out that objection.
- (3) After considering the Special Recovery of Documents Application, and any objection that may have been sent, the sheriff may do one of three things:
 - (a) grant the application, and send a special order to recover documents to the parties,
 - (b) refuse the application,
 - (c) order the parties to appear at a discussion in court, where the sheriff will consider whether to make a special order to recover documents.

10.10 What happens when a special order to recover documents is made?

- (1) A special order to recover documents appoints a person to recover the documents mentioned in the order for the court. This person is called a commissioner.
- (2) The party who obtained the special order to recover documents must send it to the commissioner.

- (3) The commissioner must carry out the recovery of documents mentioned in the order.
- (4) When the sheriff clerk receives documents from the commissioner, the sheriff clerk must lodge them and send the parties a notice explaining that the documents have been received and lodged.

10.11 What happens if the person who has the documents claims they are confidential?

- (1) A person who has documents mentioned in a special order to recover documents must tell the court if the person believes them to be confidential
- (2) This is done by telling the commissioner why the document is considered to be confidential and giving the commissioner the confidential document in a sealed envelope.
- (3) If the party who obtained the special order to recover documents wishes to open the sealed envelope containing the confidential document, the party must send an Application to Open Confidential Document to the court, the other party and the person who sent the document to the commissioner.
- (4) If anyone who has been sent the Application to Open Confidential Document objects to the confidential document being seen by the parties, that party must send that Application to Open Confidential Document to the court within 10 days of it being sent, setting out that objection.
- (5) After considering the Application to Open Confidential Document, and any objection that may have been sent, the sheriff may do one of three things:
 - (a) grant the application, and allow the sealed envelope containing the confidential document to be opened,
 - (b) refuse the application,
 - (c) order the parties and the person who sent the document to the commissioner to appear at a discussion in court, where the sheriff will consider whether to allow the sealed envelope containing the confidential document to be opened.
- (6) When granting an application, the sheriff may order parts of the document to be redacted.