

The Simple Procedure Rules

Part 20: Provisional orders

- 20.1 [What is this Part about?](#)
- 20.2 [When can a claimant ask for provisional orders to be made?](#)
- 20.3 [What happens when the court receives a Provisional Orders Application?](#)
- 20.4 [How can the claimant tell the respondent or an interested party about a hearing?](#)
- 20.5 [How can you ask the court to reconsider provisional orders that it has made?](#)
- 20.6 [How can you ask the court to consider other applications about provisional orders?](#)
- 20.7 [How are provisional orders made effective?](#)
- 20.8 [How is an arrestment on the dependence made effective?](#)
- 20.9 [How is an inhibition on the dependence made effective if the claimant does not know the respondent's address?](#)

20.1 What is this Part about?

- (1) This Part is about provisional orders which protect or secure the claimant's position before the sheriff makes a final decision in a case.

20.2 When can a claimant ask for provisional orders to be made?

- (1) The claimant may apply for provisional orders to be made by completing a Provisional Orders Application and sending it to the sheriff court with the Claim Form.

- (2) The claimant may also apply for provisional orders at any time before the sheriff makes a final decision in a case by completing a Provisional Orders Application and sending it to the sheriff court.
- (3) The claimant must also send the Provisional Orders Application to the respondent and any interested person, unless the claimant has asked the court to make the provisional orders without holding a provisional orders hearing.

20.3 What happens when the court receives a Provisional Orders Application?

- (1) The next steps depend on whether the claimant has asked the court to grant the Provisional Orders Application with or without holding a hearing.
- (2) If the claimant has asked the court to hold a hearing, before deciding whether to grant the Provisional Orders Application, the sheriff must—
 - (a) send the claimant notice of when and where the hearing is to be held, and
 - (b) order the claimant to tell the respondent and any interested person when and where it is to be held.
- (3) If the claimant has asked the court to grant the Provisional Orders Application without holding a hearing, the sheriff may do one of 3 things:
 - (a) grant the Provisional Orders Application and send the claimant written orders containing the provisional orders,
 - (b) refuse to grant the Provisional Orders Application without holding a hearing and send the claimant notice of when and where the hearing is to be held, or
 - (c) Where the claimant has indicated in Form 20A that they do not want the court to arrange a hearing under subsection (3)(b), refuse the Provisional Orders Application.
- (4) Where the sheriff grants the Provisional Orders Application without holding a hearing, the sheriff must also fix a provisional orders review hearing and order the claimant to tell the respondent and any interested person when and where it is to be held.
- (5) If the sheriff refuses to grant the Provisional Orders Application without holding a hearing, the sheriff must also order the claimant to send the

respondent and any interested person notice of when and where the hearing is to be held.

20.4 How can the claimant tell the respondent or an interested party about a hearing?

- (1) The claimant can tell the respondent or an interested party about any hearing under this Part by sending a Provisional Orders Hearing Notice to the respondent or interested party.

20.5 How can you ask the court to reconsider provisional orders that it has made?

- (1) The respondent can ask the sheriff to reconsider a provisional order by sending a Provisional Orders Reconsideration Application to the court, the claimant and any interested person.
- (2) An interested person can ask the sheriff to reconsider a provisional order by sending a Provisional Orders Reconsideration Application to the court, the claimant, the respondent and any other interested person.
- (3) When the court receives a Provisional Orders Reconsideration Application, the sheriff must order every person to whom the application was sent to appear at a provisional orders review hearing where the sheriff will consider whether to change the provisional order.
- (4) The sheriff may also order notice of the provisional orders review hearing to be given to any other person that the sheriff is satisfied has an interest.

20.6 How can you ask the court to consider other applications about provisional orders?

- (1) A party may make any other application mentioned in Part 1A of the Debtors (Scotland) Act 1987^a or Part 1A of the Debt Arrangement and Attachment (Scotland) Act 2002(b) by sending an Incidental Orders Application to the court, the other party and any interested person.
- (2) An interested person may make any other application mentioned in Part 1A of the Debtors (Scotland) Act 1987 or Part 1A of the Debt Arrangement and

^a 1987 c. 18 Part 1A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 169.

Attachment (Scotland) Act 2002^b by sending an Incidental Orders Application to the court, the parties and any other interested person.

- (3) When the court receives such an Incidental Orders Application, the sheriff must order every person to whom the application was sent to appear at a provisional orders discussion in court, where the sheriff will consider whether to make any orders.

20.7 How are provisional orders made effective?

- (1) The method for making a provisional order effective depends on the type of provisional order.
- (2) An arrestment on the dependence (see rule 3.8(2)(a)) is made effective in accordance with rule 20.8.
- (3) An inhibition on the dependence (see rule 3.8(2)(b)) is made effective in accordance with section 148(3)(b) of the Bankruptcy and Diligence (Scotland) Act 2007^c and the Diligence (Scotland) Regulations 2009^d (but see rule 20.9 if the respondent's address is not known).
- (4) An interim attachment (see rule 3.8(2)(c)) is made effective in accordance with Chapter 1A of the Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002^e.

20.8 How is an arrestment on the dependence made effective?

- (1) An arrestment on the dependence is made effective by formally serving an Arrestment Notice on the person named in the provisional order who holds the respondent's goods or money.
- (2) An arrestment Notice must be formally served by a sheriff officer. The sheriff officer must use one of the methods of formal service mentioned in rule 18.3.
- (3) After formally serving an Arrestment Notice, the sheriff officer must complete a Confirmation of Formal Service of Arrestment Notice and send it to the sheriff court within one week of service taking place.

^b 2002 asp 17 Part 1A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 173.

^c 2007 asp 3

^d S.S.I. 2009/68, as amended by S.S.I. 2009/396.

^e Those Rules are contained in Schedule 1 to the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002

- (4) The requirement to formally serve by sheriff officer is subject to the exceptions in sections 2 and 3 of the Execution of Diligence (Scotland) Act 1926.

20.9 How is an inhibition on the dependence made effective if the claimant does not know the respondent's address?

- (1) If the claimant does not know the respondent's address, an inhibition on the dependence is made effective if the sheriff officer does two additional things:
 - (a) send the schedule of inhibition to the sheriff clerk of the sheriff court district where the respondent's last known address is located;
 - (b) send a copy of the schedule of inhibition by post to the respondent's last known address.