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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 152**

**Act of Sederunt (Rules of the Court of Session,  
Ordinary Cause Rules and Summary Cause  
Rules Amendment) (Miscellaneous) 2014**

**Amendment of the Ordinary Cause Rules**

- 3.**—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraphs.  
(2) For rule 28.3 (optional procedure before executing commission and diligence)(1) substitute—

**“Optional procedure before executing commission and diligence**

**28.3.**—(1) Subject to rule 28.3A (optional procedure where there is a party litigant), this rule applies where a party has obtained a commission and diligence for the recovery of a document on an application made under rule 28.2(1)(a).

(2) Such a party may, at any time before executing the commission and diligence against a haver, serve on the haver an order in Form G11 (in this rule referred to as “the order”).

(3) The order and a copy of the specification referred to in rule 28.2(2), as approved by the sheriff, must be served on the haver or his known agent and must be complied with by the haver in the manner and within the period specified in the order.

(4) Not later than the day after the date on which the order, and any document recovered, is received from a haver by the party who obtained the order, that party—

(a) must give written intimation of that fact in Form G11A to the sheriff clerk and every other party; and

(b) must—

(i) if the document has been sent by post, send a written receipt for the document in Form G11B to the haver; or

(ii) if the document has been delivered by hand, give a written receipt in Form G11B to the person delivering the document.

(5) Where the party who has recovered any such document does not lodge it in process within 14 days of receipt of it, that party must—

(a) give written intimation to every party that that party may borrow, inspect or copy the document within 14 days after the date of that intimation; and

(b) in so doing, identify the document.

(6) Where a party who has obtained any document under paragraph (5) wishes to lodge the document in process, that party must—

(a) lodge the document within 14 days after receipt of it; and

(b) at the same time, send a written receipt for the document in Form G11C to the party who obtained the order.

(7) Where—

- (a) no party wishes to lodge or borrow any such document under paragraph (5), the document is to be returned to the haver by the party who obtained the order within 14 days after the expiry of the period specified in paragraph (5)(a); or
- (b) any such document has been uplifted by another party under paragraph (5) and that party does not wish to lodge it in process, the document shall be returned to the haver by that party within 21 days after the date of receipt of it by him.

(8) Any such document lodged in process is to be returned to the haver by the party lodging it within 14 days after the expiry of any period allowed for appeal or, where an appeal has been marked, from the disposal of any such appeal.

(9) If any party fails to return any such document as provided for in paragraph (7) or (8), the haver may apply by motion (whether or not the cause is in dependence) for an order that the document be returned to him and for the expenses occasioned by that motion.

(10) The party holding any such document (being the party who last issued a receipt for it) is responsible for its safekeeping during the period that the document is in his custody or control.

(11) If the party who served the order is not satisfied that—

- (a) full compliance has been made with the order, or
- (b) adequate reasons for non-compliance have been given,

he may execute the commission and diligence under rule 28.4.

(12) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the sheriff may, on the motion of the party who served the order, direct that that party may inspect the book and take copies of any entries falling with the specification.

(13) Where any question of confidentiality arises in relation to a book directed to be inspected under paragraph (12), the inspection shall be made, and any copies shall be taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence.

(14) The sheriff may, on cause shown, order the production of any book (not being a banker's book or book of public record) containing entries falling under a specification, notwithstanding the production of a certified extract from that book.

### **Optional procedure where there is a party litigant**

**28.3A.**—(1) This rule applies where any of the parties to the action is a party litigant.

(2) The party who has obtained a commission and diligence for the recovery of a document on an application under rule 28.2(1)(a) may, at any time before executing it against a haver, serve on the haver an order in Form G11D (in this rule referred to as “the order”).

(3) The order and a copy of the specification referred to in rule 28.2(2), as approved by the sheriff, must be served on the haver or his known agent and must be complied with by the haver in the manner and within the period specified in the order.

(4) Not later than the day after the date on which the order, and any document recovered, is received from a haver by the sheriff clerk, the sheriff clerk shall give written intimation of that fact to each party.

(5) No party, other than the party who served the order, may uplift any such document until after the expiry of 7 days after the date of intimation under paragraph (4).

(6) Where the party who served the order fails to uplift any such document within 7 days after the date of intimation under paragraph (4), the sheriff clerk must give written intimation of that failure to every other party.

(7) Where no party has uplifted any such document within 14 days after the date of intimation under paragraph (6), the sheriff clerk must return it to the haver.

(8) Where a party who has uplifted any such document does not wish to lodge it, he must return it to the sheriff clerk who must—

- (a) give written intimation of the return of the document to every other party; and
- (b) if no other party uplifts the document within 14 days after the date of intimation, return it to the haver.

(9) Any such document lodged in process is to be returned to the haver by the party lodging it within 14 days after the expiry of any period allowed for appeal or, where an appeal has been marked, from the disposal of any such appeal.

(10) If any party fails to return any such document as provided for in paragraph (8) or (9), the haver may apply by motion (whether or not the cause is in dependence) for an order that the document be returned to him and for the expenses occasioned by that motion.

(11) The party holding any such document (being the party who last issued a receipt for it) is responsible for its safekeeping during the period that the document is in his custody or control.

(12) If the party who served the order is not satisfied that—

- (a) full compliance has been made with the order, or
- (b) adequate reasons for non-compliance have been given,

he may execute the commission and diligence under rule 28.4.

(13) Where an extract from a book of any description (whether the extract is certified or not) is produced under the order, the sheriff may, on the motion of the party who served the order, direct that that party shall be allowed to inspect the book and take copies of any entries falling within the specification.

(14) Where any question of confidentiality arises in relation to a book directed to be inspected under paragraph (13), the inspection shall be made, and any copies shall be taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence.

(15) The sheriff may, on cause shown, order the production of any book (not being a banker's book or book of public record) containing entries falling under a specification, notwithstanding the production of a certified extract from that book.”.

(3) In rule 28.8 (confidentiality)(2), for paragraph (1) substitute—

“(1) Where confidentiality is claimed for any evidence sought to be recovered under any of the following rules, such evidence is to be, where practicable, enclosed in a sealed packet—

- (a) rule 28.3 (optional procedure before executing commission and diligence),
- (b) rule 28.3A (optional procedure where there is a party litigant),
- (c) rule 28.4 (execution of commission and diligence for recovery of documents),
- (d) rule 28.5 (execution of orders for production or recovery of documents or other property under section 1(1) of the Act of 1972),
- (e) rule 28.7 (execution of orders for preservation etc. of documents or other property under section 1(1) of the Act of 1972).”.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (4) In rule 36.G1 (allocation of diets and timetables)(3)—
  - (a) in paragraph (3), omit “paragraph 8 or”;
  - (b) omit paragraph (8).
- (5) In rule 36.H1(2)(b) (applications for sist or for variation of timetable)(4), omit “special”.
- (6) In Appendix 1 (forms) for Form G11 substitute Forms G11, G11A, G11B, G11C and G11D in the Schedule to this Act of Sederunt.

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(3) Rule 36.G1 was inserted by [S.S.I. 2009/285](#) and was last amended by [S.S.I. 2011/386](#).  
(4) Rule 36.H1 was inserted by [S.S.I. 2009/285](#) and was last amended by [S.S.I. 2010/279](#).