

SCHEDULE

Article 2(5)

FORM 11A Form of order for recovery of documents etc. under Part I of Chapter 3 of Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999

Rule 3.1.6

SHERIFFDOM OF *(insert name of sheriffdom)*

AT *(insert place of sheriff court)*

in the Summary Application

of

[A.B.] *(designation and address)*

Applicant

against

[C.D.] *(designation and address)*

Respondent

Date: *(date of interlocutor)*

To: *(name and address of party or parties or named third party haver, from whom the documents and other property are sought to be recovered)*

THE SHERIFF having heard the applicant and being satisfied that it is appropriate to make an order under section 1 of the Administration of Justice (Scotland) Act 1972:

ORDERS the Summary Application to be served upon the person(s) named and designed therein;

APPOINTS *(name and designation of Commissioner)* to be Commissioner of the court;

GRANTS commission and diligence;

ORDERS the Commissioner to explain to the haver on executing the order—

- (1) the meaning and effect of the order;
 - (2) that the haver may be entitled to claim that certain of the documents and other property are confidential or privileged; and
 - (3) that the haver has a right to seek legal or other professional advice of his choice,
- and to give to the haver a copy of the Notice in Form 11B of Schedule 1 to the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999.

GRANTS warrant to and authorises the said Commissioner, whether the haver has allowed entry or not—

- (1) to enter, between the hours of 9am and 5pm on Monday to Friday, *(or, where the court has found cause shown under rule 3.1.11(1), otherwise specify the time and day)* the premises at *(address of premises)* and any other place in Scotland owned or occupied by the haver at which it appears to the Commissioner that any of the items set out in the statement of facts in the application to the court (the “listed items”) may be located; and
- (2) unless the haver is taking legal or other professional advice on the question of having the order varied—
 - (a) to search for and take all other steps which he considers necessary to take possession of or preserve *(specify the listed items)*; and

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(b) to take possession of and to preserve all or any of the listed items and to consign them with the Sheriff Clerk at *(enter name and address of sheriff court)* to be held by him pending the further order of the sheriff,
and for that purpose,

ORDERS the haver or his servants or agents to allow the Commissioner, any person whom the Commissioner considers necessary to assist him, and the Applicant's representatives to enter the premises named in the order and, unless the haver has sought legal or other professional advice on the question of having the order varied, to allow them—

- (1) to search for the listed items and take such other steps as the Commissioner considers it is reasonable to take to execute the order;
- (2) to provide access to information stored on any computer owned or used by him by supplying or providing the means to overcome any and all security mechanisms inhibiting access thereto;
- (3) to allow the Commissioner, any person whom the Commissioner considers necessary to assist him, and the Applicant's representatives to remain in the premises until such time as the search is complete, including allowing them to continue the search on subsequent days if necessary;
- (4) to inform the Commissioner immediately of the whereabouts of the listed items; and
- (5) to provide the Commissioner with a list of the names and addresses of everyone who has supplied him with any of the listed items and of the names and addresses of everyone to whom he has given any of the listed items,

and not to destroy, conceal or tamper with any of the listed items except in accordance with the terms of this order;

FURTHER AUTHORISES *(specify the representatives)* to be the sole representatives of the Applicant to accompany the Commissioner for the purpose of identification of the said documents and other property.

SCHEDULE TO THE ORDER

Undertakings given by Applicant

The Applicant has given the following undertakings:—

1. That he will comply with any order of the court as to payment of compensation if it is subsequently discovered that the order, or the implementation of the order, has caused loss to the respondent or, where the respondent is not the haver, to the haver.
2. That he will bring within a reasonable time of the execution of the order any proceedings which he decides to bring.
3. That he will not, without leave of the court, use any information, documents or other property obtained as a result of the order, except for the purpose of any proceedings which he decides to bring and to which the order relates.

(or as modified under rule 3.1.4)

FORM 11B Notice to accompany order in Form 11A when served by Commissioner

IMPORTANT

NOTICE TO PERSON ON WHOM THIS ORDER IS SERVED

1. This order orders you to allow the person appointed and named in the order as Commissioner to enter your premises to search for, examine and remove or copy the items mentioned in the order.
2. It also allows entry to the premises to any person appointed and named in the order as a representative of the person who has been granted the order and to any person accompanying the Commissioner to assist him.
3. No-one else is given authority to enter the premises.
4. You should read the order immediately.
5. You have the right to seek legal or other professional advice of your choice and you are advised to do so as soon as possible.
6. Consultation under paragraph 5 will not prevent the Commissioner from entering your premises for the purposes mentioned in paragraph 1 but if the purpose of your seeking advice is to help you to decide if you should ask the court to vary the order he will not be able to search the premises.
7. The Commissioner is obliged to explain the meaning and effect of the order to you.
8. He is also obliged to explain to you that you are entitled to claim that the items, or some of them, are protected as confidential or privileged.
9. You are entitled to ask the court to vary the order provided that—
 - you take steps to do so at once; and
 - you allow the Commissioner, any person appointed as a representative of the person who has been granted the order and any person accompanying the Commissioner to assist him, to enter the premises – but not to start the search – meantime.
10. The Commissioner and the people mentioned as representatives or assistants have a right to enter the premises even if you refuse to allow them to do so, unless—
 - you are female and alone in the premises and there is no female with the Commissioner (where the Commissioner is not female), in which case they have no right to enter the premises;
 - the Commissioner serves the order before 9am or after 5pm on a weekday or at any time on a Saturday or Sunday (except where the court has specifically allowed this, which will be stated in the order);in which cases you should refuse to allow entry.
11. You are entitled to insist that there is no-one (*or no-one other than insert name of person*) present who could gain commercially from anything which might be read or seen on your premises.
12. You are required to hand over to the Commissioner any of the items mentioned in the order which are in your possession.
13. You may be found liable for contempt of court if you refuse to comply with the order.