

## SCHEDULE 1

### RULES FOR APPLICATIONS IN THE SHERIFF COURT UNDER THE DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

#### CHAPTER 1

#### GENERAL

#### **Citation and interpretation**

1.—(1) These Rules may be cited as the Rules for Applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002<sup>(1)</sup>.

(2) In these Rules—

“the 2002 Act” means the Debt Arrangement and Attachment (Scotland) Act 2002;

“authorised lay representative” means a person to whom section 32(1) of the Solicitors (Scotland) Act 1980<sup>(2)</sup> (offence for unqualified persons to prepare certain documents) does not apply by virtue of section 32(2)(a) of that Act;

“decree” and “document of debt” have the meanings given to them in section 10(5) of the 2002 Act; and

“exceptional attachment order” has the meaning given to it by section 47(1) of the 2002 Act;

(3) Any reference in these Rules—

(a) to a section is to be construed as the section bearing that number in the 2002 Act;

(b) to a specified paragraph is to be construed as a reference to the paragraph so numbered or lettered in the provision in which that reference occurs; or

(c) to a numbered form means the form so numbered in Appendix 1 to these Rules, or a form of substantially the same effect with such variation as circumstances may require.

(4) The glossary in Appendix 2 to these Rules is a guide to the meaning of certain legal expressions, but is not to be taken as giving those expressions any meaning that they do not have in law generally.

#### **Dispensing power of sheriff**

2.—(1) The sheriff may relieve any party from the consequences of any failure to comply with the provisions of these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as the sheriff thinks fit.

(2) Where the sheriff so relieves a party the sheriff may make such order as the sheriff thinks fit to enable the application to proceed as if the failure to comply had not taken place.

#### **Lay representation**

3.—(1) A party to any proceedings before the sheriff under Parts 2 and 3 of the 2002 Act may be represented by an advocate, a solicitor or, subject to paragraph (3), an authorised lay representative.

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(1) 2002 asp 17.

(2) 1980 c. 46; section 32(1) was relevantly amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 56 and Schedule 1, Part I, paragraph 9, the Solicitors (Scotland) Act 1988 (c. 42), section 6 and Schedule 1, paragraph 7, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 74 and Schedule 8, Part II, paragraph 29, and S.S.I. 2000/121.

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(2) An authorised lay representative may in representing a party do everything for the preparation and conduct of any proceedings as may be done by that party.

(3) If the sheriff finds that an authorised lay representative is—

- (a) not a suitable representative; or
- (b) not duly authorised to represent a party,

that person shall cease to represent the party.

### **Conduct of hearings**

4.—(1) Any hearing before the sheriff in an application under the 2002 Act shall be conducted as informally as the sheriff considers the circumstances permit.

(2) The procedure to be adopted at a hearing shall be such as the sheriff considers—

- (a) to be fair;
- (b) best suited to the clarification and determination of the issues; and
- (c) gives each party sufficient opportunity to put across the party's position.

### **Intimation**

5.—(1) A warrant for intimation referred to in these Rules shall be in form 1.

(2) The sheriff may order intimation to such persons other than those to whom intimation is required under these Rules as the sheriff considers appropriate.

(3) Intimation shall be made by sheriff clerk or by officer of court.

(4) The sheriff clerk or officer of court on making intimation shall complete a certificate of intimation in form 2.

### **Electronic transmission of documents**

6.—(1) Any document referred to in these Rules which requires to be—

- (a) lodged with the sheriff clerk;
- (b) intimated to a party; or
- (c) sent by the sheriff clerk,

may be in electronic or documentary form, and if in electronic form may be lodged, intimated or sent by e-mail or similar means.

(2) Paragraph (1), so far as it permits any document to be in electronic form, or if in electronic form to be lodged, intimated or sent by e-mail or similar means, does not apply to—

- (a) a certificate of intimation of service;
- (b) a citation;
- (c) a decree or extract decree of the court;
- (d) a report of an attachment;
- (e) a report of an auction; or
- (f) an attachment schedule.

(3) Where any document is lodged by e-mail or similar means the sheriff may require any principal document to be lodged.

(4) The time of lodgement, intimation or sending shall be the time when the document was sent or transmitted.

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