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SCHEDULES

^{F1}FIRST SCHEDULE

ORDINARY CAUSE RULES 1993

Textual Amendments

- F1** Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by [S.I. 1993/1956](#), para. 2, [Sch.1](#).
Sch. 1 (except rule 29.10) excluded (1.4.1997) by [S.I. 1997/291](#), [rule 3.24](#), Sch. 3
Sch. 1 extended (14.2.2000) by [S.I. 2000/124](#), [reg. 30\(5\)](#)

SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES

CHAPTER 34

ACTIONS RELATING TO HERITABLE PROPERTY

^{F1}PART I

Textual Amendments

- F1** Sch. 1 Ch. 34 Pt. 1 revoked (1.4.2008) by [Act of Sederunt \(Sheriff Court Rules Amendment\) \(Diligence\) 2008 \(S.S.I. 2008/121\)](#), [para. 2\(1\)\(a\)](#) (with para. 2(2))

PART II

REMOVING

Actions of removing where fixed term of removal

- 34.5. (1) Subject to section 21 of the Agricultural Holdings (Scotland) Act 1991 ^{M1}(notice to quit and notice of intention to quit)—
- (a) where the tenant has bound himself to remove by writing, dated and signed—
 - (i) within 12 months after the term of removal, or
 - (ii) where there is more than one ish, after the ish first in date to remove an action of removing may be raised at any time; and
 - (b) where the tenant has not bound himself, an action of removing may be raised at any time, but—
 - (i) in the case of a lease of lands exceeding two acres in extent for three years and upwards, an interval of not less than one year nor more

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than two years shall elapse between the date of notice of removal and the term of removal first in date;

- (ii) in the case of a lease of lands exceeding two acres in extent, whether written or verbal, held from year to year or under tacit relocation, or for any other period less than three years, an interval of not less than six months shall elapse between the date of notice of removal and the term of removal first in date; and
- (iii) in the case of a house let with or without land attached not exceeding two acres in extent, as also of land not exceeding two acres in extent without houses, as also of mills, fishings, shootings, and all other heritable subjects excepting land exceeding two acres in extent, and let for a year or more, 40 days at least shall elapse between the date of notice of removal and the term of removal first in date.

- (2) In any defended action of removing the sheriff may order the defender to find caution for violent profits.
- (3) In an action for declarator of irritancy and removing by a superior against a vassal, the pursuer shall call as parties the last entered vassal and such heritable creditors and holders of postponed ground burdens as are disclosed by a search for 20 years before the raising of the action, and the expense of the search shall form part of the pursuer's expenses of process.

Marginal Citations

M1 1991 c.55.

Form of notice of removal

- 34.6. (1) A notice under the following sections of [^{F2}the ^{M2}Sheriff Courts (Scotland) Act 1907] shall be in Form H2:—
- (a) section 34 (notice in writing to remove where lands exceeding two acres held on probative lease),
 - (b) section 35 (letter of removal where tenant in possession of lands exceeding two acres), and
 - (c) section 36 (notice of removal where lands exceeding two acres occupied by tenant without written lease).
- (2) A letter of removal shall be in Form H3.

Textual Amendments

F2 Words in [rule 34.6\(1\)](#) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(59\)](#)

Marginal Citations

M2 1907 c. 51

Form of notice under section 37 of [^{F3}the Act of 1907]

- 34.7. A notice under section 37 of [^{F4}the Sheriff Courts (Scotland) Act 1907] (notice of termination of tenancy) shall be in Form H4.

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Textual Amendments

- F3** Words in rule 34.7 heading substituted (1.11.1996) by S.I. 1996/2445, para. 3(60)(a)
F4 Words in rule 34.7 substituted (1.11.1996) by S.I. 1996/2445, para. 3(60)(b)

Giving notice of removal

- 34.8. (1) A notice under section 34, 35, 36, 37 or 38 of [^{F5}the Sheriff Courts (Scotland) Act 1907] (which relate to notices of removal) may be given by—
- a sheriff officer,
 - the person entitled to give such notice, or
 - the solicitor or factor of such person,
- posting the notice by registered post or the first class recorded delivery service at any post office within the United Kingdom in time for it to be delivered at the address on the notice before the last date on which by law such notice must be given, addressed to the person entitled to receive such notice, and bearing the address of that person at the time, if known, or, if not known, to the last known address of that person.
- (2) A sheriff officer may also give notice under a section of [^{F5}the Sheriff Courts (Scotland) Act 1907] mentioned in paragraph (1) in any manner in which he may serve an initial writ; and, accordingly, rule 5.4 (service within Scotland by sheriff officer) shall, with the necessary modifications, apply to the giving of notice under this paragraph as it applies to service of an initial writ.

Textual Amendments

- F5** Words in rule 34.8 substituted (1.11.1996) by S.I. 1996/2445, para. 3(61)

Evidence of notice to remove

- 34.9. (1) A certificate of the sending of notice under rule 34.8 dated and endorsed on the lease or an extract of it, or on the letter of removal, signed by the sheriff officer or the person sending the notice, his solicitor or factor, or an acknowledgement of the notice endorsed on the lease or an extract of it, or on the letter of removal, by the party in possession or his agent, shall be sufficient evidence that notice has been given.
- (2) Where there is no lease, a certificate of the sending of such notice shall be endorsed on a copy of the notice or letter of removal.

Applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970

- 34.10. (1) An application or counter-application to the sheriff under any of the following provisions of Part II of the ^{M3}Conveyancing and Feudal Reform (Scotland) Act 1970 (which relates to the standard security) shall be made by initial writ where any other remedy is craved:—
- ^{M4}section 18(2) (declarator that obligations under contract performed);
 - section 20(3) (application by creditor for warrant to let security subjects);
 - section 22(1) (objections to notice of default); and
 - section 22(3) (counter-application for remedies under the Act);

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- (e) section 24(1) (application by a creditor for warrant to exercise remedies on default); and
 - (f) section 28(1) (decree of foreclosure).
- (2) An interlocutor of the sheriff disposing of an application or counter-application under paragraph (1) shall be final and not subject to appeal except as to a question of title or any other remedy granted.

Marginal Citations

M3 1970 c.35.

M4 Section 18(2) was amended by the [Redemption of Standard Securities \(Scotland\) Act 1971 \(c.45\)](#), [section 1](#).

Service on unnamed occupiers

[^{F6}34.1(1) Subject to paragraph (2), this rule applies only to a crave for removing in an action of removing against a person or persons in possession of heritable property without right or title to possess the property.

- (2) This rule shall not apply with respect to a person who has or had a title or other right to occupy the heritable property and who has been in continuous occupation since that title or right is alleged to have come to an end.
- (3) Where this rule applies, the pursuer may apply by motion to shorten or dispense with the period of notice or other period of time in these Rules relating to the conduct of the action or the extracting of any decree.
- (4) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the pursuer shall call that person as a defender by naming him as an “occupier”.
- (5) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the initial writ shall be served (whether or not it is also served on a named person), unless the court otherwise directs, by a sheriff officer–
 - (a) affixing a copy of the initial writ and a citation in Form H5 addressed to “the occupiers” to the main door or other conspicuous part of the premises, and if practicable, depositing a copy of each of those documents in the premises; or
 - (b) in the case of land only, inserting stakes in the ground at conspicuous parts of the occupied land to each of which is attached a sealed transparent envelope containing a copy of the initial writ and a citation in Form H5 addressed to “the occupiers”.]

Textual Amendments

F6 Sch. 1 rule 34.11 inserted (2.10.2000) by [S.S.I. 2000/239](#), [para. 3\(1\)\(18\)](#)

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Applications under the Mortgage Rights (Scotland) Act 2001

[^{F7}34.1(1)] In an action to which rule 3.2(3) applies, an application under either of the following provisions of the Mortgage Rights (Scotland) Act 2001 shall be made by minute in the action:–

- (a) section 1(2)(application to the court for an order under section 2);
- (b) section 2(5)(application to vary or revoke an order or to further continue proceedings).

(2) Any such minute may be lodged by a person who is entitled to make an application even although that person has not been called as a defender and such a person may appear or be represented at any hearing to determine the application.]

Textual Amendments

F7 [Rule 34.12](#) inserted (17.1.2002) by Act of Sederunt (Amendment of Ordinary Cause Rules and Summary Applications, Statutory Applications and Appeals etc. Rules) (Applications under the Mortgage Rights (Scotland) Act 2001) 2002 (2002/7), {para. 2(5)}

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