

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2002 No. 133**

**SHERIFF COURT**

**Act of Sederunt (Small Claim Rules) 2002**

*Made* - - - - *1st March 2002*

*Coming into force* - - *10th June 2002*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971<sup>(1)</sup> and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Small Claim Rules) 2002 and shall come into force on 10th June 2002.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

**Small Claim Rules**

2. The provisions of Schedule 1 to this Act of Sederunt shall have effect for the purpose of providing rules for the form of summary cause process known as a small claim.

**Transitional provision**

3. Nothing in Schedule 1 to this Act of Sederunt shall apply to a small claim commenced before 10th June 2002 and any such claim shall proceed according to the law and practice in force immediately before that date.

**Revocation**

4. The Acts of Sederunt mentioned in column (1) of Schedule 2 to this Act of Sederunt are revoked to the extent specified in column (3) of that Schedule except in relation to any small claim commenced before 10th June 2002.

---

(1) 1971 c. 58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4) and the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2) and the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 13, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c. 48).

---

**Status:** *This is the original version (as it was originally made).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

---

Edinburgh  
1st March 2002

*W DOUGLAS CULLEN*  
Lord President, I.P.D.

## SCHEDULE 1

Paragraph 2

### SMALL CLAIM RULES 2002

## ARRANGEMENT OF RULES

### CHAPTER 1

#### Citation, interpretation and application

- 1.1 Citation, interpretation and application

### CHAPTER 2

#### Representation

- 2.1 Representation

### CHAPTER 3

#### Relief from failure to comply with rules

- 3.1 Dispensing power of sheriff

### CHAPTER 4

#### Commencement of claim

- 4.1 Form of summons
- 4.2 Statement of claim
- 4.3 Defender's copy summons
- 4.4 Authentication and effect of summons
- 4.5 Period of notice
- 4.6 Intimation

### CHAPTER 5

#### Register of Small Claims

- 5.1 Register of Small Claims

### CHAPTER 6

#### Service and return of the summons

- 6.1 Persons carrying on business under trading or descriptive name
- 6.2 Form of service
- 6.3 Service of the summons
- 6.4 Service within Scotland by sheriff officer

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

- 6.5 Service on persons outwith Scotland
- 6.6 Service where address of defender is unknown
- 6.7 Endorsation by sheriff clerk of defender's residence not necessary
- 6.8 Contents of envelope containing defender's copy summons
- 6.9 Re-service
- 6.10 Defender appearing barred from objecting to service
- 6.11 Return of summons and execution

## CHAPTER 7

### Arrestment

- 7.1 Service of schedule of arrestment
- 7.2 Arrestment before service
- 7.3 Recall and restriction of arrestment

## CHAPTER 8

### Undefended claim

- 8.1 Undefended claim
- 8.2 Application for time to pay direction or time order
- 8.3 Decree in claims to which the Hague Convention or the Civil Jurisdiction and Judgments Act 1982 apply

## CHAPTER 9

### Defended claim

- 9.1 The Hearing
- 9.2 Purpose of the Hearing
- 9.3 Conduct of hearings
- 9.4 Inspection of places and objects
- 9.5 Remit to determine matter of fact
- 9.6 Noting of evidence
- 9.7 Application for a time to pay direction or time order in defended claim
- 9.8 Pronouncement of decision

## CHAPTER 10

### Incidental applications and sists

- 10.1 General
- 10.2 Application to sist claim

## CHAPTER 11

### Counterclaim

- 11.1 Counterclaim

## CHAPTER 12

### Alteration of summons etc.

- 12.1 Alteration of summons etc.

## CHAPTER 13

### Additional defender

- 13.1 Additional defender

## CHAPTER 14

### Applications for sist of party and transference

- 14.1 Applications for sist of party and transference

## CHAPTER 15

### Transfer and remit of claims

- 15.1 Transfer to another court
- 15.2 Remit between procedures

## CHAPTER 16

### Productions and documents

- 16.1 Lodging of productions
- 16.2 Borrowing of productions
- 16.3 Documents lost or destroyed
- 16.4 Documents and productions to be retained in custody of sheriff clerk

## CHAPTER 17

### Recovery of documents and attendance of witnesses

- 17.1 Diligence for recovery of documents
- 17.2 Optional procedure before executing commission and diligence
- 17.3 Confidentiality of documents
- 17.4 Witnesses
- 17.5 Citation of witnesses by party litigants
- 17.6 Witnesses failing to attend

## CHAPTER 18

### European Court

- 18.1 Interpretation of rules 18.2 to 18.5
- 18.2 Application for reference
- 18.3 Preparation of case for reference
- 18.4 Sist of claim

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

18.5 Transmission of reference

CHAPTER 19

Abandonment

19.1 Abandonment of claim

CHAPTER 20

Decree by default

20.1 Decree by default

CHAPTER 21

Decrees, extracts, execution and variation

21.1 Decree

21.2 Decree for alternative claim for payment

21.3 Taxes on funds under control of the court

21.4 Correction of interlocutor or note

21.5 Extract of decree

21.6 Expenses

21.7 Charge

21.8 Service of charge where address of defender is unknown

21.9 Diligence on decree in claim for delivery

21.10 Applications in same claim for variation etc. of decree

CHAPTER 22

Recall of decree

22.1 Recall of decree

CHAPTER 23

Appeals

23.1 Appeals

23.2 Effect of and abandonment of appeal

23.3 Hearing of appeal

23.4 Appeal in relation to a time to pay direction

23.5 Sheriff to regulate interim possession

CHAPTER 24

Management of damages payable to persons under legal disability

24.1 Orders for payment and management of money

24.2 Methods of management

24.3 Subsequent orders

24.4 Management of money paid to sheriff clerk

24.5 Management of money payable to children

CHAPTER 25

Electronic transmission of documents

25.1 Extent of provision

25.2 Time of lodgement

**APPENDIX 1 FORMS**

1. Small claim summons
- 1a Small claim summons – defender’s copy – claim for or including payment of money (where time to pay direction or time order may be applied for)
- 1b Small claim summons – defender’s copy – all other claims
2. Claim in a summons for payment of money
3. Claim in a summons for delivery
4. Claim in a summons for implement of an obligation
5. Form of service
6. Certificate of execution of service
7. Postal service – form of notice
8. Service on person whose address is unknown – form of advertisement
9. Service on person whose address is unknown – form of notice to be displayed on the walls of court
10. Recall or restriction of arrestment – certificate authorising the release of arrested funds or property
11. Minute – no form of response lodged by defender
12. Minute – pursuer not objecting to application for a time to pay direction or time order
13. Minute – pursuer opposing an application for a time to pay direction or time order
14. Counterclaim – form of intimation by sheriff clerk where pursuer fails to appear
15. Order by the court and certificate in optional procedure for recovery of documents
16. Witness citation
- 16a Certificate of execution of witness citation
17. Reference to the European Court
18. Extract decree – (basic)
- 18a Extract decree – payment
- 18b Extract – delivery
- 18c Extract decree – delivery – payment failing delivery
- 18d Extract decree – recovery of possession of moveable property
- 18e Extract decree – recovery of possession of moveable property – payment failing recovery
- 18f Extract decree – *ad factum praestandum*
- 18g Extract decree – *ad factum praestandum* – payment upon failure to implement obligation
- 18h Extract decree – absolutor
- 18i Extract decree – dismissal
19. Certificate by sheriff clerk – service of charge where address of defender is unknown
20. Minute for recall of decree
- 20a Minute for recall of decree – service copy
21. Note of appeal to the sheriff principal

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

22. Application for leave to appeal against time to pay direction
23. Appeal against time to pay direction
24. Form of receipt for money paid to sheriff clerk

## APPENDIX 2 GLOSSARY

Signature  
Explanatory Note

## CHAPTER 1

### *Citation, interpretation and application*

#### **Citation, interpretation and application**

1.1.—(1) These Rules may be cited as the Small Claim Rules 2002.

(2) In these rules—

“the 1971 Act” means the Sheriff Courts (Scotland) Act 1971(2);

“the 1975 Act” means the Litigants in Person (Costs and Expenses) Act 1975(3);

“authorised lay representative” means a person to whom section 32(1) of the Solicitors (Scotland) Act 1980(4) (offence to prepare writs) does not apply by virtue of section 32(2) (a) of that Act;

“small claim” has the meaning assigned to it by section 35(2) of the 1971 Act(5);

“summary cause” has the meaning assigned to it by section 35(1) of the 1971 Act(6).

(3) Any reference in these Rules to a specified rule shall be construed as a reference to the rule bearing that number in these Rules, and a reference to a specified paragraph, sub-paragraph or head shall be construed as a reference to the paragraph, sub-paragraph or head so numbered or lettered in the provision in which that reference occurs.

(4) A form referred to by number in these Rules means the form so numbered in Appendix 1 to these rules or a form substantially of the same effect with such variation as circumstances may require.

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

(6) These Rules shall apply to a small claim.

## CHAPTER 2

### *Representation*

#### **Representation**

2.1.—(1) A party may be represented by an advocate, solicitor or, subject to paragraph (3), an authorised lay representative.

(2) An authorised lay representative may in representing a party do everything for the preparation and conduct of a small claim as may be done by an individual conducting his own claim.

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

---

(2) 1971 c. 58.

(3) 1975 c. 47.

(4) 1980 c. 46. Section 32 was amended by the Solicitors (Scotland) Act 1988 (c. 42), Schedule 1, paragraph 7, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 29(6) and S.S.I. 2000/121.

(5) Section 35(2) was substituted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18(1).

(6) Section 35(1) was amended by S.I. 1976/900, 1981/842 and 1988/1993.

- (a) not a suitable person to represent the party; or
  - (b) not in fact authorised to do so,
- that person must cease to represent the party.

### CHAPTER 3

#### *Relief from failure to comply with Rules*

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

**3.1.**—(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 he thinks fit.

(2) Where the sheriff relieves a party from the consequences of the failure to comply with a provision in these Rules under paragraph (1), he may make such order as he thinks fit to enable the claim to proceed as if the failure to comply with the provision had not occurred.

### CHAPTER 4

#### *Commencement of claim*

##### **Form of summons**

- 4.1.**—(1) A small claim shall be commenced by summons, which shall be in Form 1.
- (2) The claim in a small claim summons may be in one of Forms 2 to 4.

##### **Statement of claim**

**4.2.** The pursuer must insert a statement of his claim in the summons to give the defender fair notice of the claim; and the statement must include—

- (a) details of the basis of the claim including relevant dates; and
- (b) if the claim arises from the supply of goods or services, a description of the goods or services and the date or dates on or between which they were supplied and, where relevant, ordered.

##### **Defender's copy summons**

- 4.3.** A copy summons shall be served on the defender—
- (a) in Form 1a where—
    - (i) the small claim is for, or includes a claim for, payment of money; and
    - (ii) an application for a time to pay direction under the Debtors (Scotland) Act 1987(7) or time order under the Consumer Credit Act 1974(8) may be applied for;
- or
- (b) in Form 1b in every other case.

##### **Authentication and effect of summons**

**4.4.**—(1) A summons shall be authenticated by the sheriff clerk in some appropriate manner except where—

---

(7) 1987 c. 18.

(8) 1974 c. 39.

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

- (a) he refuses to do so for any reason;
  - (b) the defender's address is unknown; or
  - (c) a party seeks to alter the normal period of notice specified in rule 4.5(2).
- (2) If any of paragraphs (1)(a), (b) or (c) applies, the summons shall be authenticated by the sheriff, if he thinks it appropriate.
- (3) The authenticated summons shall be warrant for—
- (a) service on the defender; and
  - (b) where the appropriate warrant has been sought in the summons—
    - (i) arrestment on the dependence; or
    - (ii) arrestment to found jurisdiction,as the case may be.

### **Period of notice**

**4.5.**—(1) A claim shall proceed after the appropriate period of notice of the summons has been given to the defender prior to the return day.

- (2) The appropriate period of notice shall be—
- (a) 21 days where the defender is resident or has a place of business within Europe; or
  - (b) 42 days where the defender is resident or has a place of business outwith Europe.

(3) The sheriff may, on cause shown, shorten or extend the period of notice on such conditions as to the form of service as he may direct, but in any case where the period of notice is reduced at least two days' notice must be given.

(4) If a period of notice expires on a Saturday, Sunday, public or court holiday, the period of notice shall be deemed to expire on the next day on which the sheriff clerk's office is open for civil court business.

(5) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882<sup>(9)</sup>, where service is by post the period of notice shall run from the beginning of the day next following the date of posting.

- (6) The sheriff clerk shall insert in the summons—
- (a) the return day, which is the last day on which the defender may return a form of response to the sheriff clerk; and
  - (b) the hearing date, which is the date set for the hearing of the claim.

### **Intimation**

**4.6.** Any provision in these Rules requiring papers to be sent to or any intimation to be made to any party or applicant shall be construed as if the reference to the party or applicant included a reference to the solicitor representing that party or applicant.

---

<sup>(9)</sup> 1882 c. 77. Section 4 was repealed in part by S.I. 1994/1443.

## CHAPTER 5

### *Register of Small Claims*

#### **Register of Small Claims**

**5.1.**—(1) The sheriff clerk shall keep a register of claims and incidental applications made in claims, which shall be known as the Register of Small Claims.

(2) There shall be entered in the Register of Small Claims a note of all claims, together with a note of all minutes under rule 22.1(1) (recall of decree) and the entry for each claim or minute must contain the following particulars where appropriate:—

- (a) the names, designations and addresses of the parties;
- (b) whether the parties were present or absent at any hearing, including an inspection, and the names of their representatives;
- (c) the nature of the claim;
- (d) the amount of any claim;
- (e) the date of issue of the summons;
- (f) the method of service;
- (g) the return day;
- (h) the hearing date;
- (i) whether a form of response was lodged and details of it;
- (j) the period of notice if shortened or extended in accordance with rule 4.5(3);
- (k) details of any minute by the pursuer regarding a time to pay direction or time order, or minute by the pursuer requesting decree or other order;
- (l) details of any interlocutors issued;
- (m) details of the final decree and the date of it; and
- (n) details of any variation or recall of a decree by virtue of the Debtors (Scotland) Act 1987.

(3) There shall be entered in the Register of Small Claims, in the entry for the claim to which they relate, details of incidental applications including, where appropriate—

- (a) whether parties are present or absent at the hearing of the application, and the names of their representatives;
- (b) the nature of the application; and
- (c) the interlocutor issued or order made.

(4) The Register of Small Claims must be—

- (a) authenticated in some appropriate manner by the sheriff in respect of each day any order is made or application determined in a claim; and
- (b) open for inspection during normal business hours to all concerned without fee.

(5) The Register of Small Claims may be kept in electronic or documentary form.

## CHAPTER 6

### *Service and return of the summons*

#### **Persons carrying on business under trading or descriptive name**

**6.1.**—(1) A person carrying on a business under a trading or descriptive name may sue or be sued in such trading or descriptive name alone.

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

(2) An extract of a decree pronounced in a claim against such person under such trading or descriptive name shall be a valid warrant for diligence against that person.

(3) A summons, decree, charge or other document following upon such summons or decree in a claim in which a person carrying on business under a trading or descriptive name sues or is sued in that name may be served—

- (a) at any place of business or office at which such business is carried on within the sheriffdom of the sheriff court in which the claim is brought; or
- (b) if there is no place of business within that sheriffdom, at any place where such business is carried on (including the place of business or office of the clerk or secretary of any company, corporation or association or firm).

### **Form of service**

**6.2.**—(1) Subject to rule 6.6 (service where address of defender is unknown), a form of service in Form 5 must be enclosed with the defender’s copy summons.

(2) After service has been effected a certificate of execution of service in Form 6 must be prepared and signed by the person effecting service.

(3) When service is effected by a sheriff officer the certificate of execution of service must specify whether the service was personal or, if otherwise, the mode of service and the name of any person to whom the defender’s copy summons was delivered.

(4) If service is effected in accordance with rule 6.4(2) (service within Scotland by sheriff officer where personal service etc. unsuccessful) the certificate must also contain a statement of—

- (a) the mode of service previously attempted; and
- (b) the circumstances which prevented the service from being effected.

### **Service of the summons**

**6.3.**—(1) Subject to rule 6.5 (service on persons outwith Scotland), a copy summons may be served on the defender—

- (a) by the pursuer’s solicitor, a sheriff officer or the sheriff clerk sending it by first class recorded delivery post; or
- (b) in accordance with rule 6.4 (service within Scotland by sheriff officer).

(2) On the face of the envelope used for postal service in terms of this rule, there must be printed or written a notice in Form 7.

(3) The certificate of execution of service in the case of postal service must have annexed to it any relevant postal receipt.

(4) If the pursuer requires the sheriff clerk to effect service on his behalf by virtue of section 36A of the 1971 Act (pursuer not being a partnership, body corporate or acting in a representative capacity)<sup>(10)</sup> under paragraph (1), he may require the sheriff clerk to supply him with a copy of the summons.

### **Service within Scotland by sheriff officer**

**6.4.**—(1) A sheriff officer may validly serve any summons, decree, charge or other document following upon such summons or decree issued in a claim by—

- (a) personal service; or

---

<sup>(10)</sup> Section 36A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 18.

- (b) leaving it in the hands of—
  - (i) an inmate at the person’s dwelling place; or
  - (ii) an employee at the person’s place of business.
- (2) If a sheriff officer has been unsuccessful in effecting service in accordance with paragraph (1), he may, after making diligent inquiries, serve the document—
  - (a) by depositing it in the person’s dwelling place or place of business by means of a letter box or by other lawful means; or
  - (b) by affixing it to the door of the person’s dwelling place or place of business.
- (3) If service is effected in accordance with paragraph (2), the sheriff officer must thereafter send by ordinary post to the address at which he thinks it most likely that the person may be found a letter containing a copy of the document.
- (4) In proceedings in or following on a claim, it shall be necessary for any sheriff officer to be accompanied by a witness except where service, citation or intimation is to be made by post.
- (5) Where the firm which employs the sheriff officer has in its possession—
  - (a) the document or a copy of it certified as correct by the pursuer’s solicitor or the sheriff clerk, the sheriff officer may serve the document upon the defender without having the document or certified copy in his possession (in which case he shall if required to do so by the person on whom service is executed and within a reasonable time of being so required, show the document or certified copy to the person); or
  - (b) a certified copy of the interlocutor pronounced allowing service of the document, the sheriff officer may serve the document without having in his possession the certified copy interlocutor if he has in his possession a facsimile copy of the certified copy interlocutor (which he shall show, if required, to the person on whom service is executed).
- (6) If the pursuer requires the sheriff clerk to effect service of the summons on his behalf by virtue of section 36A of the 1971 Act, the sheriff clerk may instruct a sheriff officer to effect service in accordance with this rule on payment to the sheriff clerk by the pursuer of the fee prescribed by order of the Scottish Ministers.

### **Service on persons outwith Scotland**

**6.5.**—(1) If any summons, decree, charge or other document following upon such summons or decree, or any charge or warrant, requires to be served outwith Scotland on any person, it must be served in accordance with this rule.

- (2) If the person has a known home or place of business in—
    - (a) England and Wales, Northern Ireland, the Isle of Man or the Channel Islands; or
    - (b) any country with which the United Kingdom does not have a convention providing for service of writs in that country,
- the document must be served either—
- (i) by posting in Scotland a copy of the document in question in a registered letter addressed to the person at his residence or place of business; or
  - (ii) in accordance with the rules for personal service under the domestic law of the place in which the document is to be served.
- (3) Subject to paragraph (4), if the document requires to be served in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965<sup>(11)</sup> or the European Convention on Jurisdiction

---

<sup>(11)</sup> Cmnd. 3986 (1969).

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

and Enforcement of Judgments in Civil and Commercial Matters as set out in Schedule 1 or 3C to the Civil Jurisdiction and Judgments Act 1982(12), it must be served—

- (a) by a method prescribed by the internal law of the country where service is to be effected for the service of documents in domestic actions upon persons who are within its territory;
- (b) by or through a British consular authority at the request of the Secretary of State for Foreign and Commonwealth Affairs;
- (c) by or through a central authority in the country where service is to be effected at the request of the Secretary of State for Foreign and Commonwealth Affairs;
- (d) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered letter addressed to the person at his residence; or
- (e) where the law of the country in which service is to be effected permits, service by an huissier, other judicial officer or competent official of the country where service is to be made.

(4) If the document requires to be served in a country to which Council Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters(13) applies, service may be effected by a method prescribed in paragraph (3) (b) or (c) only in exceptional circumstances.

(5) If the document requires to be served in a country with which the United Kingdom has a convention on the service of writs in that country other than the conventions specified in paragraph (3) or the regulation specified in paragraph (4), it must be served by one of the methods approved in the relevant convention.

(6) Subject to paragraph (9), a document which requires to be posted in Scotland for the purposes of this rule must be posted by a solicitor, the sheriff clerk or a sheriff officer, and the form for service and the certificate of execution of service must be in Forms 5 and 6 respectively.

(7) On the face of the envelope used for postal service under this rule there must be written or printed a notice in Form 7.

(8) Where service is effected by a method specified in paragraph (3)(b) or (c), the pursuer must—

- (a) send a copy of the summons and warrant for service with form of service attached, or other document, with a request for service to be effected by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and
- (b) lodge in process a certificate of execution of service signed by the authority which has effected service.

(9) If service is effected by the method specified in paragraph (3)(e), the pursuer must—

- (a) send to the official in the country in which service is to be effected a copy of the summons and warrant for service, with citation attached, or other document, with a request for service to be effected by delivery to the defender or his residence; and
- (b) lodge in process a certificate of execution of service by the official who has effected service.

(10) Where service is executed in accordance with paragraph (2)(b)(ii) or (3)(a) other than on another party in—

- (a) the United Kingdom;
- (b) the Isle of Man; or
- (c) the Channel Islands,

(12) 1982 c. 27. Schedule 1 was substituted by S.I. 1990/2591 and by S.I. 2000/1894. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 1 and Schedule 1 and amended by S.I. 2000/1824.

(13) O.J. No. L 160, 30.06.00. p.37.

the party executing service must lodge a certificate stating that the form of service employed is in accordance with the law of the place where the service was executed.

(11) A certificate lodged in accordance with paragraph (10) shall be given by a person who is conversant with the law of the country concerned and who—

- (a) practises or has practised law in that country; or
- (b) is a duly accredited representative of the government of that country.

(12) Every summons or document and every citation and notice on the face of the envelope referred to in paragraph (7) must be accompanied by a translation in an official language of the country in which service is to be executed, unless English is an official language of that country.

(13) A translation referred to in paragraph (12) must be certified as a correct translation by the person making it and the certificate must contain the full name, address and qualifications of the translator and be lodged along with the execution of such service.

(14) If the pursuer requires the sheriff clerk to effect service on his behalf under this rule by virtue of section 36A of the 1971 Act (pursuer not a partnership, body corporate or acting in a representative capacity)—

- (a) the cost must be borne by the pursuer;
- (b) no service shall be instructed by the sheriff clerk until such cost has been paid to him by the pursuer; and
- (c) the pursuer may require the sheriff clerk to supply him with a copy of the summons.

#### **Service where address of defender is unknown**

**6.6.—**(1) If the defender's address is unknown to the pursuer and cannot reasonably be ascertained by him, the sheriff may grant warrant to serve the summons—

- (a) by the publication of an advertisement in Form 8 in a newspaper circulating in the area of the defender's last known address; or
- (b) by displaying on the walls of court a copy of a notice in Form 9.

(2) Where a summons is served in accordance with paragraph (1), the period of notice, which must be fixed by the sheriff, shall run from the date of publication of the advertisement or display on the walls of court, as the case may be.

(3) If service is to be effected under paragraph (1), the pursuer must lodge a defender's copy summons with the sheriff clerk.

(4) The defender may uplift from the sheriff clerk the copy summons lodged in accordance with paragraph (3).

(5) If the pursuer requires the sheriff clerk to effect service on his behalf under paragraph (1) by virtue of section 36A of the 1971 Act (pursuer not a partnership, body corporate or acting in a representative capacity)—

- (a) the cost of any advertisement required under sub-paragraph (a) of that paragraph must be borne by the pursuer;
- (b) no advertisement required under sub-paragraph (a) of that paragraph shall be instructed by the sheriff clerk until such cost has been paid to him by the pursuer; and
- (c) the pursuer may require the sheriff clerk to supply him with a copy of the summons.

(6) A copy of the newspaper containing the advertisement referred to in paragraph (1)(a) must be lodged with the sheriff clerk unless the sheriff clerk instructed such advertisement.

(7) If display on the walls of court is required under paragraph (1)(b), the pursuer must supply to the sheriff clerk for that purpose a completed copy of Form 9.

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

(8) If service has been made under this rule and thereafter the defender's address becomes known, the sheriff may allow the summons to be amended and, if appropriate, grant warrant for re-service subject to such conditions as he thinks fit.

#### **Endorsation by sheriff clerk of defender's residence not necessary**

6.7. Any summons, decree, charge or other document following upon a summons or decree may be served, enforced or otherwise lawfully executed in Scotland without endorsation by a sheriff clerk and, if executed by a sheriff officer, may be so executed by a sheriff officer of the court which granted the summons, or by a sheriff officer of the sheriff court district in which it is to be executed.

#### **Contents of envelope containing defender's copy summons**

- 6.8. Nothing must be included in the envelope containing a defender's copy summons except—
- (a) the copy summons;
  - (b) a response or other notice in accordance with these Rules; and
  - (c) any other document approved by the sheriff principal.

#### **Re-service**

6.9.—(1) If it appears to the sheriff that there has been any failure or irregularity in service upon a defender, the sheriff may order the pursuer to re-serve the summons on such conditions as he thinks fit.

(2) If re-service has been ordered in accordance with paragraph (1) or rule 6.6(8), the claim shall proceed thereafter as if it were a new claim.

#### **Defender appearing barred from objecting to service**

6.10.—(1) A person who appears in any claim shall not be entitled to state any objection to the regularity of the execution of service or intimation on him and his appearance shall remedy any defect in such service or intimation.

(2) Nothing in paragraph (1) shall preclude a party pleading that the court has no jurisdiction.

#### **Return of summons and execution**

6.11.—(1) If—

- (a) someone other than the sheriff clerk has served the summons; and
- (b) the case requires to call in court for any reason on the hearing date,

the pursuer must return the summons and the certificate of execution of service to the sheriff clerk at least two days before the hearing date.

(2) If the case does not require to call in court on the hearing date, the pursuer must return the certificate of execution of service to the sheriff clerk by the date mentioned in paragraph (1) above.

(3) If the pursuer fails to return the summons or certificate of execution of service in accordance with paragraph (1) or (2) as appropriate, the sheriff may dismiss the claim.

## CHAPTER 7

### *Arrestment*

#### **Service of schedule of arrestment**

7.1. If a schedule of arrestment has not been personally served on an arrestee, the arrestment shall have effect only if a copy of the schedule is also sent by registered post or the first class recorded delivery service to—

- (a) the last known place of residence of the arrestee; or
- (b) if such place of residence is not known, or if the arrestee is a firm or corporation, to the arrestee's principal place of business if known, or, if not known, to any known place of business of the arrestee,

and the sheriff officer must, on the certificate of execution, certify that this has been done and specify the address to which the copy of the schedule was sent.

#### **Arrestment before service**

7.2.—(1) An arrestment to found jurisdiction or an arrestment on the dependence of a claim used prior to service shall cease to have effect, unless the summons is served within 21 days from the date of execution of the arrestment.

(2) When such an arrestment as is referred to in paragraph (1) has been executed, the party using it must forthwith report the execution to the sheriff clerk.

#### **Recall and restriction of arrestment**

7.3.—(1) The sheriff may order that an arrestment on the dependence of a claim or counterclaim shall cease to have effect if the party whose funds or property are arrested—

- (a) pays into court; or
- (b) finds caution to the satisfaction of the sheriff clerk in respect of,

the sum claimed together with the sum of £50 in respect of expenses.

(2) Without prejudice to paragraph (1), a party whose funds or property are arrested may at any time apply to the sheriff to exercise his powers to recall or restrict an arrestment on the dependence of a claim or counterclaim, with or without consignation or caution.

(3) An application made under paragraph (3) must be intimated by the applicant to the party who instructed the arrestment.

(4) On payment into court or the finding of caution to the satisfaction of the sheriff clerk in accordance with paragraph (1), or if the sheriff recalls or restricts an arrestment on the dependence of a claim in accordance with paragraph (2) and any condition imposed by the sheriff has been complied with, the sheriff clerk must—

- (a) issue to the party whose funds or property are arrested a certificate in Form 10 authorising the release of any sum or property arrested to the extent ordered by the sheriff; and
- (b) send a copy of the certificate to—
  - (i) the party who instructed the arrestment; and
  - (ii) the party who has possession of the funds or property that are arrested.

## CHAPTER 8

### *Undefended claim*

#### **Undefended claim**

**8.1.**—(1) Where the defender has not lodged a form of response on or before the return day, the claim shall not require to call in court.

(2) Where paragraph (1) applies, the pursuer must lodge a minute in Form 11 before the sheriff clerk's office closes for business on the second day before the date set for the hearing.

(3) Where the pursuer has lodged a minute in accordance with paragraph (2), the sheriff may grant decree or other competent order sought in terms of that minute.

(4) Where the pursuer has not lodged a minute in accordance with paragraph (2), the sheriff must dismiss the claim.

#### **Application for time to pay direction or time order**

**8.2.**—(1) If the defender admits the claim, he may, where competent—

(a) make an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) or a time order by completing the appropriate parts of the Form 1a and lodging it with the sheriff clerk on or before the return day; or

(b) lodge a form of response indicating that he admits the claim and intends to apply orally for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) or time order.

(2) Where the defender has lodged an application in terms of paragraph (1)(a), the pursuer may intimate that he does not object to the application by lodging a minute in Form 12 before the time the sheriff clerk's office closes for business on the day occurring two days before the hearing date stating that he does not object to the defender's application and seeking decree.

(3) If the pursuer intimates in accordance with paragraph (2) that he does not object to the application—

(a) the sheriff may grant decree on the hearing date;

(b) the parties need not attend; and

(c) the action will not call in court.

(4) If the pursuer wishes to oppose the application for a time to pay direction or time order made in accordance with paragraph (1)(a), he must lodge a minute in Form 13 before the time the sheriff clerk's office closes for business on the day occurring two days before the hearing date.

(5) Where the pursuer objects to an application in terms of paragraph (1)(a) or the defender has lodged a form of response in accordance with paragraph (1)(b), the action shall call in court on the hearing date when the parties may appear and the sheriff must decide the application and grant decree accordingly.

(6) The sheriff shall decide an application in accordance with paragraph (5) whether or not any of the parties appear.

(7) Where the defender has lodged an application in terms of paragraph (1)(a) and the pursuer fails to proceed in accordance with either of paragraphs (2) or (4) the sheriff may dismiss the claim.

## **Decree in claims to which the Hague Convention or the Civil Jurisdiction and Judgments Act 1982 apply**

**8.3.**—(1) If the summons has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965(**14**) applies, decree must not be granted until it is established to the satisfaction of the sheriff that the requirements of Article 15 of that Convention have been complied with.

(2) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree until it has been shown that the defender has been able to receive the summons in sufficient time to arrange his defence or that all necessary steps have been taken to that end.

(3) For the purposes of paragraph (2)—

- (a) the question whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982(**15**);
- (b) the question whether a person is domiciled in another Contracting State shall be determined in accordance with Article 52 of the Convention in Schedule 1 or 3C to that Act; and
- (c) the term “Contracting State” has the meaning assigned in section 1 of that Act(**16**).

## **CHAPTER 9**

### ***Defended claim***

#### **The Hearing**

**9.1.**—(1) Where a defender intends to—

- (a) challenge the jurisdiction of the court;
- (b) state a defence (including, where appropriate, a counterclaim); or
- (c) dispute the amount of the claim,

he must complete the form of response part of Form 1a or 1b as appropriate indicating that intention and lodge it with the sheriff clerk on or before the return day.

(2) Where the defender has lodged a form of response in accordance with paragraph (1) the claim will call in court for a hearing (“the Hearing”).

(3) The Hearing shall be held on the hearing date which shall be seven days after the return day.

(4) If the claim is not resolved at the Hearing, the sheriff may continue the Hearing to such other date as he considers to be appropriate.

(5) The defender must attend or be represented at the Hearing and the sheriff shall note any challenge, defence or dispute, as the case may be, on the summons.

(6) Where at the Hearing the defender—

- (a) does not appear or is not represented; and
- (b) the pursuer is present or is represented,

decree may be granted against the defender in terms of the summons.

(7) Where at the Hearing—

---

(14) Cmnd. 3986 (1969).

(15) 1982 c. 27; sections 41 and 42 were amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2, paragraphs 16 and 17 respectively.

(16) Section 1 was amended by S.I. 1990/2591, the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 2 and S.I. 2000/1824.

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

- (a) the pursuer does not appear or is not represented; and
- (b) the defender is present or represented,

the sheriff may grant decree of dismissal.

(8) If all parties fail to appear at the Hearing, the sheriff shall, unless sufficient reason appears to the contrary, dismiss the claim.

### **Purpose of the Hearing**

**9.2.**—(1) If, at the Hearing, the sheriff is satisfied that the claim is incompetent or that there is a patent defect of jurisdiction, he must grant decree of dismissal in favour of the defender or, if appropriate, transfer the claim in terms of rule 15.1(2).

(2) At the Hearing, the sheriff shall—

- (a) ascertain the factual basis of the claim and any defence, and the legal basis on which the claim and defence are proceeding; and
- (b) seek to negotiate and secure settlement of the claim between the parties.

(3) If the sheriff cannot secure settlement of the claim between the parties, he shall—

- (a) identify and note on the summons the issues of fact and law which are in dispute;
- (b) note on the summons any facts which are agreed; and
- (c) if possible reach a decision on the whole dispute on the basis of the information before him.

(4) Where evidence requires to be led for the purposes of reaching a decision on the dispute, the sheriff shall—

- (a) direct parties to lead evidence on the disputed issues of fact which he has noted on the summons;
- (b) indicate to the parties the matters of fact that require to be proved, and may give guidance on the nature of the evidence to be led; and
- (c) fix a hearing on evidence for a later date for that purpose.

### **Conduct of hearings**

**9.3.**—(1) Any hearing in a claim shall be conducted in accordance with the following paragraphs of this rule.

(2) A hearing shall be conducted as informally as the circumstances of the claim permit.

(3) 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 before him; and
- (c) gives each party sufficient opportunity to present his case.

(4) Before proceeding to hear evidence, the sheriff shall explain to the parties the form of procedure which he intends to adopt.

(5) Having considered the circumstances of the parties and whether (and to what extent) they are represented, the sheriff—

- (a) may, in order to assist resolution of the disputed issues of fact, put questions to parties and to witnesses; and
- (b) shall (if he considers it necessary for the fair conduct of the hearing) explain any legal terms or expressions which are used.

(6) Evidence will normally be taken on oath or affirmation but the sheriff may dispense with that requirement if it appears reasonable to do so.

#### **Inspection of places and objects**

**9.4.**—(1) If, at any hearing, a disputed issue noted by the sheriff is the quality or condition of an object, the sheriff may inspect the object in the presence of the parties or their representatives in court or, if it is not practicable to bring the object to court, at the place where the object is located.

(2) The sheriff may, if he considers it appropriate, inspect any place that is material to the disputed issues in the presence of the parties or their representatives.

#### **Remit to determine matter of fact**

**9.5.**—(1) The sheriff may, where parties agree, remit to any suitable person to report on any matter of fact.

(2) Where a remit is made under paragraph (1) above, the report of such person shall be final and conclusive with respect to the matter of fact which is the subject of the remit.

(3) A remit shall not be made under paragraph (1) of this rule unless parties have previously agreed the basis upon which the fees, if any, of such person shall be met.

#### **Noting of evidence**

**9.6.** The sheriff must make notes of the evidence at a hearing for his own use and must retain these notes until after any appeal has been disposed of.

#### **Application for time to pay direction or time order in defended claim**

**9.7.** A defender in a claim which proceeds as defended may, where it is competent to do so, make an incidental application or apply orally at any hearing, at any time before decree is granted, for a time to pay direction (including where appropriate, an order recalling or restricting an arrestment on the dependence) or a time order.

#### **Pronouncement of decision**

**9.8.**—(1) The sheriff must, where practicable, give his decision and a brief statement of his reasons at the end of the hearing of a claim, or he may reserve judgment.

(2) If the sheriff reserves judgment, he must, within 28 days of the hearing, give his decision in writing together with a brief note of his reasons, and the sheriff clerk must send a copy to the parties.

(3) After giving his judgment, the sheriff must—

- (a) deal with the question of expenses and, where appropriate, make an award of expenses; and
- (b) grant decree as appropriate.

(4) The decree of the sheriff shall be a final decree.

### **CHAPTER 10**

#### ***Incidental applications and sists***

#### **General**

**10.1.**—(1) Except where otherwise provided, any incidental application in a claim may be made—

- (a) orally with the leave of the sheriff during any hearing of the claim; or

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

- (b) by lodging the application in written form with the sheriff clerk.
- (2) An application lodged in accordance with paragraph (1)(b) may only be heard after not less than two days' notice has been given to the other party.
- (3) A party who is not—
  - (a) a partnership or a body corporate; or
  - (b) acting in a representative capacity,and is not represented by a solicitor, may require the sheriff clerk to intimate to the other party a copy of an incidental application.
- (4) Where the party receiving notice of an incidental application lodged in accordance with paragraph (1)(b) intimates to the sheriff clerk and the party making the application that it is not opposed, the application shall not require to call in court unless the sheriff so directs.
- (5) Any intimation under paragraph (4) shall be made not later than noon on the day before the application is due to be heard.

#### **Application to sist claim**

- 10.2.**—(1) Where an incidental application to sist a claim is made, the reason for the sist—
  - (a) shall be stated by the party seeking the sist; and
  - (b) shall be recorded in the Register of Small Claims and on the summons.
- (2) Where a claim has been sisted, the sheriff may, after giving parties an opportunity to be heard, recall the sist.

### **CHAPTER 11**

#### ***Counterclaim***

#### **Counterclaim**

- 11.1.**—(1) If a defender intends to state a counterclaim he must—
  - (a) indicate that on the form of response; and
  - (b) state the counterclaim—
    - (i) in writing on the form of response; or
    - (ii) orally at the Hearing.
- (2) Where a defender states a counterclaim in accordance with paragraph (1)(b)(i) he must at the same time send a copy of the form of response to—
  - (a) the pursuer; and
  - (b) any other party.
- (3) Where a counterclaim stated in accordance with paragraph (1)(b)(i) seeks warrant for arrestment on the dependence or arrestment to found jurisdiction—
  - (a) the sheriff clerk may authenticate it in some appropriate manner; or
  - (b) the defender may apply at the Hearing for the warrant to be authenticated, and the authenticated warrant shall be warrant for—
    - (i) arrestment on the dependence; or
    - (ii) arrestment to found jurisdiction,as the case may be.

(4) Where the sheriff clerk refuses to authenticate a warrant on a counterclaim in accordance with paragraph (3)(a) for any reason, the sheriff may authenticate it.

(5) Where a defender has indicated in terms of paragraph (1)(a) that he intends to state a counterclaim orally at the Hearing the sheriff may continue the Hearing to allow an answer to the counterclaim to be stated.

(6) The defender may state a counterclaim after–

- (a) the Hearing; or
- (b) any continuation of the Hearing,

as the case may be, only with the leave of the sheriff.

(7) If a counterclaim has been stated orally at any hearing at which the pursuer fails to appear or be represented the sheriff may continue that hearing after noting the counterclaim and the factual basis of it to allow the pursuer to appear.

(8) Intimation of a continued hearing fixed under paragraph (7) shall be given to the pursuer by the sheriff clerk in Form 14 advising him that if he fails to appear or be represented at the continued hearing decree may be granted in terms of the counterclaim.

## CHAPTER 12

### *Alteration of summons etc.*

#### **Alteration of summons etc.**

**12.1.**—(1) The sheriff may, on the incidental application of a party allow amendment of the summons, form of response or any counterclaim, and adjust the note of disputed issues at any time before final judgment is pronounced on the merits.

(2) In an undefended claim, the sheriff may order the amended summons to be re-served on the defender on such period of notice as he thinks fit.

## CHAPTER 13

### *Additional defender*

#### **Additional defender**

**13.1.**—(1) Any person who has not been called as a defender may apply by incidental application to the sheriff for leave to enter a claim as a defender, and to state a defence.

(2) An application under this rule must specify–

- (a) the applicant's title and interest to enter the claim; and
- (b) the grounds of the defence which he proposes to state.

(3) On the lodging of an application under this rule–

- (a) the sheriff must fix a date for hearing the application; and
- (b) the applicant must forthwith serve a copy of the application and of the order for a hearing on the parties to the claim.

(4) After hearing the applicant and any party to the claim the sheriff may, if he is satisfied that the applicant has shown title and interest to enter the claim, grant the application.

(5) Where an application is granted under paragraph (4)–

- (a) the applicant shall be treated as a defender; and
- (b) the claim shall proceed against him as if was the Hearing in terms of rule 9.2.

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

## CHAPTER 14

### *Applications for sist of party and transference*

#### **Application for sist of party and transference**

**14.1.**—(1) If a party dies or becomes legally incapacitated while a claim is depending, any person claiming to represent that party or his estate may apply by incidental application to be sisted as a party to the claim.

(2) If a party dies or becomes legally incapacitated while a claim is depending and the provisions of paragraph (1) are not invoked, any other party may apply by incidental application to have the claim transferred in favour of or against, as the case may be, any person who represents that party or his estate.

## CHAPTER 15

### *Transfer and remit of claims*

#### **Transfer to another court**

**15.1.**—(1) The sheriff may transfer a claim to any other sheriff court, whether in the same sheriffdom or not, if the sheriff considers it expedient to do so.

(2) If the sheriff is satisfied that the court has no jurisdiction, he may transfer the claim to any sheriff court in which it appears to the sheriff that it ought to have been brought.

(3) A claim so transferred shall proceed in all respects as if it had been brought originally in the court to which it is transferred.

#### **Remit between procedures**

**15.2.**—(1) If the sheriff makes a direction that a claim is to be treated as an ordinary cause, he must, at the time of making that direction—

- (a) direct the pursuer to lodge an initial writ, and intimate it to every other party, within 14 days of the date of the direction;
- (b) direct the defender to lodge defences within 28 days of the date of the direction; and
- (c) fix a date and time for an Options Hearing and that date shall be the first suitable court day occurring not sooner than ten weeks, or such lesser period as he considers appropriate, after the last date for lodging the initial writ.

(2) If the sheriff directs that a claim is to be treated as a summary cause he must specify the next step of procedure to be followed.

(3) If the sheriff directs that an ordinary cause or a summary cause is to be treated as a claim under these rules it shall call for the Hearing held in terms of rule 9.1(2).

## CHAPTER 16

### *Productions and documents*

#### **Lodging of productions**

**16.1.**—(1) A party who intends to rely at a hearing at which evidence is to be led, upon any documents or articles in his possession, which are reasonably capable of being lodged with the court, must—

- (a) lodge them with the sheriff clerk together with a list detailing the items no later than 14 days before the hearing; and

- (b) at the same time send a copy of the list to the other party.
- (2) The documents referred to in paragraph (1) include any affidavit or other written statement admissible under section 2(1) of the Civil Evidence (Scotland) Act 1988<sup>(17)</sup>.
- (3) Subject to paragraph (4), only documents or articles produced—
  - (a) in accordance with paragraph (1);
  - (b) at an earlier hearing; or
  - (c) under rule 17.2(3) or (4),may be used or put in evidence.
- (4) Documents other than those mentioned in paragraph (3) may be used or put in evidence only with the—
  - (a) consent of the parties; or
  - (b) permission of the sheriff on cause shown, and on such terms as to expenses or otherwise as to him seem proper.

### **Borrowing of productions**

- 16.2.**—(1) Any productions borrowed must be returned not later than noon on the day preceding the date of any hearing.
- (2) A receipt for any production borrowed must be entered in the list of productions and that list must be retained by the sheriff clerk.
- (3) Subject to paragraph (4), productions may be borrowed only by—
  - (a) a solicitor; or
  - (b) his authorised clerk for whom he shall be responsible.
- (4) A party litigant or an authorised lay representative may borrow a production only with permission of the sheriff and subject to such conditions as the sheriff may impose.
- (5) Productions may be inspected within the office of the sheriff clerk during normal business hours, and copies may be obtained by a party litigant, where practicable, from the sheriff clerk.

### **Documents lost or destroyed**

- 16.3.**—(1) This rule applies to any—
  - (a) summons;
  - (b) form of response;
  - (c) counterclaim;
  - (d) Register of Small Claims; or
  - (e) other document lodged with the sheriff clerk in connection with a claim.
- (2) Where any document mentioned in paragraph (1) is—
  - (a) lost; or
  - (b) destroyed,a copy of it, authenticated in such manner as the sheriff may require, may be substituted and shall, for the purposes of the claim including the use of diligence, be equivalent to the original.

---

(17) 1988 c. 32.

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

### **Documents and productions to be retained in custody of sheriff clerk**

**16.4.**—(1) This rule applies to all documents or other productions which have at any time been lodged or referred to during a hearing.

(2) The sheriff clerk must retain in his custody any document or other production mentioned in paragraph (1) until—

- (a) after the expiry of the period during which an appeal is competent; and
- (b) any appeal lodged has been disposed of.

(3) Each party who has lodged productions in a claim shall—

- (a) after the final determination of the claim, where no appeal has been lodged, within 14 days after the appeal period has expired; or
- (b) within 14 days after the disposal of any appeal lodged on the final determination of the claim,

uplift the productions from the sheriff clerk.

(4) Where any production has not been uplifted as required by paragraph (3), the sheriff clerk shall intimate to—

- (a) the solicitor who lodged the production; or
- (b) where no solicitor is acting, the party himself or such other party as seems appropriate,

that if he fails to uplift the production within 28 days after the date of such intimation, it will be disposed of in such manner as the sheriff directs.

## **CHAPTER 17**

### ***Recovery of documents and attendance of witnesses***

#### **Diligence for recovery of documents**

**17.1.**—(1) At any time after a summons has been served, a party may make an incidental application in writing to the sheriff to grant commission and diligence to recover documents.

(2) A party who makes an application in accordance with paragraph (1) must list in the application the documents which he wishes to recover.

(3) The sheriff may grant commission and diligence to recover those documents in the list mentioned in paragraph (2) which he considers relevant to the claim.

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

**17.2.**—(1) Any party who has obtained a commission and diligence for the recovery of documents may, at any time before executing it, serve by first class recorded delivery post on the person from whom the documents are sought to be recovered (or on his known solicitor or solicitors) an order with certificate attached in Form 15.

(2) If in a claim the party in whose favour the commission and diligence has been granted is not—

- (a) a partnership or body corporate; or
- (b) acting in a representative capacity,

and is not represented by a solicitor, service under paragraph (1) must be effected by the sheriff clerk posting a copy of the order together with a certificate in Form 15 by first class recorded delivery post or, on payment of the fee prescribed by the Scottish Ministers by order, by sheriff officer.

(3) Documents recovered in response to an order under paragraph (1) must be sent to, and retained by, the sheriff clerk who shall, on receiving them, advise the parties that the documents are in his possession and may be examined within his office during normal business hours.

- (4) If the party who served the order is not satisfied that—
  - (a) full production has been made under the specification; or
  - (b) that adequate reasons for non-production have been given,

he may execute the commission and diligence in normal form, notwithstanding his adoption in the first instance of the procedure in paragraph (1) above.

(5) Documents recovered under this rule may be submitted as evidence at any hearing without further formality, and rule 17.3(3) and (4) shall apply to such documents.

### **Confidentiality of documents**

**17.3.**—(1) In any claim where a party has obtained a commission and diligence to recover documents and the documents have been produced either—

- (a) before the execution of the commission and diligence; or
- (b) following execution of the commission and diligence,

confidentiality may be claimed for any document produced.

(2) Where confidentiality is claimed under paragraph (1), the documents in respect of which confidentiality is claimed shall be enclosed in a separate, sealed packet.

(3) A sealed packet referred to in paragraph (2) shall not be opened except by authority of the sheriff obtained on the application of the party who sought the commission and diligence.

(4) Before the sheriff grants an application made in accordance with paragraph (3), he shall offer to hear the party or parties from whose possession the documents specified in the commission and diligence were obtained.

### **Witnesses**

**17.4.**—(1) A party shall be responsible for securing the attendance of his witnesses or havers at a hearing and shall be personally liable for their expenses.

(2) The summons or the copy served on the defender shall be sufficient warrant for the citation of witnesses or havers.

(3) The citation of a witness or haver must be in Form 16 and the certificate of execution of citation must be in Form 16a.

(4) The period of notice given to witnesses or havers cited in terms of paragraph (3) must be not less than seven days.

- (5) A witness or haver shall be cited—
  - (a) by registered post or the first class recorded delivery service by the solicitor for the party on whose behalf he is cited;
  - (b) by a sheriff officer—
    - (i) personally;
    - (ii) by a citation being left with a resident at the person's dwelling place or an employee at his place of business;
    - (iii) by depositing it in that person's dwelling place or place of business;
    - (iv) by affixing it to the door of that person's dwelling place or place of business; or
    - (v) by registered post or the first class recorded delivery service.

(6) Where service is effected under paragraph 5(b)(iii) or (iv), the sheriff officer shall, as soon as possible after such service, send by ordinary post to the address at which he thinks it most likely that the person may be found, a letter containing a copy of the citation.

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

### **Citation of witnesses by party litigants**

**17.5.**—(1) Where a party to a claim is a party litigant he shall—

- (a) not later than 28 days before any hearing on evidence apply to the sheriff to fix caution for expenses in such sum as the sheriff considers reasonable having regard to the number of witnesses he proposes to cite and the period for which they may be required to attend court; and
- (b) before instructing a solicitor or a sheriff officer to cite a witness, find the sum fixed in accordance with paragraph (1)(a).

(2) A party litigant who does not intend to cite all the witnesses referred to in his application under paragraph (1)(a) may apply for variation of the amount of caution.

### **Witnesses failing to attend**

**17.6.**—(1) A hearing must not be adjourned solely on account of the failure of a witness to appear unless the sheriff, on cause shown, so directs.

(2) A witness or haver who fails without reasonable excuse to answer a citation after having been properly cited and offered his travelling expenses if he has asked for them may be ordered by the sheriff to pay a penalty not exceeding £250.

(3) The sheriff may grant decree for payment of a penalty imposed under paragraph (2) above in favour of the party on whose behalf the witness or haver was cited.

(4) The sheriff may grant warrant for the apprehension of the witness or haver and for bringing him to court.

(5) A warrant mentioned in paragraph (4) shall be effective in any sheriffdom without endorsement and the expenses of it may be awarded against the witness or haver.

## **CHAPTER 18**

### ***European Court***

#### **Interpretation of rules 18.2 to 18.5**

**18.1.**—(1) In rules 18.2 to 18.5—

“the European Court” means the Court of Justice of the European Communities;

“reference” means a reference to the European Court for—

- (a) a preliminary ruling under Article 234 of the E.E.C. Treaty, Article 150 of the Euratom Treaty or Article 41 of the E.C.S.C. Treaty; or
- (b) a ruling on the interpretation of the Conventions, as defined in section 1(1) of the Civil Jurisdiction and Judgments Act 1982, under Article 3 of Schedule 2 to that Act<sup>(18)</sup>.

(2) The expressions “E.E.C. Treaty”, “Euratom Treaty” and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972<sup>(19)</sup>.

#### **Application for reference**

**18.2.**—(1) The sheriff may, on the incidental application of a party, or of his own accord, make a reference.

(2) A reference must be made in the form of a request for a preliminary ruling of the European Court in Form 17.

---

<sup>(18)</sup> Schedule 2 was substituted by S.I. 1990/2591 and 2000/1824.

<sup>(19)</sup> 1972 c. 68.

### **Preparation of case for reference**

**18.3.**—(1) If the sheriff decides that a reference shall be made, he must within four weeks draft a reference.

(2) On the reference being drafted, the sheriff clerk must send a copy to each party.

(3) Within four weeks after the date on which copies of the draft have been sent to parties, each party may—

(a) lodge with the sheriff clerk; and

(b) send to every other party,

a note of any adjustments he seeks to have made in the draft reference.

(4) Within 14 days after the date on which any such note of adjustments may be lodged, the sheriff, after considering any such adjustments, must make and sign the reference.

(5) The sheriff clerk must forthwith intimate the making of the reference to each party.

### **Sist of claim**

**18.4.**—(1) Subject to paragraph (2), on a reference being made, the claim must, unless the sheriff when making the reference otherwise orders, be sisted until the European Court has given a preliminary ruling on the question referred to it.

(2) The sheriff may recall a sist made under paragraph (1) for the purpose of making an interim order which a due regard to the interests of the parties may require.

### **Transmission of reference**

**18.5.** A copy of the reference, certified by the sheriff clerk, must be transmitted by the sheriff clerk to the Registrar of the European Court.

## **CHAPTER 19**

### ***Abandonment***

#### **Abandonment of claim**

**19.1.**—(1) At any time prior to decree being granted, the pursuer may offer to abandon the claim.

(2) If the pursuer offers to abandon, the sheriff clerk must assess the expenses payable by the pursuer to the defender on such basis as the sheriff may direct subject to the provisions of section 36B of the 1971 Act<sup>(20)</sup> and rule 21.6, and the claim must be continued to the first appropriate court occurring not sooner than 14 days thereafter.

(3) If before the continued diet the pursuer makes payment to the defender of the amount fixed under paragraph (2), the sheriff must dismiss the action unless the pursuer consents to absolvitor.

(4) If before the continued diet the pursuer fails to pay the amount fixed under paragraph (2), the defender shall be entitled to decree of absolvitor with expenses.

---

<sup>(20)</sup> Section 36B was substituted by section 18(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73).

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

## CHAPTER 20

### *Decree by default*

#### **Decree by default**

**20.1.**—(1) If, after the sheriff has fixed a hearing on evidence under rule 9.2(4), any party fails to appear or be represented at a hearing, the sheriff may grant decree by default.

(2) If all parties fail to appear or be represented at a hearing referred to at paragraph (1) the sheriff must, unless sufficient reason appears to the contrary, dismiss the claim and any counterclaim.

(3) If, after a defence has been stated, a party fails to implement an order of the court, the sheriff may, after giving him an opportunity to be heard, grant decree by default.

(4) The sheriff shall not grant decree by default solely on the ground that a party has failed to appear at the hearing of an incidental application.

## CHAPTER 21

### *Decrees, extracts, execution and variation*

#### **Decree**

**21.1.**—(1) The sheriff must not grant decree against—

- (a) a defender in respect of a claim; or
- (b) a pursuer in respect of a counterclaim,

under any provision of these Rules unless satisfied that a ground of jurisdiction exists.

#### **Decree for alternative claim for payment**

**21.2.**—(1) If the sheriff has granted decree for—

- (a) delivery;
- (b) recovery of possession of moveable property; or
- (c) implement of an obligation,

and the defender fails to comply with that decree, the pursuer may lodge with the sheriff clerk an incidental application for decree in terms of the alternative claim for payment.

(2) If the pursuer lodges an incidental application in terms of paragraph (1), he must intimate it to the defender at or before the time it is lodged with the sheriff clerk.

(3) The pursuer must appear at the hearing of an incidental application under paragraph (1).

#### **Taxes on funds under control of the court**

**21.3.** In a claim in which money has been consigned into court under the Sheriff Court Consignations (Scotland) Act 1893(21), no decree, warrant or order for payment to any person shall be granted until there has been lodged with the sheriff clerk a certificate by an authorised officer of the Inland Revenue stating that all taxes or duties payable to the Commissioners of Inland Revenue have been paid or satisfied.

---

(21) 1893 c. 44.

### **Correction of interlocutor or note**

**21.4.** At any time before extract, the sheriff may correct any clerical or incidental error in an interlocutor or note attached to it.

### **Extract of decree**

**21.5.—(1)** Unless the sheriff on application authorises earlier extract, extract of a decree signed by the sheriff clerk may be issued only after the lapse of 14 days from the granting of the decree.

(2) An application for early extract shall be made by incidental application.

(3) In a claim where an appeal has been lodged, the extract may not be issued until the appeal has been disposed of.

(4) The extract decree—

- (a) may be written on the summons or on a separate paper;
- (b) may be in one of Forms 18 to 18i; and
- (c) shall be warrant for all lawful execution.

### **Expenses**

**21.6.—(1)** This rule applies, subject to section 36B of the 1971 Act, to the determination of expenses—

(a) in a claim, where the defender has—

- (i) not stated a defence;
- (ii) having stated a defence, has not proceeded with it; or
- (iii) having stated a defence, has not acted in good faith as to its merits; and

(b) in an appeal to the sheriff principal.

(2) Subject to paragraphs (3) to (5), the sheriff clerk must, with the approval of the sheriff, assess the amount of expenses including the fees and outlays of witnesses awarded in any claim, in accordance with the statutory table of fees of solicitors appropriate to a summary cause.

(3) Paragraph (4) applies to a party who—

- (a) represents himself;
- (b) is represented by an authorised lay representative; or
- (c) is not an individual and—
  - (i) is represented by an authorised lay representative; and
  - (ii) if unrepresented could not represent itself.

(4) A party mentioned in paragraph (3) who, if he had been represented by a solicitor or advocate would have been entitled to expenses, may be awarded any outlays or expenses to which he might be found entitled by virtue of the 1975 Act or any enactment under that Act.

(5) In every case including an appeal where expenses are awarded, the sheriff clerk shall hear the parties or their solicitors on the claims for expenses including fees, if any, and outlays.

(6) Except where the sheriff principal or the sheriff has reserved judgment or where he orders otherwise, the hearing on the claim for expenses must take place immediately upon the decision being pronounced.

(7) When that hearing is not held immediately, the sheriff clerk must—

- (a) fix the date, time and place when he shall hear the parties or their solicitors; and
- (b) give all parties at least 14 days' notice in writing of the hearing so fixed.

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

- (8) The party awarded expenses must—
- (a) lodge his account of expenses in court at least seven days prior to the date of any hearing fixed under paragraph (7); and
  - (b) at the same time forward a copy of that account to every other party.
- (9) The sheriff clerk must—
- (a) fix the amount of the expenses; and
  - (b) report his decision to the sheriff principal or the sheriff in open court for his approval at a diet which the sheriff clerk has intimated to the parties.
- (10) The sheriff principal or the sheriff, after hearing parties or their solicitors if objections are stated, must pronounce final decree including decree for payment of expenses as approved by him.
- (11) In an appeal, the sheriff may pronounce decree under paragraph (10) on behalf of the sheriff principal.
- (12) Failure by—
- (a) any party to comply with any of the foregoing provisions of this rule; or
  - (b) the successful party or parties to appear at the hearing on expenses,
- must be reported by the sheriff clerk to the sheriff principal or the sheriff at a diet which the sheriff clerk has intimated to the parties.
- (13) In either of the circumstances mentioned in paragraphs (12)(a) or (b), the sheriff principal or sheriff must, unless sufficient cause be shown, pronounce decree on the merits of the claim and find no expenses due to or by any party.
- (14) A decree pronounced under paragraph (13) shall be held to be the final decree for the purposes of these Rules.
- (15) The sheriff principal or sheriff may, if he thinks fit, on the application of the solicitor of any party to whom expenses may be awarded, made at or before the time of the final decree being pronounced, grant decree in favour of that solicitor for the expenses of the claim.

### **Charge**

- 21.7.**—(1) The period for payment specified in any charge following on a decree for payment granted in a claim shall be—
- (a) 14 days if the person on whom it is served is within the United Kingdom; and
  - (b) 28 days if he is outside the United Kingdom or his whereabouts are unknown.
- (2) The period in respect of any other form of charge on a decree granted in a claim shall be 14 days.

### **Service of charge where address of defender is unknown**

- 21.8.**—(1) If the address of a defender is not known to the pursuer, a charge shall be deemed to have been served on the defender if it is—
- (a) served on the sheriff clerk of the sheriff court district where the defender's last known address is located; and
  - (b) displayed by the sheriff clerk on the walls of court for the period of the charge.
- (2) On receipt of such a charge, the sheriff clerk must display it on the walls of court and it must remain displayed for the period of the charge.
- (3) The period specified in the charge shall run from the first date on which it was displayed on the walls of court.

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

(4) On the expiry of the period of charge, the sheriff clerk must endorse a certificate in Form 19 on the charge certifying that it has been displayed in accordance with this rule and must thereafter return the charge to the sheriff officer by whom service was executed.

#### **Diligence on decree in claim for delivery**

**21.9.**—(1) In a claim for delivery, the court may, when granting decree, grant warrant to search for and take possession of goods and to open shut and lockfast places.

(2) A warrant granted under paragraph (1) shall only apply to premises occupied by the defender.

#### **Applications in same claim for variation, etc. of decree**

**21.10.**—(1) If by virtue of any enactment the sheriff, without a new action being initiated, may order that—

- (a) a decree granted be varied, discharged or rescinded; or
- (b) the execution of that decree in so far as it has not already been executed be sisted or suspended,

the party requesting the sheriff to make such an order must do so by lodging a minute to that effect, setting out briefly the reasons for the application.

(2) On the lodging of such a minute by the pursuer, the sheriff clerk must grant warrant for service upon the defender (provided that the pursuer has returned the extract decree).

(3) On the lodging of such a minute by the defender, the sheriff clerk must grant warrant for service upon the pursuer ordaining him to return the extract decree and may, where appropriate, grant interim sist of execution of the decree.

(4) Subject to paragraph (5), the minute shall not be heard in court unless seven days' notice of the minute and warrant has been given to the other parties by the party lodging the minute.

(5) The sheriff may, on cause shown, alter the period of seven days referred to in paragraph (4) but may not reduce it to less than two days.

(6) This rule shall not apply to any proceedings under the Debtors (Scotland) Act 1987(22) or to proceedings which may be subject to the provisions of that Act.

## **CHAPTER 22**

### ***Recall of decree***

#### **Recall of decree**

**22.1.**—(1) A party may apply for recall of a decree granted under rule 8.1(3), rule 9.1(6), (7) or (8) or rule 11.1(8) by lodging with the sheriff clerk a minute in Form 20, explaining the party's failure to appear and in the case of—

- (a) a defender; or
- (b) where decree has been granted in respect of a counterclaim, a pursuer,

stating, where he has not already done so—

- (i) his proposed defence, in the case of a defender; or
- (ii) his proposed answer, in the case of a pursuer responding to a counterclaim.

(2) A party may apply for recall of a decree in the same claim on one occasion only.

---

(22) 1987 c. 18.

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

(3) Except in relation to an application to which paragraph (4) applies, a minute by a pursuer under paragraph (1) must be lodged within 14 days of the grant of the decree.

(4) A minute lodged by—

- (a) a pursuer in respect of a decree granted in terms of a counterclaim; or
- (b) a defender,

shall be lodged—

- (i) if the claim has been served outwith the United Kingdom under rule 6.5, within a reasonable time after he had knowledge of the decree against him or in any event before the expiry of one year from the date of that decree; or
- (ii) in any other case, within 14 days of the execution of a charge or execution of arrestment, whichever first occurs, following on the grant of decree.

(5) On the lodging of a minute for recall of a decree, the sheriff clerk must fix a date, time and place for a hearing of the minute.

(6) If a hearing has been fixed under paragraph (5), the party seeking recall must serve upon the other party not less than seven days before the date fixed for the hearing—

- (a) a copy of the minute in Form 20a; and
- (b) a note of the date, time and place of the hearing.

(7) If the party seeking recall—

- (a) is not a partnership or body corporate;
- (b) is not acting in a representative capacity; and
- (c) is not represented by a solicitor,

the sheriff clerk must assist that party to complete and lodge the minute for recall and must arrange service of it—

- (i) by first class recorded delivery post; or
- (ii) on payment of the fee prescribed by the Scottish Ministers by order, by sheriff officer.

(8) At a hearing fixed under paragraph (5), the sheriff shall recall the decree so far as not implemented and the hearing shall then proceed as the Hearing held in terms of rule 9.1(2).

(9) A minute for recall of a decree, when lodged and served in terms of this rule, shall have the effect of preventing any further action being taken by the other party to enforce the decree.

(10) On receipt of the copy minute for recall of a decree, any party in possession of an extract decree must return it forthwith to the sheriff clerk.

(11) If it appears to the sheriff that there has been any failure or irregularity in service of the minute for recall of a decree, he may order re-service of the minute on such conditions as he thinks fit.

## CHAPTER 23

### *Appeals*

#### **Appeals**

**23.1.**—(1) An appeal to the sheriff principal, other than an appeal to which rule 23.4 applies, must be by note of appeal in Form 21 and lodged with the sheriff clerk not later than 14 days after the date of final decree—

- (a) requesting a stated case; and
- (b) specifying the point of law upon which the appeal is to proceed.

(2) The appellant must, at the same time as lodging a note of appeal, intimate a copy of it to every other party.

(3) The sheriff must, within 28 days of the lodging of a note of appeal, issue a draft stated case containing—

- (a) findings in fact and law or, where appropriate, a narrative of the proceedings before him;
- (b) appropriate questions of law; and
- (c) a note stating the reasons for his decisions in law,

and the sheriff clerk must send a copy of the draft stated case to the parties.

(4) Within 14 days of the issue of the draft stated case—

- (a) a party may lodge with the sheriff clerk a note of any adjustments which he seeks to make;
- (b) a respondent may state any point of law which he wishes to raise in the appeal; and
- (c) the note of adjustment and, where appropriate, point of law must be intimated to every other party.

(5) The sheriff may, on the motion of a party or of his own accord, and must where he proposes to reject any proposed adjustment, allow a hearing on adjustments and may provide for such further procedure under this rule prior to the hearing of the appeal as he thinks fit.

(6) The sheriff must, within 14 days after—

- (a) the latest date on which a note of adjustments has been or may be lodged; or
- (b) where there has been a hearing on adjustments, that hearing,

and after considering such note and any representations made to him at the hearing, state and sign the case.

(7) If the sheriff is temporarily absent from duty for any reason, the sheriff principal may extend any period specified in paragraphs (3) or (6) for such period or periods as he considers reasonable.

(8) The stated case signed by the sheriff must include questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate.

(9) After the sheriff has signed the stated case, the sheriff clerk must—

- (a) place before the sheriff principal all documents and productions in the case together with the stated case; and
- (b) send to the parties a copy of the stated case together with a written note of the date, time and place of the hearing of the appeal.

### **Effect of and abandonment of appeal**

**23.2.**—(1) When a note of appeal has been lodged, it may be insisted on by all other parties in the claim although they may not have lodged separate appeals.

(2) After a note of appeal has been lodged, the appellant shall not be at liberty to withdraw it, except—

- (a) with the consent of the other parties which may be incorporated in a joint minute; or
- (b) by leave of the sheriff principal and on such terms as to expenses or otherwise as to him seem proper.

### **Hearing of appeal**

**23.3.**—(1) The sheriff principal shall hear the parties or their solicitors orally on all matters connected with the appeal including liability for expenses, but if any party moves that the question

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

of liability for expenses be heard after the sheriff principal has given his decision the sheriff principal may grant that motion.

(2) In the hearing of an appeal, a party shall not be allowed to raise questions of law of which notice has not been given except on cause shown and subject to such conditions as to expenses or otherwise as the sheriff principal may consider appropriate.

(3) The sheriff principal may permit a party to amend any question of law or to add any new question in accordance with paragraph (2).

(4) The sheriff principal may—

- (a) adhere to or vary the decree appealed against;
- (b) recall the decree appealed against and substitute another therefor; or
- (c) remit, if he considers it desirable, to the sheriff, for any reason other than to have further evidence led.

(5) At the conclusion of the hearing, the sheriff principal may either pronounce his decision or reserve judgment in which case he must give his decision in writing within 28 days and the sheriff clerk must forthwith intimate it to the parties.

#### **Appeal in relation to a time to pay direction**

**23.4.**—(1) This rule applies to appeals to the sheriff principal or to the Court of Session which relate solely to any application in connection with a time to pay direction.

(2) Rules 23.1, 23.2 and 23.3(2) and (3) shall not apply to appeals under this rule.

(3) An application for leave to appeal against a decision in an application for a time to pay direction or any order connected therewith must—

- (a) be made in Form 22, within seven days of that decision, to the sheriff who made the decision; and
- (b) must specify the question of law upon which the appeal is to proceed.

(4) If leave to appeal is granted, the appeal must be lodged in Form 23 and intimated by the appellant to every other party within 14 days of the order granting leave and the sheriff must state in writing his reasons for his original decision.

(5) An appeal under this rule to the sheriff principal shall proceed in accordance with paragraphs (1), (4) and (5) of rule 23.3.

#### **Sheriff to regulate interim possession**

**23.5.**—(1) Notwithstanding an appeal, the sheriff shall have power—

- (a) to regulate all matters relating to interim possession;
- (b) to make any order for the preservation of any property to which the claim relates or for its sale, if perishable;
- (c) to make any order for the preservation of evidence; or
- (d) to make in his discretion any interim order which a due regard for the interests of the parties may require.

(2) An order under paragraph (1) shall not be subject to review except by the appellate court at the hearing of the appeal.

## CHAPTER 24

### *Management of damages payable to persons under legal disability*

#### **Orders for payment and management of money**

**24.1.**—(1) In a claim of damages in which a sum of money becomes payable, by virtue of a decree or an extra-judicial settlement, to or for the benefit of a person under legal disability (other than a person under the age of 18 years), the sheriff shall make such order regarding the payment and management of that sum for the benefit of that person as he thinks fit.

(2) Any order required under paragraph (1) shall be made on the granting of decree for payment or of absolvitor.

#### **Methods of management**

**24.2.** In making an order under rule 24.1(1), the sheriff may—

(a) order the money to be paid to—

(i) the Accountant of Court, or

(ii) the guardian of the person under legal disability,

as trustee, to be applied, invested or otherwise dealt with and administered under the directions of the sheriff for the benefit of the person under legal disability;

(b) order the money to be paid to the sheriff clerk of the sheriff court district in which the person under legal disability resides, to be applied, invested or otherwise dealt with and administered, under the directions of the sheriff of that district, for the benefit of the person under legal disability; or

(c) order the money to be paid directly to the person under legal disability.

#### **Subsequent orders**

**24.3.**—(1) If the sheriff has made an order under rule 24.1(1), any person having an interest may apply for an order under rule 24.2, or any other order for the payment or management of the money, by incidental application.

(2) An application for directions under rule 24.2(a) or (b) may be made by any person having an interest by incidental application.

#### **Management of money paid to sheriff clerk**

**24.4.**—(1) A receipt in Form 24 by the sheriff clerk shall be a sufficient discharge in respect of the amount paid to him under rules 24.1 to 24.3.

(2) The sheriff clerk shall, at the request of any competent court, accept custody of any sum of money in an claim of damages ordered to be paid to, applied, invested or otherwise dealt with by him, for the benefit of a person under legal disability.

(3) Any money paid to the sheriff clerk under rules 24.1 to 24.3 must be paid out, applied, invested or otherwise dealt with by the sheriff clerk only after such intimation, service and enquiry as the sheriff may order.

(4) Any sum of money invested by the sheriff clerk under rules 24.1 to 24.3 must be invested in a manner in which trustees are authorised to invest by virtue of the Trustee Investments Act 1961(23).

---

(23) 1961 c. 62.

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

## **Management of money payable to children**

**24.5.** If the sheriff has made an order under section 13 of the Children (Scotland) Act 1995<sup>(24)</sup>, an application by a person for an order by virtue of section 11(1)(d) of that Act<sup>(25)</sup> must be made in writing.

## **CHAPTER 25**

### *Electronic transmission of documents*

#### **Extent of provision**

**25.1.**—(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) does not apply to any certificate of execution of service, citation or arrestment, or to a decree or extract decree of the court.

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

#### **Time of lodgement**

**25.2.** The time of lodgement, intimation or sending shall be the time when the document was sent or transmitted.

---

(24) 1995 c. 36.

(25) Section 11 was amended by S.I. 1996/2203 and S.S.I. 2001/36.

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

## APPENDIX 1

### Forms

Rule 1.1(4)

FORM 1 Summons

4.1(1)



**FORM 1**

**OFFICIAL USE ONLY**  
SUMMONS No.

### Small Claim Summons

**Action for/of**

(state type, e.g., payment of money)

Sheriff Court (name, address, e-mail and telephone no.)	<b>1</b>											
Name and address of person making the claim ( <b>pursuer</b> )	<b>2</b>											
Name and address of person against whom claim made ( <b>defender</b> )	<b>3</b>											
Claim (form of decree or other order sought)	<b>4</b>											
Name, full address, telephone no. and e-mail address of pursuer's solicitor or authorised representative (if any) acting in the claim	<b>5</b>											
Fee Details (Enter these only if forms sent electronically to court)	<b>5a</b>											
*Sheriff Clerk to delete as appropriate	<b>6</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"><b>RETURN DAY</b></td> <td style="width: 10%; text-align: center;"><b>20</b></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td><b>HEARING DATE</b></td> <td style="text-align: center;"><b>20</b></td> <td style="text-align: center;"><b>at</b></td> <td style="text-align: center;"><b>am.</b></td> <td></td> </tr> </table> <p>The pursuer is authorised to serve a copy summons in Form *1a/1b, on the defender(s) not less than *21/42 days before the <b>RETURN DAY</b> shown in the box above. The summons is warrant for service, *arrestment on the dependence and for citation of witnesses to attend court on any future date at which evidence may be led.</p>	<b>RETURN DAY</b>	<b>20</b>				<b>HEARING DATE</b>	<b>20</b>	<b>at</b>	<b>am.</b>	
<b>RETURN DAY</b>	<b>20</b>											
<b>HEARING DATE</b>	<b>20</b>	<b>at</b>	<b>am.</b>									
Court Authentication												

**NOTE:** The pursuer should complete boxes 1 to 5a, and the statement of claim on page 2. The sheriff clerk will complete box 6.

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

---

**7. STATE DETAILS OF CLAIM HERE OR ATTACH A STATEMENT OF CLAIM**  
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)

The details of the claim are:

**FOR OFFICIAL USE ONLY**

Sheriff's notes as to:

1. Issues of fact and law in dispute
2. Facts agreed
3. Directions and guidance upon evidence to be led

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

4.3(a)



**FORM 1a**

**Small Claim Summons  
Action for/of**

(state type, e.g., payment of money)

OFFICIAL USE ONLY  
SUMMONS No.

**DEFENDER'S COPY: Claim for or including payment of money (where time to pay direction or time order may be applied for)**

Sheriff Court  
(name, address, e-mail  
and telephone no.) **1** \_\_\_\_\_

Name and address  
of person making  
the claim (**pursuer**) **2** \_\_\_\_\_

Name and address of  
person against whom  
claim made (**defender**) **3** \_\_\_\_\_

Claim (form of decree or  
other order sought – *complete  
as in section 1 of Form 1*) **4** \_\_\_\_\_

Name, full address, telephone  
no, and e-mail address of  
pursuer's solicitor or  
authorised lay representative  
(if any) acting in the claim **5** \_\_\_\_\_

<b>6</b>	<b>RETURN DAY</b>	<b>20</b>		
	<b>HEARING DATE</b>	<b>20</b>	<b>at</b>	<b>am.</b>

**NOTE:** You will find details of claim on page 2.

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

**7. STATE DETAILS OF CLAIM HERE OR ATTACH A STATEMENT OF CLAIM  
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)**

The details of the claim are:

**8. SERVICE ON DEFENDER**

(Place)

(Date)

To:

(defender)

You are hereby served with a copy of the above summons.

Solicitor / sheriff officer  
*delete as appropriate*

**NOTE:** The pursuer should complete boxes 1 to 6 on page 1, the statement of claim in box 7 on page 2 and section A on page 5 before service on the defender. The person serving the summons will complete box 8.

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

### **WHAT MUST I DO ABOUT THIS SUMMONS?**

**Decide whether you wish to dispute the claim and/or whether you owe any money or not, and how you wish to proceed.** Then, look at the 4 options listed below. Find the one which covers your decision and follow the instructions given there. You will find the RETURN DAY and the HEARING DATE on page one of the summons.

**Written guidance on small claims procedure can be obtained from the sheriff clerk at any sheriff clerk's office. Further advice can also be obtained by contacting any of the following:**

**Citizen's Advice Bureau, Consumer Advice Centre, Trading Standards or Consumer Protection Department or a Solicitor. (Addresses can be found in the guidance booklets.)**

### **OPTIONS**

**1. ADMIT LIABILITY FOR THE CLAIM and settle it with the pursuer now.**

If you wish to avoid the possibility of a court order passing against you, you should settle the claim (including any question of expenses) with pursuer or his representative **in good time before the return day**. Please do not send any payment direct to the court. Any payment should be made to the pursuer or his representative.

**2. ADMIT LIABILITY FOR THE CLAIM and make a written application to pay by instalments or by deferred lump sum.**

Complete box 1 of section B on page 5 of this form and return pages 5 and 6 to the court **to arrive on or before the return day**. You should then contact the court to find out whether or not the pursuer has accepted your offer. If he has not accepted it, the case will then call on the hearing date and the court will decide how the amount claimed is to be paid.

If the claim is for delivery, or implement of an obligation, and you wish to pay the alternative amount claimed, you may also wish to make an application about the method of payment. If so, follow the instructions in the previous paragraph.

**NOTE: If you fail to return pages 5 and 6 as directed, or if, having returned them, you fail to attend or are not represented at the hearing date if the case is to call, the court will almost certainly decide the claim in your absence.**

**3. ADMIT LIABILITY FOR THE CLAIM and attend at court to make application to pay by instalments or deferred lump sum.**

Complete box 2 on page 5. Return page 5 to the court so that it arrives **on or before the return day**.

If the claim is for delivery, or implement of an obligation, you may wish to pay the alternative amount claimed, and attend at court to make an application about the method of payment.

**You must attend personally, or be represented, at court on the hearing date.** Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

**NOTE: If you fail to return page 5 as directed, or if, having returned it, you fail to attend or are not represented on the hearing date, the court will almost certainly decide the claim in your absence.**

PAGE 3

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

**4. DISPUTE THE CLAIM and attend at court to do any of the following:**

- Challenge the jurisdiction of the court.
- State a defence.
- State a counterclaim.
- Dispute the amount of the claim.

Complete box 3 on page 5. Return page 5 to the court so that it arrives **on or before the return day**. **You must attend personally, or be represented, at court on the hearing date.**

Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

**NOTE: If you fail to return page 5 as directed, or if, having returned it, you fail to attend or are not represented on the hearing date, the court will almost certainly decide the claim in your absence.**

**WRITTEN NOTE OF PROPOSED COUNTERCLAIM**

You may send to the court a written note of any counterclaim. If you do, you should also send a copy to the pursuer. You must also attend or be represented at court on the hearing date.

**PLEASE NOTE**

If you do nothing about this summons, the court will almost certainly, where appropriate, grant decree against you and order you to pay to the pursuer the sum claimed, including any interest and expenses found due.

If the summons is for delivery, or impement of an obligation, the court may order you to deliver the article or perform the duty in question within a specified period. If you fail to do so, the court may order you to pay to the pursuer the alternative amount claimed, including interest and expenses.

**YOU ARE ADVISED TO KEEP PAGES 1 AND 2, AS THEY MAY BE USEFUL AT A LATER STAGE OF THE CASE.**

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

<b>SECTION A</b> This section must be completed before service	_____	Summons No
	_____	Return Day
	_____	Hearing Date
	<b>SHERIFF COURT</b> (Including address)	_____
	_____	_____
	_____	_____
	PURSUER'S FULL NAME AND ADDRESS	DEFENDER'S FULL NAME AND ADDRESS

**SECTION B**

**DEFENDER'S RESPONSE TO THE SUMMONS**

**\*\* Delete whichever boxes do not apply**

<b>**Box 1</b>	<p><b>ADMIT LIABILITY FOR THE CLAIM and make <u>written</u> application to pay by instalments or by <u>deferred lump sum</u>.</b></p> <p>I do not intend to defend the case but admit liability for the claim and wish to pay the sum of money claimed.</p> <p>I wish to make a written application about payment.</p> <p>I have completed the application form on page 6.</p>
<b>**Box 2</b>	<p><b>ADMIT LIABILITY FOR THE CLAIM and attend at court.</b></p> <p>I admit liability for the claim.</p> <p>I wish to make application to pay the sum claimed by instalments or by deferred lump sum.</p> <p>I intend to appear or be represented at court.</p>
<b>**Box 3</b>	<p><b>DISPUTE THE CLAIM (or the amount due) and attend at court</b></p> <p>* I wish to dispute the amount due only.</p> <p>* I intend to challenge the jurisdiction of the court.</p> <p>* I intend to state a defence.</p> <p>* I intend to state a counterclaim.</p> <p>I intend to appear or be represented in court.</p> <p>* I attach a note of my proposed counterclaim which has been copied to the pursuer.</p> <p><i>* delete as necessary</i></p>

**NOTE:** Please remember to send your response to the court to arrive on or before the return day if you have completed any of the responses above.

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

**APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION  
OR A TIME ORDER**

**I WISH TO APPLY FOR A \*TIME TO PAY DIRECTION/TIME ORDER**

**\* delete whichever does not apply**

**I admit the claim** and make application to pay as follows:

(1) by instalments of £ \_\_\_\_\_ per \*week / fortnight / month

**OR**

(2) In one payment within \_\_\_\_\_ \*weeks / months from the date of the court order

To help the court, please provide details of your financial position in the boxes below

**\*Please also indicate whether payments/receipts are weekly, fortnightly or monthly**

<b>My outgoings are:</b>	*Weekly / fortnightly / monthly
Rent/Mortgage £	
Council tax £	
Gas/electricity etc £	
Food £	
Loans and credit agreements £	
Other	
<b>TOTAL</b>	

<b>My income is:</b>	*Weekly / fortnightly / monthly
Wages/Pensions £	
Social Security £	
Other	
<b>TOTAL</b>	

Number of dependent children

Number of dependent relatives

Please list details of all capital held, eg. value of house: amount in savings account, shares or other investments:

**\*APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT**

I seek the recall or restriction of the arrestment of which the details are as follows:-

Date:

*\*Delete if inapplicable*

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

## **NOTES: APPLICATION FOR A TIME TO PAY DIRECTION OR TIME ORDER**

### **(1) Time to pay directions**

The Debtors (Scotland) Act 1987 gives you the right to apply to the court for a 'time to pay direction'. This is an order which allows you to pay any sum which the court orders you to pay either in instalments or by deferred lump sum. A 'deferred lump sum' means that you will be ordered by the court to pay the whole amount at one time within a period which the court will specify.

If the court makes a time to pay direction it may also recall or restrict any arrestment made on your property by the pursuer in connection with the action or debt (for example, your bank account may have been frozen).

No court fee is payable when making an application for a time to pay direction.

If a time to pay direction is made, a copy of the court order (called an extract decree) will be sent to you by the pursuer telling you when payment should start or when it is you have to pay the lump sum.

If a time to pay direction is not made, and an order for immediate payment is made against you, an order to pay (called a charge) may be served on you if you do not pay.

### **(2) Time Orders**

The Consumer Credit Act 1974 allows you to apply to the court for a 'time order' during a court action. A time order is similar to a time to pay direction, but can only be applied for in certain circumstances, e.g., in relation to certain types of credit agreement. Payment under a time order can only be made by instalments, so that you cannot apply to pay by deferred lump sum.

FORM 1bDefender's copy summons - all other claims

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

4.3(b)



FORM 1b

OFFICIAL USE ONLY  
SUMMONS No.

Small Claim Summons  
Action for/of

(state type, e.g., payment of money)

**DEFENDER'S COPY: (Claim other than claim for or including payment of money where time to pay direction or time order may be applied for)**

1 Sheriff Court  
(name, address, e-mail  
and telephone nos.)

2 Name and address  
of person making  
the claim (**pursuer**)

3 Name and address of  
person against whom  
claim made (**defender**)

4 Claim (Form of decree or  
other order sought - *complete  
as in section 4 of Form 1*)

5 Name, full address, telephone  
no. and e-mail address of  
pursuer's solicitor or  
authorised lay representative  
(if any)

6	RETURN DAY	20		
	HEARING DATE	20	at	am.

NOTE: You will find details of claim on page 2.

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

**7. STATE DETAILS OF CLAIM HERE OR ATTACH A STATEMENT OF CLAIM  
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)**

The details of the claim are:

**8. SERVICE ON DEFENDER**

(Place)

(Date)

To:

(defender)

You are hereby served with a copy of the above summons.

Solicitor / sheriff officer  
*delete as appropriate*

The pursuer should complete boxes 1 to 6 on page 1, the statement of claim in box 7 on page 2 and section A on page 4 before service on the defender. The person serving the summons will complete box 8.

PAGE 2

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

### **WHAT MUST I DO ABOUT THIS SUMMONS?**

**Decide whether you wish to dispute the claim and/or whether you owe any money or not, and how you wish to proceed.** Then, look at the 2 options listed below. Find the one which covers your decision and follow the instructions given there. You will find the RETURN DAY and the HEARING DATE on page one of the summons.

**Written guidance on small claims procedure can be obtained from the sheriff clerk at any Sheriff Clerk's office.**

**Further advice can also be obtained by contacting any of the following:**

**Citizen's Advice Bureau, Consumer Advice Centre, Trading Standards or Consumer Protection Department or a solicitor. (Addresses can be found in the guidance booklets).**

### **OPTIONS**

**1. ADMIT LIABILITY FOR THE CLAIM and settle it with the pursuer now.**

If you wish to avoid the possibility of a court order passing against you, you should settle the claim (including any question of expenses) with pursuer or his representative **in good time before the return day**. Please do not send any payment direct to the court. Any payment should be made to the pursuer or his representative.

**2. DISPUTE THE CLAIM and attend at court to do any of the following:**

- Challenge the jurisdiction of the court
- State a defence
- State a counterclaim
- Dispute the amount of the claim

Complete Section B on page 4. Return page 4 to the court so that it arrives **on or before the return day**. You **must attend personally, or be represented, at court on the hearing date**.

Your representative may be a solicitor, or someone else having your authority. It may be helpful if you or your representative bring pages 1 and 2 of this form to the court.

**NOTE: If you fail to return page 4 as directed, or if, having returned it, you fail to attend or are not represented at the hearing date, the court will almost certainly decide the claim in your absence.**

### **WRITTEN NOTE OF PROPOSED COUNTERCLAIM**

You may send to the court a written note of any counterclaim. If you do, you should also send a copy to the pursuer. You must also attend or be represented at court on the hearing date.

### **PLEASE NOTE**

If you do nothing about this summons, the court will almost certainly, where appropriate, grant decree against you and order you to pay to the pursuer the sum claimed, including any interest and expenses found due.

If the summons is for delivery, or implement of an obligation, the court may order you to deliver the article or perform the duty in question within a specified period. If you fail to do so, the court may order you to pay to the pursuer the alternative amount claimed, including interest and expenses.

**YOU ARE ADVISED TO KEEP PAGES 1 AND 2, AS THEY MAY BE USEFUL AT A LATER STAGE OF THE CASE.**

PAGE 3

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

**SECTION A**

This section must be completed before service


SHERIFF COURT (Including address)


PURSUER'S FULL NAME AND ADDRESS

Summons No

Return Day

Hearing Date


DEFENDER'S FULL NAME AND ADDRESS

**SECTION B**

**DEFENDER'S RESPONSE TO THE SUMMONS**

<p><b>DISPUTE THE CLAIM (or the amount due) and attend at court</b></p> <ul style="list-style-type: none"> <li>* I wish to dispute the amount due only.</li> <li>* I intend to challenge the jurisdiction of the court.</li> <li>* I intend to state a defence.</li> <li>* I intend to state a counterclaim.</li> </ul> <p>I intend to appear or be represented in court.</p> <ul style="list-style-type: none"> <li>* I attach a note of my proposed counterclaim which has been copied to the pursuer.</li> </ul> <p>* delete as necessary</p>
--

**PLEASE REMEMBER:** You must send this page to the court **to arrive on or before the return day** if you have completed Section B above.

If you have admitted the claim, please do not send any payment direct to the court. Any payment should be made to the pursuer or his solicitor.

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

4.1(2)

The pursuer claims from the defender(s) the sum of £                    with interest on that sum at the rate of                    % annually from the date of service, together with the expenses of bringing the claim.

FORM 3 Form of claim in a summons for delivery

4.1(2)

The pursuer claims that, in the circumstances described in the statement contained on page 2 of this copy summons, he has right to the possession of the article(s) described therein.

He therefore asks the court to grant a decree ordering you to deliver the said article(s) to the pursuer.

*Alternatively*, if you do not deliver said article(s), the pursuer asks the court to grant a decree ordering you to pay to him the sum of £                    with interest on that sum at the rate of                    % annually from                    until payment.

The pursuer also claims from you the expenses of bringing the claim.

FORM 4 Form of claim in a summons for implement of an obligation

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

4.1(2)

The pursuer claims that, in the circumstances described in the statement contained on page 2 of the summons, you are obliged to \_\_\_\_\_.

He therefore asks the court to grant a decree ordering you to implement the said obligation.

*Alternatively*, if you do not fulfil the obligation, the pursuer asks the court to grant a decree ordering you to pay to him the sum of £ \_\_\_\_\_ with interest on that sum at the rate of \_\_\_\_\_ % annually from \_\_\_\_\_ until payment.

The pursuer also claims from you the expenses of bringing the claim.

FORM 5 Form of service

Rule 6.2(1)

XY, you are hereby served with a copy of the above (or attached) summons.

*(signature of solicitor or sheriff officer)*

FORM 6 Form of certificate of execution of service

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

Rule 6.2(2)

*(place and date)*

I, \_\_\_\_\_, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ I duly cited XY to answer the foregoing summons. This I did by *(set forth the mode of service)*

*(signature of solicitor or sheriff officer)*

FORM 7 Postal service – form of notice

Rule 6.3(2)

This letter contains a citation to or intimation from the sheriff court at

If delivery cannot be made the letter must be returned immediately to the sheriff clerk at *(insert full address)*.

FORM 8 Service on person whose address is unknown – form of advertisement

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

Rule 6.6(1)(a)

A small claim has been raised in the sheriff court at \_\_\_\_\_, by AB., pursuer, against CD, defender, whose last known address was \_\_\_\_\_.

If the said CD wishes to defend the claim he should immediately contact the sheriff clerk's office at the above court, from whom the defender's copy summons may be obtained.

Address of court:  
Telephone no:  
Fax no:  
E mail address:

FORM 9 Service on person whose address is unknown Form of notice to be displayed on the walls of court

Rule 6.6(1)(b)

A small claim has been raised in this court by AB, pursuer against CD, defender, whose last known address was \_\_\_\_\_.

If the said CD wishes to defend the claim he should immediately contact the sheriff clerk's office, from whom the defender's copy summons may be obtained.

(date) Displayed on the walls of court of this date.

Sheriff clerk depute

FORM 10 Recall or restriction of arrestment Certificate authorising the release of arrested funds or property

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

Rule 7.3(4)(a)

Sheriff court at *(place)*

Court ref. no.:

AB (pursuer) against CD (defender)

I, *(name)*, hereby certify that the sheriff on *(date)* authorised the release of the funds or property arrested on the \*dependence of the action / counterclaim to the following extent:

*(details of sheriff's order)*

*(date)*

Sheriff clerk depute

*\* delete as appropriate*

Copy to:

- Party instructing arrestment
- Party possessing arrested funds/property

FORM 11 Form of minute – no form of response lodged by defender

Rule 8.1(2)

Sheriff court at *(place)*

Hearing date:

In respect that the defender(s) has/have failed to lodge a form of response to the summons, the pursuer requests the court to make the orders specified in the following case(s):

Court ref. no.:	Name(s) of defender(s)	Minute(s)
-----------------	------------------------	-----------

FORM 12 Form of minute – pursuer not objecting to application for a time to pay direction or time order

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

Rule 8.2(2)

Sheriff court at *(place)*

Court ref. no.:

Name(s) of defender(s)

Hearing date:

I do not object to the defender's application for

\*a time to pay direction

\*recall or restriction of an arrestment

\* a time order

*\*delete as appropriate*

FORM 13 Form of minute – pursuer opposing an application for a time to pay direction or time order

Rule 8.2(4)

Sheriff court at *(place)*

Court ref. no.:

Name(s) of defender(s)

Hearing date:

I oppose the defender's application for

\*a time to pay direction

\*recall or restriction of an arrestment

\*a time order

*\* delete as appropriate*

FORM 14 Counterclaim – form of intimation by sheriff clerk where pursuer fails to appear

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

Rule 11.1(8)

Court ref no.:

(AB) (*insert address*), pursuer

against

(CD) (*insert address*), defender

When the above case called in court on (*insert date*), the defender appeared (or was represented) and stated a counterclaim to the claim made by you against him.

The court continued the case until (*date*) at (*time*).

**Please note that, if you fail to appear or be represented at the continued diet, the court may grant decree against you in terms of the counterclaim.**

(*date*)

Sheriff clerk depute

FORM 15 Order by the court and certificate in optional procedure for recovery of documents

Rule 17.2(1)

Sheriff court at *(place)*

In the claim *(court ref. no.)*

in which

*AB (design)* is the pursuer

and

*C.D. (design)* is the defender

To: *(name and designation of party or haver from whom the documents are sought to be recovered).*

You are hereby required to produce to the sheriff clerk at *(address)* within  days of the service upon you of this order:

1. This order itself (which must be produced intact),
2. The certificate marked 'B' attached;
3. All documents within your possession covered by the specification which is enclosed; and
4. A list of these documents.

You can produce the items listed above either:

- (a) by delivering them to the sheriff clerk at the address shown above; or
- (b) sending them to the sheriff clerk by registered or recorded delivery post.

*(date)*

*(signature, name, address and designation of person serving order)*

**PLEASE NOTE:**

**If you claim confidentiality for any of the documents produced by you, you must still produce them. However, they may be placed in a separate envelope by themselves, marked 'confidential'. The court will, if necessary, decide whether the envelope should be opened or not.**

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

13

**CERTIFICATE**

Sheriff Court at *(place)*

In the claim *(court ref. no.)*

in which

AB *(design)* is the pursuer

and

CD *(design)* is the defender

Order for recovery of documents dated *(insert date)*.

With reference to the above order and relative specification of documents, I hereby certify:

\*That the documents produced herewith and the list signed by me which accompanies them are all the documents in my possession which fall under the specification.

\*I have no documents in my possession falling under the specification.

\*I believe that there are other documents falling within the specification which are not in my possession. These documents are (list the documents as described in the specification.) These documents were last seen by me on (date) in the possession of (name and address of person/company, if known).

\* I know of no documents falling within the specification which are in the possession of any other person.

*\* Delete as appropriate*

*(name)*

*(date)*

FORM 16 Form of witness citation

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

Rule 17.4(3)

Sheriffdom of *(insert name of sheriffdom)*

at *(insert place of sheriff court)*

to **AB** *(design)*

You are required to attend at *(full name and address of court)* on *(day)*, *(date)* at *(time)* as a witness for the *(party)* in the action at the instance of **CD** *(design)* against **EF** *(design)* *(and required to bring with you )*.

**If you fail to attend, warrant may be granted for your arrest.**

*(date)*

*(signature of solicitor or sheriff officer)*

Name of person/firm serving citation  
Address  
Telephone no.  
Fax no.  
E-mail address

NOTE: Within certain specified limits claims for necessary outlays and loss of earnings incurred by your attendance at court as a witness will be met. Claims should be made to the person who has cited you to attend court. Proof of any expenses incurred may be requested and should be given to that person.

If you wish your travelling expenses to be paid prior to your attendance, you should apply for payment to the person who has cited you.

**If you fail to attend without reasonable cause, having requested and been paid your travelling expenses, you may be ordered to pay a penalty not exceeding £250.**

FORM 16a Form of certificate of execution of witness citation

Rule 17.4(3)

I certify that on *(date)* I duly cited **AB** *(design)* to attend at *(name of court)* on *(date)* at *(time)* as a witness for the *(design party)* in the action at the instance of **CD** *(design)* against **EF** *(design)* *(and I required him to bring with him )*. This I did by \_\_\_\_\_.

*(signature of solicitor or sheriff officer)*

FORM 17 Form of reference to the European Court

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

Rule 18.2(2)

**REQUEST**

for

**PRELIMINARY RULING**

of

**THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES**

from

**THE SHERIFFDOM OF** *(insert name of sheriffdom)* at *(insert place of court)*

in the cause

**AB** *(insert designation and address)*, pursuer

against

**CD** *(insert designation and address)*, defender

*(Here set out a clear and succinct statement of the case giving rise to the request for a ruling of the European Court in order to enable the European Court to consider and understand the issues of Community law raised and to enable governments of Member states and other interested parties to submit observations. The statement of the case should include:*

- (a) particulars of the parties;*
- (b) the history of the dispute between the parties;*
- (c) the history of the proceedings;*
- (d) the relevant facts as agreed by the parties or found by the court or, failing such agreement or finding, the contentions of the parties on such facts;*
- (e) the nature of the issues of law and fact between the parties;*
- (f) the Scots law, so far as relevant;*
- (g) the Treaty provisions or other acts, instruments or rules of Community law concerned;*
- (h) an explanation of why the reference is being made).*

The preliminary ruling of the Court of Justice of the European Communities is accordingly requested on the following questions:

*1,2,etc. (Here set out the question(s) on which the ruling is sought, identifying the Treaty provisions or other acts, instruments or rules of Community law concerned.)*

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

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

Rule 21.5(4)(b)

Sheriff court	Court ref. no.:
Date of decree	*in absence
Pursuer(s)	Defender(s)

The sheriff  
and granted decree against the \_\_\_\_\_  
against the (name of party) \_\_\_\_\_ for payment of expenses of £ \_\_\_\_\_

This extract is warrant for a lawful execution thereon.

Date	Sheriff clerk depute
------	----------------------

*\* delete as appropriate*

FORM 18a Form of extract decree for payment

Rule 21.5(4)(b)

Sheriff court	Court ref. no.
Date of decree	*in absence
Pursuer(s)	Defender(s)

The sheriff granted decree against the \_\_\_\_\_ for payment to the  
of the undernoted sums:

- (1) Sum(s) decreed for: £ \_\_\_\_\_
- (2) Interest at \_\_\_\_\_ per cent per year from (date) until payment.
- (3) Expenses of £ \_\_\_\_\_ against the (name of party).

\*A time to pay direction was made under section 1(1) of the Debtors (Scotland) Act 1987.

\*A time order was made under section 129(1) of the Consumer Credit Act 1974.

\*The amount is payable by instalments of £ \_\_\_\_\_ per \_\_\_\_\_ commencing within \_\_\_\_\_ \*days/weeks/months of intimation of this extract decree.

\* The amount is payable by lump sum within \_\_\_\_\_ \*days/weeks/months of intimation of this extract decree.

This extract is warrant for all lawful execution thereon.

Date	Sheriff clerk depute
------	----------------------

*\* delete as appropriate*

FORM 18b Form of extract decree in an action of delivery

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

Rule 21.5(4)(b)

Sheriff court  
Date of decree  
Pursuer(s)  
Defender(s)

Court ref. no.:  
\*in absence

The sheriff granted decree against the defender:

- (1) for delivery to the pursuer of *(specify articles)*
- (2) for expenses of £

\* Further, the sheriff granted warrant to officers of court to (1) open shut and lockfast places occupied by the defender and (2) search for and take possession of said goods in the possession of the defender.

\* *delete as appropriate*

This extract is warrant for all lawful execution thereon.

Date

Sheriff clerk depute

FORM 18c Form of extract decree in an action of delivery – payment failing delivery

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

Rule 21.5(4)(b)

Sheriff court  
Date of decree  
Pursuer(s)  
Defender(s)

Court ref. no.  
\*in absence

The sheriff, in respect that the defender has failed to make delivery in accordance with the decree granted in this court on *(date)*, granted decree for payment against the defender of the undernoted sums:

- (1) Sum(s) decreed for: £ , being the alternative amount claimed.
- (2) Interest at per cent per year from *(date)* until payment.
- (3) Expenses of £ against the *(name of party)*.

\* A time to pay direction was made under section 1(1) of the Debtors (Scotland) Act 1987.

+ The amount is payable by instalments of £ per commencing within \*days/weeks/months of intimation of this extract decree.

\* The amount is payable by lump sum within \*days/weeks/months of intimation of this extract decree.

\* *delete as appropriate*

This extract is warrant for full lawful execution thereon.

Date Sheriff clerk depute

FORM 18d Form of extract decree Recovery of possession of moveable property

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

Rule 21.5(4)(b)

Sheriff Court  
Date of decree  
Pursuer(s)

Court ref. no.:  
\*In absence  
Defender(s)

The sheriff granted decree against the defender:

- (1) Finding the pursuer entitled to recovery of possession of the article(s) *(specify)*
- (2) for expenses of £

\* Further, the sheriff granted warrant to officers of court to (1) open shut and lockfast places occupied by the defender and (2) search for and take possession of said goods in the possession of the defender.

\* *delete as appropriate*

This extract is warrant for all lawful execution thereon.

Date

Sheriff clerk depute

FORM 18eForm of extract decreeRecovery of possession of moveable property – payment failing recovery

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

Rule 21.5(4)(b)

Sheriff court	Court ref. no.:
Date of decree	*in absence
Pursuer(s)	Defender(s)

The sheriff, in respect that the defender has failed to recover possession in accordance with the decree granted in this court on *(date)*, granted decree for payment against the defender of the underdecoed sum(s):

Sum(s) decreed for: £ \_\_\_\_\_, being the alternative amount claimed.

Interest at \_\_\_\_\_ per cent per year from *(date)* until payment.

Expenses of £ \_\_\_\_\_ against the *(name of party)*.

\* A time to pay direction was made under section 1(1) of the Debtors (Scotland) Act 1987.

\* The amount is payable by instalments of £ \_\_\_\_\_ per \_\_\_\_\_ commencing within \_\_\_\_\_  
\*days/weeks/months of intimation of this extract decree.

\*\* The amount is payable by lump sum within \_\_\_\_\_ \*days/weeks/months of intimation of this extract decree.

~ *delete as appropriate*

This extract is warrant for all lawful execution thereon.

Date \_\_\_\_\_ Sheriff clerk depute

FORM 18f Form of extract decree ad factum praestandum

Rule 21.5(4)(b)

Sheriff court	Court ref. no.:
Date of decree	*in absence
Pursuer(s)	
Defender(s)	

The sheriff

(1) ordained the defender(s).....

(2) granted decree for payment of expenses of £ \_\_\_\_\_ against the defender(s).

This extract is warrant for all lawful execution thereon.

Date \_\_\_\_\_ Sheriff clerk depute

FORM 18g Form of extract decree ad factum praestandum – payment upon failure to implement obligation





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

Rule 22.1(1)

Sheriff court: *(place)*

Court ref. no.:

AB *(pursuer)* against CD *(defender(s))*

The *\*(pursuer/defender)* moves the court to recall the decree pronounced on *(date)* in this case <sup>#</sup> and in which execution of a charge/arrestment was effected on *(date)*.

Reason for failure to appear or be represented:

Proposed defence/answer:

Date

*\* delete as appropriate*

FORM 20aMinute for recall of decree – service copy

Rule 22.1(6)

Sheriff court: *(place)*

Court ref. no.:

AB *(pursuer)* against CD *(defender(s))*

The *\*(pursuer/defender)* moves the court to recall the decree pronounced on *(date)* in this case <sup>#</sup> and in which execution of a charge/arrestment was effected on *(date)*.

Reason for failure to appear or be represented:

Proposed defence/answer:

Date

*\* delete as appropriate*

**NOTE:** You must return the summons to the sheriff clerk at the court mentioned at the top of this form by (insert date 2 days before the date of the hearing).

FORM 21Form of note of appeal to the sheriff principal

Rule 23.1(1)

Sheriff court (*place*)

Court ref. no.:

AB (pursuer) against CD (defender(s))

The pursuer/defender appeals the sheriff's interlocutor of (*date*) to the sheriff principal and requests the sheriff to state a case.

The point(s) of law upon which the appeal is to proceed is/are: (*give brief statement*).

(*date*)

FORM 22 Application for leave to appeal against time to pay direction

Rule 23.4(3)(a)

Sheriff court (*place*)

Court ref. no.:

AB (pursuer) against CD (defender(s))

The pursuer/defender requests the sheriff to grant leave to appeal the decision made on (*date*) in respect of the defender's application for a time to pay direction to the sheriff principal/Court of Session.

The point(s) of law upon which the appeal is to proceed is/are: (*give brief statement*).

(*date*)

FORM 23 Appeal against time to pay direction

Rule 23.4(4)

Sheriff court (*place*)

Court ref. no.:

AB (pursuer) against CD (defender(s))

The pursuer/defender appeals the decision made on (*date*) in respect of the defender's application for a time to pay direction to the sheriff principal/Court of Session.

(*date*)

FORM 24 Form of receipt for money paid to sheriff clerk

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

Rule 24.4(1)

In the sheriff court of *(name of sheriffdom)* at *(place of sheriff court)*.

In the claim *(state names of parties or other appropriate description)*

*AB (designation)* has this day paid into court the sum of £ . being a payment made in terms of Chapter 24 of the Small Claim Rules 2002

\*Custody of this money has been accepted at the request of *(insert name of court making the request)*.

\*delete as appropriate

(Date)

Sheriff clerk capture

## APPENDIX 2

### GLOSSARY

Rule 1.1(5)

*Absolve*

To find in favour of and exonerate the defender.

*Absolvitor*

An order of the court granted in favour of and exonerating the defender which means that the pursuer is not allowed to bring the same matter to court again.

*Appellant*

A person making an appeal against the sheriff's decision. This might be the pursuer or the defender.

*Arrestee*

A person subject to an arrestment.

*Arrestment on the dependence*

A court order to freeze the goods or bank account of the defender until the court has heard the case.

*Arrestment to found jurisdiction*

A court order used against a person who has goods or other assets in Scotland to give the court jurisdiction to hear a claim. This is achieved by preventing anything being done with the goods or assets until the case has been disposed of.

*Authorised lay representative*

A person other than a lawyer who represents a party to a small claim.

*Cause*

Another word for case or claim, used for cases under the summary cause procedure.

*Caution (pronounced kay-shun)*

A security, usually a sum of money, given to ensure that some obligation will be carried out.

*Certificate of execution of service*

The document recording that an application to, or order or decree of, the court for service of documents has been effected.

*Charge*

An order to obey a decree of a court. A common type is one served on the defender by a sheriff officer on behalf of the pursuer who has won a case demanding payment of a sum of money.

*Commission and diligence*

Authorisation by the court for someone to take the evidence of a witness who cannot attend court or to obtain the production of documentary evidence. It is combined with a diligence authorising the person appointed to require the attendance of the witness and the disclosure of documents.

*Consignation*

The deposit in court, or with a third party, of money or an article in dispute.

*Continuation*

An order made by the sheriff postponing the completion of a hearing until a later date or dates.

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

*Counterclaim*

A claim made by a defender in response to the pursuer's claim and which is not a defence to that claim. It is a separate but related claim against the pursuer which is dealt with at the same time as the pursuer's claim.

*Damages*

Money compensation payable for a breach of contract or some other legal duty.

*Decree*

An order of the court containing the decision of the claim in favour of one of the parties and granting the remedy sought or disposing of the claim.

*Defender*

Person against whom a claim is made.

*Deliverance*

A decision or order of a court.

*Depending*

A case is said to be depending when it is going through a court procedure. Technically, this begins with citation of the defender and ends with any final appeal.

*Diet*

Date for a court hearing.

*Diligence*

The collective term for the procedures used to enforce a decree of a court. These include arrestment of wages, goods or a bank account.

*Dismissal*

An order bringing to an end the proceedings in a claim. It is usually possible for a new claim to be brought if not time barred.

*Domicile*

The place where a person is normally resident or where, in the case of a company, it has its place of business or registered office.

*Execution of service*

See Certificate of execution of service.

*Execution of a charge*

The intimation of the requirement to obey a decree or order of a court.

*Execution of an arrestment*

The carrying out of an order of arrestment.

*Expenses*

The costs of a court case.

*Extra-judicial settlement*

An agreement between the parties to a case to settle it themselves rather than to await a decision by the sheriff.

*Extract decree*

The document containing the order of the court made at the end of the claim. For example, it can be used to enforce payment of a sum awarded.

*Haver*

A person who holds documents which are required as evidence in a case.

*Huissier*

An official in France and some other European countries who serves court documents.

*Incidental application*

An application that can be made during the course of a small claim for certain orders. Examples are applications for the recovery of documents or to amend the statement of claim.

*Interlocutor*

The official record of the order or judgment of a court.

*Intimation*

Giving notice to another party of some step in the small claim.

*Jurisdiction*

The authority of a court to hear particular cases.

*Messenger at arms*

Officers of court who serve documents issued by the Court of Session.

*Minute*

A document produced in the course of a case in which a party makes an application or sets out his position on some matter.

*Minute for recall*

A form lodged with the court by one party asking the court to recall a decree.

*Options Hearing*

A preliminary stage in an ordinary cause action.

*Ordinary cause*

Another legal procedure for higher value claims available in the sheriff court.

*Party litigant*

A person who conducts his own case.

*Productions*

Documents or articles which are used in evidence.

*Pursuer*

The person making a claim.

*Recall of an arrestment*

A court order withdrawing an arrestment.

*Restriction of an arrestment*

An order releasing part of the money or property arrested.

*Recall of a decree*

An order revoking a decree which has been granted.

*Recovery of documents*

The process of obtaining documentary evidence which is not in the possession of the person seeking it (e.g. hospital records necessary to establish the extent of injuries received in a road accident).

*Remit between procedures*

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

A decision of the sheriff to transfer the claim to another court procedure e.g. summary cause or ordinary cause procedure.

*Respondent*

When a decision of the sheriff is appealed against, the person making the appeal is called the appellant. The other side in the appeal is called the respondent.

*Return day*

The date by which the defender must send a written reply to the court and, where appropriate, the pursuer must return the summons to court.

*Schedule of arrestment*

The list of items which may be arrested.

*Serve/Service*

Sending a copy of the summons or other court document to the defender or another party.

*Sheriff clerk*

The court official responsible for the administration of the sheriff court.

*Sheriff officer*

A person who serves court documents and enforces court orders.

*Sist of action*

The temporary suspension of a court case by court order.

*Sist as a party*

To add another person as a litigant in a case.

*Stated case*

An appeal procedure where the sheriff sets out his findings and the reasons for his decision and states the issues on which the decision of the sheriff principal is requested.

*Statement of claim*

The part of the summons in which pursuers set out details of their claims against defenders.

*Summary cause*

Another legal procedure available in the Sheriff Court. It is used for certain types of claim usually having a higher value than small claims though less than those dealt with as ordinary causes.

*Summons*

The form which must be filled in to begin a small claim.

*Time to pay direction*

A court order for which a defender who is an individual may apply permitting a sum owed to be paid by instalments or by a single payment at a later date.

*Time order*

A court order which assists debtors who have defaulted on an agreement regulated by the Consumer Credit Act 1974 (c. 39) and which may be applied for during a court action.

*Warrant for diligence*

Authority to carry out one of the diligence procedures.

*Writ*

A legally significant writing.

## SCHEDULE 2

Paragraph 4

## REVOCATIONS

<i>(1)</i> <i>Act of Sederunt</i>	<i>(2)</i> <i>Reference</i>	<i>(3)</i> <i>Extent of revocation</i>
Act of Sederunt (Small Claim Rules) 1988	S.I. <a href="#">1988/1976</a>	The whole Act of Sederunt
Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, Summary Cause and Small Claim, Rules) 1990	S.I. <a href="#">1990/661</a>	Paragraph 4
Act of Sederunt (Amendment of Sheriff Court Ordinary Cause, Summary Cause and Small Claim, Rules) (No. 2) 1990	S.I. <a href="#">1990/2105</a>	Paragraph 4
Act of Sederunt (Amendment of Summary Cause and Small Claim Rules) 1991	S.I. <a href="#">1991/821</a>	Paragraph 3
Act of Sederunt (Amendment of Ordinary Cause, Summary Cause and Small Claim Rules) 1992	S.I. <a href="#">1992/249</a>	Paragraph 4
Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993	S.I. <a href="#">1993/1956</a>	Paragraph 4

**EXPLANATORY NOTE***(This note is not part of the Act of Sederunt)*

This Act of Sederunt makes rules of procedure in the sheriff court for small claims.

The form of summary cause process known as a small claim applies to such summary cause proceedings as have been prescribed in the Small Claims (Scotland) Order 1988 under section 35(2) of the Sheriff Courts (Scotland) Act 1971 (as substituted by section 18(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985)