

SCHEDULE 1

Rule 7

“ORDER 26 SMALL CLAIMS

Definitions

1. In this Order –
 - “the applicant” means the person who makes the initial claim;
 - “the respondent” means the person against whom the initial claim is made;
 - “a counterclaim” means a claim which is made by the respondent against the applicant;
 - “the judge” means the district judge;
 - “a small claim” means an action to which Article 30(3) of the Order applies;
 - “small claims court” means a court which processes small claims;
 - “the small claims office” means the office of the small claims court which will process the small claim;
 - “the officer” means the person in the court office who processes the application for a small claim; and
 - “party” means the applicant or the respondent.

Excluded claims

2. No small claims application shall be made with regard to any claim which –
 - (a) is for damages for personal injuries;
 - (b) is for damages in respect of a road traffic accident;
 - (c) is for damages for libel or slander;
 - (d) is made under Article 11 (Recovery of legacies, annuities, etc.) of the Order;
 - (e) concerns the title to land;
 - (f) is made under section 17 of the Married Women’s Property Act 1882;
 - (g) has been remitted by the High Court.
- 3.—(1) Subject to paragraph (2), where the claim is for a debt or other liquidated amount which does not exceed £2000, the applicant may proceed by ordinary civil bill provided he includes, immediately after the Warning in the civil bill, the statement in Form 10A.
 - (2) If the respondent’s notice of intention to defend includes a request that the claim and any counterclaim be dealt with as a small claim, his request shall be granted.

Starting Proceedings

4. An application for a small claim must be made in Form 125.
5. The applicant must complete Part A of Form 125, setting out details of his claim, including any claim for interest under Article 45A of the Order or otherwise.
6. After completing Part A of Form 125, the applicant must bring or send the original Form, together with two copies and the appropriate fee, to any court office and that office will then forward the application on to the small claims office.

Status: This is the original version (as it was originally made).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

7. If there is more than one respondent, the applicant must bring or send one extra copy of Form 125 for each additional respondent.

8. When the relevant forms and the appropriate fee are received in the small claims office, the officer will –

- (a) complete Part B of the original Form 125 and the copy forms;
- (b) file the original Form 125;
- (c) return one copy of Form 125, together with Form 127 (application for default decree for liquidated amount) or 128 (application for default decree for unliquidated amount) to the applicant; and
- (d) issue one copy of Form 125, together with Forms 126A (notice of dispute) and 126B (acceptance of liability) to the respondent.

9. Each court office shall keep a record of –

- (a) the applications which are received; and
- (b) the small claims office to which those applications are sent.

Defending the application

10. If the respondent intends to defend the claim or rely on a counterclaim he must, within 21 days of receiving the copy Form 125, lodge with the small claims office a notice of dispute in Form 126A which sets out the details of his defence and of any counterclaim he wishes to make, together with the appropriate fee.

11. On receiving a notice of dispute, the officer must send a copy to any other party and advise all parties of the date of hearing.

Accepting Liability

12. If the respondent accepts liability for the claim, he must, within 21 days of receiving the copy Form 125, lodge with the small claims office a notice of acceptance of liability in Form 126B.

13. On receiving a notice of acceptance of liability, the chief clerk may issue a decree, together with a copy of Form 126B, or may refer the notice to the judge if he considers that would be more appropriate.

Default decrees

14. If a Form 126A or 126B is not lodged with the small claims office within 21 days of the date on which the application is received, the applicant may apply to the chief clerk for a decree.

15. An application under Rule 14 shall –

- (a) if the claim is for a liquidated amount, be in Form 127; and
- (b) if the claim is for an unliquidated amount, be in Form 128.

16. On receiving an application under rule 14, the chief clerk may –

- (a) if the claim is for a liquidated amount, issue a decree for the amount then due to the applicant; or
- (b) if the claim is for an unliquidated amount, issue a decree which states that the amount of the claim will be assessed by the judge.

17. The chief clerk may refer any application in Form 127 or 128 to the judge if he considers that it would be more appropriate for the judge to deal with the application.

18. The chief clerk may only issue a decree under rule 16 if he is satisfied that: –
- (a) the application was sent to the respondent;
 - (b) no notice of dispute has been received; and
 - (c) the claim has not been settled.
19. Where a decree has been issued under rule 16, the judge may, either on an application or of his own choosing –
- (a) set aside or vary the decree; or
 - (b) make any other order or give any other directions as the circumstances require.
20. If an application under rule 19 is made by one of the parties, it must be made in Form 129 and must set out all of the relevant facts.
21. On receiving the application, the officer shall send a copy to the other party (who may, within 14 days, respond in writing to the application) and inform the parties of the date on which the application will be heard.
22. If a decree is set aside the officer must inform the parties immediately and amend the court records accordingly.
23. An application in Form 127 or 128 may not be made if the claim is brought against a minor or a patient.
24. An application in Form 127 or 128 may only be made with the judge's permission if the claim –
- (a) is brought against the Crown; or
 - (b) arises from a hire purchase agreement, a credit sale agreement or a regulated agreement as defined by the Consumer Credit Act 1974(1).
25. A request for permission under rule 24 shall be made in writing and the other party shall be informed of the request.

Assessment hearing

26. The officer shall notify the parties of the date on which the amount of the claim will be assessed by the judge.
27. Where a decree has been issued under Rule 16(b) and the party against whom the decree has been made wishes to attend the assessment hearing, he must notify the small claims office and the other parties in writing.
28. The judge shall issue a decree for the amount of the claim, as assessed.

Venue for a small claims hearing

29. A small claims hearing may take place: –
- (a) in a court in the county court division in which the applicant or one of the applicants lives or carries on business; or
 - (b) in a court in the county court division in which the respondent or one of the respondents lives or carries on business.

(1) 1974 c. 10

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

Procedure on a small claims hearing

30. A small claims hearing –
- (a) shall be informal; and
 - (b) shall not be subject to the strict rules of evidence.
31. The judge may adopt any procedure which he considers to be fair.

Powers of the Judge

32. The judge has the power –
- (a) to administer oaths and take the affirmations of the parties and any witnesses who attend;
 - (b) to order specific performance of a contract;
 - (c) to make an interim decree;
 - (d) to correct any clerical mistake in a decree;
 - (e) without prejudice to Rule 19(a) and either on the application of any of the parties or of his own choosing, to set aside, vary or confirm any decree; or
 - (f) to direct that an application in Form 125 be transferred to his civil bill list, provided he is satisfied that –
 - (i) a difficult question of fact or law is involved; or
 - (ii) fraud is alleged against a party; or
 - (iii) the parties consent to the application being dealt with in that way; or
 - (iv) it would be unreasonable for the application to be dealt with in a small claims hearing because of its subject matter, the circumstances of the parties or the interests of any other person likely to be affected by the outcome.
33. If an application is transferred to the judge's civil bill list, it shall proceed as if it had been commenced by civil bill and shall be subject to scale costs.
34. An application under Rule 32(e) shall be made in writing and the other party shall be informed of the application.
35. All parties shall, subject to any legal objection, agree to –
- (a) be examined by the judge on oath or affirmation;
 - (b) produce any relevant documents or items which are in their possession; and
 - (c) otherwise comply with the judge's requests.

Witnesses

36. If a party wishes to summons a person as a witness, he can apply to the small claims court under Order 24, rule 9 for a witness summons and the summons may be served in accordance with paragraph (5) of that rule or may be delivered to the witness personally by the applicant.

Expert Evidence

37. At any time before giving his decision the judge may –
- (a) consult any expert;
 - (b) ask for an expert report on any disputed issue; and
 - (c) invite an expert to attend the hearing.

38. Unless the judge orders otherwise the evidence of any expert witness retained by a party must be given in a written report and the report, together with one copy, must be lodged with the small claims office not less than 14 days before the date of the small claims hearing.

39. On receiving the report, the officer shall send a copy to the other party and may set a new date for hearing.

Transfer of proceedings

40. If the judge is satisfied that an application could be more conveniently or fairly dealt with in another small claims court, he may order the application to be transferred to that court and the chief clerk of the court in which the application is originally made must –

- (a) inform all the parties of the transfer; and
- (b) send to the chief clerk of the other court any relevant court records and documents.

41. On receiving the relevant records and documents, the chief clerk of the other court shall set a date for the hearing and advise the parties of that date.

Documents

42. Any document which is required to be sent may be sent by ordinary first class post.

Costs

43. Subject to Rules 33, 44 and 45, no costs, except the appropriate court fee, may be awarded in respect of an application for a small claim.

44. No witness expenses may be awarded, except in respect of expert witnesses who have provided written or oral evidence at the request of the judge under Rule 37.

45. If the judge is satisfied that –

- (a) there has been unreasonable conduct by one of the parties he may award costs against that party;
- (b) the proceedings were properly started by ordinary civil bill under Rule 3 he may, subject to Rule 46, award such costs as he considers appropriate.

46. When the judge is awarding costs under Rule 45 the costs must not exceed those specified in Table 3 of Part I of Appendix 2 and must be determined in accordance with the amount of the claim.