

## **SCHEDULE 1**

### **SMALL CLAIM RULES 2002**

#### **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(1), 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.

###### **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—

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(1) 1893 c. 44.

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- (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.

(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.

(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.

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### **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(2) or to proceedings which may be subject to the provisions of that Act.

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(2) 1987 c. 18.