

## **SCHEDULE 1**

### **SMALL CLAIM RULES 2002**

#### **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.

*Status: This is the original version (as it was originally made).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

**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<sup>(1)</sup> 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<sup>(2)</sup>;
- (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<sup>(3)</sup>.

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(1) Cmnd. 3986 (1969).

(2) 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.

(3) 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.