

SCHEDULE 1

SMALL CLAIM RULES 2002

CHAPTER 11

Counterclaim

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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.