

Status: Point in time view as at 04/05/2006.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Sheriff Courts (Scotland) Act 1907. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

^{F1}FIRST SCHEDULE

ORDINARY CAUSE RULES 1993

Textual Amendments

- F1** Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by S.I. 1993/1956, para. 2, Sch.1.
Sch. 1 (except rule 29.10) excluded (1.4.1997) by S.I. 1997/291, rule 3.24, Sch. 3
Sch. 1 extended (14.2.2000) by S.I. 2000/124, reg. 30(5)

[^{F1}INITIATION AND PROGRESS OF CAUSES]

CHAPTER 8

REPONING

Reponing

- 8.1. (1) In any cause other than—
- (a) a cause mentioned in rule 33.1(1)(a) to (h) [^{F1}(n) or (o)](certain family actions), or
 - [^{F2}(aa) a cause mentioned in rule 33A.1(a), (b) or (f) (certain civil partnership actions);]
 - (b) a cause to which Chapter 37 (causes under the Presumption of death (Scotland) Act 1977) applies,
- the defender [^{F3}or any party with a statutory title or interest] may apply to be reponed by lodging with the sheriff clerk, before implement in full of a decree in absence, a reponing note setting out his proposed defence [^{F4}or the proposed order or direction,] and explaining his failure to appear.
- (2) A copy of the note lodged under paragraph (1) shall be served on the pursuer [^{F5}and any other party].
- (3) The sheriff may, on considering the reponing note, recall the decree so far as not implemented subject to such order as to expenses as he thinks fit; and the cause shall thereafter proceed as if [^{F6}—
- (a)] the defender had lodged a notice of intention to defend and the period of notice had expired on the date on which the decree in absence was recalled.[^{F7} ; or
 - (b) the party seeking the order or direction had lodged the appropriate application on the date when the decree was recalled]

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(4) A reponing note, when duly lodged with the sheriff clerk and served upon the pursuer [F8 and any other party], shall have effect to sist diligence.

[F9(4A) Where an initial writ has been served on a defender furth of the United Kingdom under rule 5.5(1)(b) (service on persons furth of Scotland) and decree in absence has been pronounced against him as a result of his failure to enter appearance, the court may, on the defender applying to be reponed in accordance with paragraph (1) above, recall the decree and allow defences to be received if–

- (a) without fault on his part, he did not have knowledge of the initial writ in sufficient time to defend;
- (b) he has disclosed *prima facie* defence to the action on the merits; and
- (c) the reponing note is lodged within a reasonable time after he had knowledge of the decree or in any event before the expiry of one year from the date of decree.]

(5) Any interlocutor or order recalling, or incidental to the recall of, a decree in absence shall be final and not subject to appeal.

Textual Amendments

- F1 Words in Sch. 1 rule 8.1(1)(a) inserted (4.5.2006) by Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 (S.S.I. 2006/207), {rule 2(5)(a)}
- F2 Sch. 1 rule 8.1(1)(aa) inserted (4.5.2006) by Act of Sederunt (Ordinary Cause Rules) Amendment (Family Law (Scotland) Act 2006 etc.) 2006 (S.S.I. 2006/207), {rule 2(5)(b)}
- F3 Words in Sch. 1 rule 8.1(1) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(5)(a)(i)
- F4 Words in Sch. 1 rule 8.1(1) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(5)(a)(ii)
- F5 Words in Sch. 1 rule 8.1(2) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(5)(b)
- F6 Word in Sch. 1 rule 8.1(3) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(5)(c)(i)
- F7 Sch. 1 rule 8.1(3)(b) and word inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(5)(c)(ii)
- F8 Words in Sch. 1 rule 8.1(4) inserted (21.5.2004) by Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (S.S.I. 2004/197), art. 2(5)(d)
- F9 Sch. 1 rule 8.1(4A) inserted (2.10.2000) by S.S.I. 2000/239, para. 3(1)(2)

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