
STATUTORY INSTRUMENTS

1988 No. 1976 (S.188)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Small Claim Rules) 1988

Made - - - - 10th November 1988

Coming into force - - 30th November 1988

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(1) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Small Claim Rules) 1988 and shall come into force on 30th November 1988.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Small Claim Rules

2.—(1) The provisions of the Schedule to this Act of Sederunt shall have effect for the purpose of providing rules for the form of summary cause process known as a small claim under section 35(2) of the Sheriff Courts (Scotland) Act 1971(2).

(2) The provisions of the Schedule to this Act of Sederunt shall not apply to a summary cause commenced before 30th November 1988.

Consequential amendment

3. In paragraph 3(1) of the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976(3) after the words “summary cause” there shall be inserted the words “other than a small claim”.

Edinburgh
10th November 1988

Emslie
Lord President, IPD

(1) [1971 c. 58](#)
(2) Section 35(2) of the Sheriff Courts (Scotland) Act 1971 was substituted by section 18(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 ([c. 73](#))
(3) [S.I. 1976/476](#)

SCHEDULE

Paragraph 2(1)

SMALL CLAIM RULES 1988

PART I
INTRODUCTORY

Citation, application and interpretation

1.—(1) These Rules may be cited as the Small Claim Rules 1988.

(2) These Rules shall apply to a small claim, being such summary cause proceedings as may be prescribed by the Lord Advocate under section 35(2) of the Sheriff Courts (Scotland) Act 1971.

(3) In these Rules—

- (a) a form referred to by number means the form so numbered in Appendix 1 to these rules or a form substantially of the same effect with such variation as circumstances may require;
- (b) a reference to the Ordinary Cause Rules means the rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907⁽⁴⁾; and
- (c) a reference to the Summary Cause Rules means the rules in the Schedule to the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976.

Application of certain Ordinary Cause, and Summary Cause, Rules

2.—(1) The provisions of the Ordinary Cause Rules⁽⁵⁾ specified in Appendix 2 to these rules shall apply to a small claim insofar as not inconsistent with these rules.

(2) The provisions of the Summary Cause Rules⁽⁶⁾ specified in Appendix 3 to these rules shall apply to a small claim insofar as not inconsistent with these rules.

PART II

RULES FOR SMALL CLAIMS FOR PAYMENT OF MONEY ONLY

3.—(1) A small claim for payment of money only shall be commenced by summons in form 1.

(2) A service copy summons in form 2 shall be served on the defender in a small claim for payment of money only in which a time to pay direction may be applied for; and the small claim shall be subject to the rules in this Part.

(3) A service copy summons in form 3 shall be served on the defender in a small claim for payment of money only in which a time to pay direction may not be applied for; and the small claim shall be subject to the rules in this Part except rules 9 and 11 below.

(4) The pursuer shall give a statement of his claim in the summons to give the defender fair notice of the claim; and the statement shall include—

- (a) details of the basis of the small claim including relevant dates;

(4) 1907 c. 51; Schedule 1 was substituted by S.I. 1983/747

(5) As amended by S.I. 1984/255, 1986/1230 and 1946.

(6) Relevant amendments are S.I. 1978/112, 1805, 1980/455 and 1988/1978

- (b) where the small claim arises from the supply of goods or services, details of the nature of the goods or services and the date or dates on or between which they were ordered and supplied;
 - (c) a reference to any agreement which the pursuer has reason to believe may exist giving jurisdiction over the subject matter of the small claim to another court;
 - (d) a reference to any proceedings which the pursuer has reason to believe may be pending before another court involving the same cause of action and between the same parties as those named in the summons.
- (5) A summons shall be signed—
- (a) by the sheriff clerk; or
 - (b) by the sheriff, if he thinks fit, where—
 - (i) the defender’s address is unknown; or
 - (ii) the sheriff clerk has for any reason refused to sign the summons.
- (6) The signed summons shall be warrant for service on the defender and, where the appropriate warrant has been included in the summons, warrant for arrestment on the dependence or for arrestment to found jurisdiction, as the case may be.

Period of notice

- 4.—(1) A small claim shall proceed after the appropriate period of notice of the summons has been given to the defender.
- (2) The appropriate period of notice shall be—
- (a) 21 days where the defender is resident or has a place of business within Europe; or
 - (b) 42 days where the defender is resident or has a place of business outwith Europe.
- (3) Where a period of notice expires on a Saturday, Sunday, public or local holiday, the period of notice shall be deemed to expire on the first following day on which the sheriff clerk’s office is open for civil court business.
- (4) Where service of a summons is by post, the period of notice shall start to run on the day of posting; and section 4(2) of the Citation Amendment (Scotland) Act 1882(7) shall not apply.
- (5) The sheriff clerk shall insert in the summons the date which is at the end of the period of notice being the last day on which the defender may return a response form to the sheriff clerk (the return date).

Service of summons where address of defender is known

- 5.—(1) Subject to paragraph (7) of this rule, a service copy summons shall be served on the defender by the pursuer’s solicitor, a sheriff officer or the sheriff clerk sending it by first class recorded delivery post, or by one of the methods specified in rule 6(1), (2) or (4) of the Summary Cause Rules (citation and service within Scotland by officer of court)(8).
- (2) Where the pursuer requires the sheriff clerk to effect service on his behalf by virtue of section 36A of the Sheriff Courts (Scotland) Act 1971 (pursuer not a partnership, body corporate or acting in a representative capacity), he may require the sheriff clerk to supply him with a copy of the summons.

(7) 1882 c. 77

(8) Rule 6 of the Summary Cause Rules was amended by S.I. 1980/455

(3) Subject to paragraph (7) of this rule, where service is to be effected by the sheriff clerk, he may do so by posting the service copy summons by first class recorded delivery post or, on payment to the sheriff clerk by the pursuer of the fee prescribed by the Secretary of State by order, by sheriff officer.

(4) There shall be enclosed with the service copy summons a form of service in form 4.

(5) On the face of the envelope used for postal service in terms of this rule there shall be printed or written a notice in form 5.

(6) A certificate of service in form 6 shall be attached to the summons after service has been effected under this rule.

(7) Service on a defender who is outwith Scotland shall be effected in the manner prescribed by rule 9 of the Summary Cause Rules (citation of or service on persons outside Scotland)(9).

(8) Where service is to be effected by the sheriff clerk under paragraph (7), any cost occasioned thereby shall be borne by the pursuer and no such service shall be instructed by the sheriff clerk until payment of such cost has been made to him by the pursuer.

Service where address of defender is unknown

6.—(1) Where the defender's address is unknown to the pursuer, the sheriff may grant warrant to serve the summons—

(a) by the publication of an advertisement in form 7 in a newspaper circulating in the area of the defender's last known address; or

(b) by displaying on the walls of court a copy of a notice in form 8,

and the period of notice, which shall be fixed by the sheriff, shall run from the date of publication of the advertisement or display on the walls of court, as the case may be.

(2) Where service is to be effected under paragraph (1) of this rule, the pursuer shall lodge a service copy of the summons with the sheriff clerk from whom it may be uplifted by the defender.

(3) Where the pursuer requires the sheriff clerk to effect service on his behalf under paragraph (1) of this rule by virtue of section 36A of the Sheriff Courts (Scotland) Act 1971 (pursuer not a partnership, body corporate or acting in a representative capacity)—

(a) the cost of any advertisement required under paragraph (1)(a) of this rule shall be borne by the pursuer and no such advertisement shall be instructed by the sheriff clerk until such cost has been paid to him by the pursuer; and

(b) the pursuer may require the sheriff clerk to supply him with a copy of the summons.

(4) Where service by advertisement is made under paragraph (1)(a) of this rule, a copy of the newspaper containing the advertisement shall be lodged with the sheriff clerk unless advertisement is instructed by the sheriff clerk under paragraph (3) of this rule.

(5) Where display on the walls of court is required under paragraph (1)(b) of this rule, the pursuer shall supply to the sheriff clerk for that purpose a copy of form 8 duly completed unless service is to be effected by the sheriff clerk under paragraph (3) of this rule.

(6) Where service has been made under this rule and thereafter the defender's address becomes known, the sheriff may allow the summons to be amended and, if appropriate, grant warrant for re-service subject to such conditions as he thinks fit.

(9) Rule 9 of the Summary Cause Rules was amended by S.I. [1986/1946](#)

Return of summons

7.—(1) Where service has been effected other than by the sheriff clerk, the pursuer shall return the summons with a certificate of service to the sheriff clerk on or before the return date, failing which the sheriff may dismiss the small claim.

(2) Where the summons has been served by the sheriff clerk, he shall intimate to the pursuer, forthwith after the return date, whether or not a response to the summons has been tendered by the defender; and such intimation shall be made by the sheriff clerk sending to the pursuer by first class recorded delivery post a copy of form 9 (claim admitted; payment by instalments or lump sum), 10 (no response) or 11 (claim admitted and defender to appear or claim not admitted or jurisdiction challenged), as appropriate.

Response to summons where defender intends to appear

8.—(1) Where the defender intends—

- (a) to challenge the jurisdiction of the court;
- (b) to defend the small claim;
- (c) to dispute the amount of the small claim; or
- (d) to admit the small claim and make oral application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment),

he shall intimate his intention to appear by completing the appropriate part of the form of response attached to the service copy summons and shall lodge it with the sheriff clerk on or before the return date.

(2) A defender who intends to defend a small claim and has delivered a form of response to the sheriff clerk may, at any time prior to the date of the preliminary hearing of the small claim, lodge a written note of the defence which he proposes to state at the preliminary hearing.

(3) Where the defender has delivered a written note of his proposed defence to the small claim to the sheriff clerk, the defender shall, at the same time, send a copy of it to the pursuer.

Response to summons where defender does not intend to appear

9. Where the defender admits the small claim and does not intend to appear, he may, where competent, make an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) by completing the appropriate part of the form of response attached to the service copy summons and lodge it with the sheriff clerk on or before the return date.

No response by defender

10.—(1) Where a form of response has not been lodged by the defender in accordance with rule 8 or 9 above, the cause shall not be called in court and, if before noon on the day prior to the date for the preliminary hearing, the pursuer, his solicitor or his solicitor's authorised clerk enters a minute in the Book of Small Claims or lodges form 10 with the minute in box 1 or 2 duly signed, or a minute in form 12, as the case may be, decree or other order in terms of that minute may be granted on the date for the preliminary hearing.

(2) Where the pursuer does not enter a minute in the Book of Small Claims or lodge form 10 with the minute in box 1 or 2 duly signed, or a minute in form 12 in accordance with paragraph (1) of this rule, the court shall dismiss the small claim.

(3) A decree granted under paragraph (1) of this rule shall be subject to recall in accordance with the provisions of rule 27 below.

(4) The sheriff shall not grant decree under paragraph (1) of this rule unless it is clear from the terms of the summons that a ground of jurisdiction exists.

Consent to application for time to pay direction

11.—(1) Where the defender has delivered a form of response to the sheriff clerk in accordance with rule 9 above making application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment), the pursuer may intimate that he does not object to the application by—

- (a) entering a minute in the Book of Small Claims stating that he does not object to the defender's application and for decree;
- (b) lodging with the sheriff clerk a minute in form 12; or
- (c) lodging with the sheriff clerk form 9 with a minute duly signed,

before noon on the day prior to the date for the preliminary hearing.

(2) Where the pursuer intimates under paragraph (1) of this rule that he does not object to the defender's application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment), the sheriff may grant decree on the date for the preliminary hearing and the parties shall not be required to attend and the cause shall not be called, in court.

Preliminary hearing

12.—(1) A preliminary hearing shall be held where—

- (a) the defender has intimated his intention to appear in accordance with rule 8(1) above; or
- (b) the defender has made an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) in accordance with rule 9 above which the pursuer does not accept.

(2) The preliminary hearing shall be held seven days after the return date, and may be continued to such other date as the court shall consider appropriate.

(3) The sheriff clerk shall insert in the summons the date for the preliminary hearing.

(4) Where the defender has delivered a form of response to the sheriff clerk in accordance with rule 8(1)(a), (b) or (c) above, he shall attend or be represented at the preliminary hearing and state his defence to the court (which shall be noted by the sheriff on the summons).

(5) Where the defender has delivered a form of response to the sheriff clerk in accordance with rule 8(1)(d) above, he shall attend or be represented at the preliminary hearing and may make oral representations in support of his application.

(6) Where the defender has delivered a form of response to the sheriff clerk in accordance with rule 9 above which the pursuer has not accepted, the sheriff shall make such order on the defender's application as he considers appropriate.

Conduct of preliminary hearing

13.—(1) Subject to paragraph (2) of this rule, where the defender has delivered a form of response to the sheriff clerk in accordance with rule 8(1) above but does not appear and has not stated a defence, decree may be granted against the defender in terms of the summons.

(2) The sheriff shall not grant decree under paragraph (1) of this rule unless it is clear from the terms of the summons that a ground of jurisdiction exists.

(3) Where the pursuer does not appear or is not represented at the preliminary hearing at which the defender is present or represented and if a defence has not been stated, the court shall grant decree absolving the defender.

(4) Where, at the preliminary hearing, the sheriff is satisfied that the small claim is incompetent or that there is a patent defect of jurisdiction, he may grant decree of dismissal in favour of the defender.

(5) At the preliminary hearing, the sheriff shall ascertain from the parties or their representatives what the disputed issues in the small claim are and shall make a note of them on the summons; and it shall thereafter be unnecessary for a party to satisfy the sheriff on any issue which is not noted as a disputed issue.

(6) Where the sheriff is satisfied that the facts are sufficiently admitted, he may decide the small claim on the merits at the preliminary hearing and if appropriate make an award of expenses.

(7) If, at the preliminary hearing or at any subsequent stage of the small claim, a disputed issue noted by the sheriff is the quality or condition of an object, the sheriff may inspect the object in the presence of the parties or their representatives in court or, if it is not practicable to bring the object to court, at the place where the object is located.

(8) The sheriff may, if he considers it appropriate, inspect any place material to the disputed issues in the presence of the parties or their representatives.

(9) The sheriff may, on the joint motion of the parties, if he considers it to be appropriate, remit to any suitable person to report on any matter of fact.

(10) Where a remit is made under paragraph (9) of this rule, the report of such person shall be final and conclusive with respect to the matter of fact which is the subject of the remit.

(11) A remit shall not be made under paragraph (9) of this rule unless parties have previously agreed the basis upon which the fees, if any, of such person shall be met by them.

(12) Where any issue of fact between the parties is still disputed, the sheriff shall appoint a date for a hearing.

Remit between rolls

14.—(1) Where a direction has been made by the sheriff under section 37(2B) of the Sheriff Courts (Scotland) Act 1971⁽¹⁰⁾ that a small claim be treated as a summary cause or as an ordinary cause, the small claim shall be remitted to the summary cause roll or ordinary cause roll, as the case may be, first occurring not sooner than seven days after the date of that direction.

(2) Where a direction has been made under section 37 of the Sheriff Courts (Scotland) Act 1971⁽¹¹⁾ that a summary cause or an ordinary cause be treated as a small claim, the initial writ or summary cause summons, as the case may be, shall be treated as a small claim summons and the cause shall be remitted to the small claim roll occurring not more than seven days after the date of the direction; or, if there is no roll within that period, to the roll first occurring thereafter.

Alteration of summons, etc.

15. The sheriff may, on the motion of a party, allow amendment of the summons, statement of claim or note of defence and adjust the disputed issues at any time.

Witnesses

16.—(1) A party to a small claim shall be entitled to give and lead evidence but shall be responsible for securing the attendance of his witnesses at a hearing and shall be personally liable for their expenses (which shall form expenses in the cause only up to the limit prescribed in rule 26 below).

⁽¹⁰⁾ Section 37(2B) of the Sheriff Courts (Scotland) Act 1971 was inserted 18(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)

⁽¹¹⁾ Section 37 of the Sheriff Courts (Scotland) Act 1971 was inserted by section 18(3) of the Law Reform (Miscellaneous Provisions) Act 1985.

(2) The hearing of a small claim shall not be adjourned solely on account of the failure of a witness to appear unless the sheriff on cause shown so directs.

(3) Evidence by a party or witness shall be given on oath or affirmation.

Productions

17.—(1) A party who intends to found at a hearing (other than a preliminary hearing) upon any documents or articles in his possession, which are reasonably capable of being lodged with the court, shall lodge them with the sheriff clerk together with a list detailing the items no later than seven days before the hearing and shall at the same time send a copy of the list to the other party.

(2) A party litigant shall not borrow a production except with leave of the sheriff and subject to such conditions as the sheriff may impose, but may inspect them within the office of the sheriff clerk during normal business hours, and may obtain copies, where practicable, from the sheriff clerk.

(3) Only documents or articles—

- (a) produced in accordance under paragraph (1) of this rule;
- (b) produced at the preliminary hearing; or
- (c) produced under rule 18 below,

may be used or put in evidence, unless with the consent of the parties or the permission of the sheriff.

Recovery of documents

18.—(1) Any party may apply to the sheriff for an order for recovery of such documents, referred to in a list of documents lodged by that party, as the sheriff considers relevant to the disputed issues.

(2) Where an order has been granted under paragraph (1) of this rule, a copy of it may be served by first class recorded delivery post on the person from whom the documents are sought to be recovered together with a certificate in form 13, and the order of the court shall be implemented in the manner and within the time specified in the order.

(3) Where the party in whose favour an order under paragraph (1) of this rule has been granted is not—

- (a) a partnership or body corporate; or
- (b) acting in a representative capacity,

and is not represented by a solicitor, service under paragraph (2) of this rule shall be effected by the sheriff clerk posting a copy of the order together with a certificate in form 13 by first class recorded delivery post or, on payment of the fee prescribed by the Secretary of State by order, by sheriff officer.

(4) Documents recovered in response to an order under paragraph (1) of this rule shall be sent to, and retained by, the sheriff clerk who shall, on receiving them, advise the parties that the documents are in his possession and (subject to rule 39 of the Summary Cause Rules (confidentiality)) may be examined within his office during normal business hours.

(5) In the event of a person, from whom documents are sought to be recovered, failing to implement an order of the court in the manner or within the time specified, the party seeking recovery may apply to the sheriff for an order requiring that person to appear before him to explain his failure; and if such person shall fail to appear he may be held in contempt of court.

(6) Documents recovered under this rule may be tendered as evidence at any hearing without further formality, and rule 17(2) above shall apply to such documents.

Hearing

19. Any hearing, including a preliminary hearing, shall be conducted in public in such manner as the sheriff considers best suited to the clarification of the issue before him; and shall, so far as practicable, be conducted in an informal manner.

Noting of evidence

20. The sheriff shall make notes of the evidence at a hearing for his own use and shall retain these notes until after any appeal has been disposed of.

Documents, etc., referred to during hearing

21. Documents or other productions referred to during a hearing, and a report of a person to whom a matter has been remitted, shall be retained in the custody of the sheriff clerk until any appeal has been disposed of.

Abandonment of small claim

22.—(1) At any time prior to decree being pronounced, the pursuer may offer to abandon the small claim.

(2) Where the pursuer offers to abandon, the sheriff clerk shall assess the sum of expenses payable by the pursuer to the defender calculated on such basis as the sheriff may direct (subject to section 36B of the Sheriff Courts (Scotland) Act 1971(12) and rule 26 below).

(3) The pursuer shall make payment to the defender of the assessed sum of expenses within 14 days of the date of assessment; and the court may thereafter dismiss the claim.

(4) Where the pursuer fails to make payment of the sum of assessed expenses within 14 days of the date of assessment, the court shall absolve the defender with expenses in favour of the defender.

Decree by default and dismissal

23.—(1) Where, after a defence has been stated, a party fails to appear or be represented at any hearing, a special hearing shall be fixed by the court to be held not earlier than 14 days after the date of such failure.

(2) Where a special hearing is fixed by the court under paragraph (1) of this rule, the sheriff clerk shall forthwith—

- (a) intimate the date, time and place of the special hearing to the party who has failed to appear or to be represented;
- (b) advise him of the reason for the special hearing; and
- (c) advise him that decree may be granted against him if—
 - (i) he fails to appear or be represented at the special hearing; or
 - (ii) at the special hearing good cause is not shown for non-appearance at any prior hearing.

(3) Where a party—

- (a) fails to appear or be represented at a special hearing;
- (b) fails to show cause at a special hearing for his non-appearance at a prior hearing; or
- (c) fails to appear or be represented at any hearing after a special hearing,

(12) Section 36B of the Sheriff Court (Scotland) Act 1971 was substituted by section 18(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)

decree by default or decree absolving the defender may be granted.

(4) Where, after a defence has been stated, a party fails to implement an order of the court, the sheriff may, after giving him an opportunity to be heard, grant decree by default or absolve the defender.

(5) Where all parties fail to appear or be represented at any hearing, the sheriff shall, unless sufficient reason appears to the contrary, dismiss the small claim.

Application for a time to pay direction in defended small claims

24. A defender in a small claim which proceeds as defended may, where it is competent to do so, make a written or oral application to the court, at any time before decree is granted, for a time to pay direction (including where appropriate, an order recalling or restricting an arrestment).

Decree

25.—(1) The sheriff shall, where practicable, give his decision and a brief statement of his reasons at the conclusion of the hearing of a small claim or reserve judgment.

(2) Where the sheriff reserves judgment, he shall, within 28 days of the hearing give his decision in writing together with a brief note of his reasons; and the sheriff clerk shall forthwith intimate these to the parties.

(3) After giving his judgment, the sheriff shall—

- (a) deal with the question of expenses and, where appropriate, make an award of expenses; and
- (b) grant decree as appropriate.

(4) A decree of the sheriff in a small claim shall be a final decree.

Expenses

26.—(1) Subject to section 36B of the Sheriff Courts (Scotland) Act 1971, where—

- (a) a defender has not stated a defence, or having stated a defence, has not proceeded with it, or having stated and proceeded with a defence, has not acted in good faith as to its merits; or
- (b) a party's conduct in relation to the proceedings or the claim has been unreasonable,

rule 88 of the Summary Cause Rules (expenses)⁽¹³⁾ shall apply to the determination of expenses in a small claim as it applies to the determination of expenses in a summary cause.

(2) Subject to section 36B of the Sheriff Courts (Scotland) Act 1971, where an appeal has been made to the sheriff principal, rule 88 of the Summary Cause Rules shall apply to the determination of the expenses of the appeal as it applies to the expenses in a summary cause.

Recall of decree

27.—(1) A pursuer, at any time within 21 days of the grant of decree absolving the defender under rule 13(3) above, may apply for the recall of that decree by lodging with the sheriff clerk a minute for recall of the decree in form 14.

(2) A defender, at any time not later than 14 days after the execution of a charge or execution of arrestment, whichever first occurs, following on the grant of decree in terms of rule 10(1) or 13(1) above, may apply for the recall of that decree by lodging with the sheriff clerk a minute for recall of the decree in form 14.

(3) A party may apply for recall of a decree in the same small claim on one occasion only.

⁽¹³⁾ Rule 88 of the Summary Cause Rules was amended by S.I. [1980/455](#)

(4) Where the party seeking recall of a decree is not—

- (a) a partnership or a body corporate; or
- (b) acting in a representative capacity,

and is not represented by a solicitor, the sheriff clerk shall assist that party to complete and lodge a minute for recall of the decree.

(5) The party seeking recall of a decree shall lodge with the sheriff clerk the sum of £5, when he lodges the minute.

(6) On the lodging of a minute for recall of a decree, the sheriff clerk shall fix a date, time and place for a hearing of the minute; and a copy of the minute together with a note of the date, time and place of the hearing shall be served upon the other party not less than seven days before the date fixed for the hearing by the party seeking recall.

(7) Where the party seeking recall is not—

- (a) a partnership or body corporate; or
- (b) acting in a representative capacity,

and is not represented by a solicitor, service of the minute shall be effected by the sheriff clerk either by first class recorded delivery post or, on payment of the fee prescribed by the Secretary of State by order, by sheriff officer.

(8) At a hearing under paragraph (6) of this rule, the sheriff shall recall the decree so far as not implemented; and the small claim shall proceed in all respects as if the hearing were a preliminary hearing.

(9) Unless the sheriff orders that the sum of £5 lodged under paragraph

(5) of this rule be repaid to the party who has minuted for recall of the decree, that sum shall be delivered by the sheriff clerk to the other party.

(10) A minute for recall of a decree, when duly lodged and served in terms of this rule, shall have the effect of preventing any further action being taken by the other party to enforce the decree.

(11) On service of the copy minute for recall of a decree, any party in possession of the summons shall return it to the sheriff clerk.

Book of Small Claims

28.—(1) The sheriff clerk shall keep a book to be known as the Book of Small Claims in which shall be entered a note of all small claims, minutes under rule 27 above (recall of decree) and minutes under rule 92(1) of the Summary Cause Rules (applications in same cause for variation etc of decree), setting forth, where appropriate—

- (a) the names, designations and addresses of the parties;
- (b) whether the parties were present or absent at any hearing, including an inspection, and the names of their representatives;
- (c) the nature of the cause;
- (d) the amount of any claim;
- (e) the date of issue of the summons;
- (f) the method of service;
- (g) the return date;
- (h) whether a form of response was lodged, and details thereof;
- (i) whether a statement of defence was lodged;

- (j) details of any minute by the pursuer intimating that he does not object to an application for a time to pay direction, or minute by the pursuer requesting decree or other order;
 - (k) details of any interlocutors issued;
 - (l) details of the final decree and the date thereof; and
 - (m) details of any variation or recall of a decree by virtue of the Debtors (Scotland) Act 1987(14).
- (2) The Book of Small Claims shall be signed in respect of each court day by the sheriff.
- (3) The Book of Small Claims may be made up of separate rolls, each roll relating solely to proceedings of a particular description of small claim.
- (4) The Book of Small Claims shall be open for inspection during normal business hours.

Appeals

29.—(1) An appeal to the sheriff principal, other than an appeal to which rule 85A of the Summary Cause Rules (appeals in relation to time to pay directions)(15) applies, shall be by note of appeal—

- (a) requesting a stated case;
- (b) specifying the point of law upon which the appeal is to proceed; and
- (c) lodged with the sheriff clerk not later than 14 days after the date of final decree.

(2) The appellant shall, at the same time as lodging a note of appeal, intimate its lodging to the other party.

(3) The sheriff shall, within 14 days of lodging a note of appeal, issue a draft stated case containing —

- (a) findings in fact and law or, where appropriate, a narrative of the proceedings before him;
- (b) appropriate questions of law; and
- (c) a note stating the reasons for his decisions in law,

and the sheriff clerk shall send a copy of the draft stated case to the parties.

(4) Within 14 days of the issue of the draft stated case—

- (a) a party may lodge with the sheriff clerk a note of any adjustments which he seeks to make;
- (b) the respondent may state any point of law which he wishes to raise in the appeal; and
- (c) the note of adjustment and, where appropriate, point of law shall be intimated to the other party.

(5) The sheriff may, on the motion of a party or of his own accord, allow a hearing on adjustments and may provide for such further procedure under this rule prior to the hearing of the appeal as he thinks fit.

(6) The sheriff shall, within 14 days after—

- (a) the latest date on which a note of adjustments has been or may be lodged; or
- (b) where there has been a hearing on adjustments, that hearing,

and after considering such note and any representations made to him at the hearing, state and sign the case.

(7) The stated case signed by the sheriff shall include questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate.

(14) 1987 c. 18

(15) Rule 85A of the Summary Cause Rules was inserted by S.I. 1988/1978

- (8) After the sheriff has signed the stated case, the sheriff clerk shall—
- (a) place before the sheriff principal all documents and productions in the small claim together with the stated case; and
 - (b) send to the parties a copy of the stated case together with a written note of the date, time and place of the hearing of the appeal.

(9) In the hearing of an appeal, a party shall not be allowed to raise questions of law of which notice has not been given except on cause shown and subject to such conditions as to expenses or otherwise as the sheriff principal may consider appropriate.

Representation

30.—(1) A party to a small claim may be represented at the preliminary hearing or at any subsequent hearing of the proceedings by a solicitor or by any other person.

(2) Where the representative is not a solicitor, the sheriff shall satisfy himself that that person is a suitable person to represent the party at the hearing and that he is authorised to do so.

Application of rules to solicitors

31. Where a rule requires something to be done by, or intimated or sent to, a party, it shall be sufficient compliance with the rule if it is done by, or intimated or sent to, the solicitor acting for that party in the small claim.

Contents of envelope containing service copy summons

32. A document not forming part of the summons or any form of response or other notice in accordance with these rules shall not be included in the same envelope as the service copy summons.

Incidental applications

33.—(1) Except where otherwise provided, any incidental application in a small claim shall be lodged with the sheriff clerk and shall only be heard after two days' notice has been given to the other party.

- (2) A party who is not—
- (a) a partnership or a body corporate; or
 - (b) acting in a representative capacity,

and is not represented by a solicitor, may require the sheriff clerk to intimate to the other party a copy of an incidental application.

(3) The sheriff clerk shall keep a book to be known as the Book of Incidental Applications in Small Claims in which shall be entered all applications incidental to a small claim, other than minutes under rule 10(1), 11(1) or 27(1) above or under rule 92(1) of the Summary Cause Rules (applications in same cause for variation etc of decree), and in which shall be set forth the following particulars, where appropriate—

- (a) the names of the parties together with a clear reference to the entry in the Book of Small Claims;
- (b) whether parties are present or absent at the hearing of the application, and the names of their representatives;
- (c) the nature of the application; and
- (d) the interlocutor issued or order made.

(4) The Book of Incidental Applications in Small Claims shall be—

- (a) signed by the sheriff on each day on which incidental applications are heard; and
- (b) be open for inspection during normal business hours to all concerned without fee.

Dispensing power of sheriff

34. The sheriff may relieve any party from the consequences of any failure to comply with the provisions of these rules which is shown to be due to mistake, oversight or other cause, not being wilful non-observance of the rules, on such terms and conditions as seem just; and in any such case the sheriff may make such order as seems just by way of extension of time, lodging or amendment of papers or otherwise so as to enable the small claim to proceed as if such failure had not occurred.

PART III

SPECIAL RULES FOR SMALL CLAIMS FOR DELIVERY OR RECOVERY OF POSSESSION OF MOVEABLE PROPERTY AND FOR IMPLEMENT OF AN OBLIGATION

Application

35.—(1) The provisions of Part II of these rules shall apply to a small claim for which rules are provided in this Part, except insofar as those provisions are inconsistent with the rules in this Part.

(2) The provisions of this Part of these rules shall apply to a small claim for delivery or recovery of possession of moveable property or for implement of an obligation to which article 2(b) or 3 of the Small Claims (Scotland) Order 1988(16) applies.

Summons for delivery or recovery of possession of moveable property

36.—(1) A small claim for delivery or recovery of possession of moveable property shall be commenced by summons in form 15.

(2) A service copy summons in form 16 shall be served on the defender in a small claim for delivery or recovery of possession of moveable property in which a time to pay direction may be applied for.

(3) A service copy summons in form 17 shall be served on the defender in a small claim for delivery or recovery of possession of moveable property in which a time to pay direction may not be applied for.

Summons for implement of an obligation

37.—(1) A small claim for implement of an obligation shall be commenced by summons in form 18.

(2) A service copy summons in form 19 shall be served on the defender in a small claim for implement of an obligation in which a time to pay direction may be applied for.

(3) A service copy summons in form 20 shall be served on the defender in a small claim for implement of an obligation in which a time to pay direction may not be applied for.

Service

38.—(1) Where service of the copy summons has been effected other than by the sheriff clerk, the pursuer shall return the summons together with a certificate of service in form 6 to the sheriff clerk at least 24 hours before the date of the preliminary hearing.

(2) Where paragraph (1) of this rule is not complied with, the sheriff may dismiss the small claim.

Time to pay directions

39.—(1) In a small claim where a service copy summons has been served under rule 36(2) or 37(2) above, the defender may, if he does not intend to defend, apply for a time to pay direction, where it is competent to do so, by—

- (a) appearing at the preliminary hearing and making a motion for a time to pay direction; or
- (b) completing and returning to the sheriff clerk, at least 7 days before the date specified in the service copy summons for the preliminary hearing, the appropriate portion of form 16 or 19, as the case may be.

(2) In a small claim where a service copy summons has been served under rule 36(2) or 37(2) above which proceeds as defended, the defender may, where it is competent to do so, apply for a time to pay direction by written or oral application to the court at any time before final decree is granted.

(3) Where a defender applies for a time to pay direction under this rule, he may at the same time apply for an order recalling or restricting an arrestment on the dependence of the action or in security of the sum concerned by completing and delivering to the sheriff clerk the appropriate part of form 16 or 19, as the case may be.

Preliminary hearing

40.—(1) A preliminary hearing shall be held on the date specified in the summons.

(2) Where the defender does not appear or is not represented at the preliminary hearing, decree may be granted against him.

Decree for alternative claim for payment

41.—(1) Where decree for delivery or recovery of possession of moveable property or for implement of an obligation has been granted but the defender has failed to comply with that decree, the pursuer may lodge with the sheriff clerk an incidental application for decree in terms of the alternative crave for payment; and the incidental application shall be intimated to the defender.

(2) The pursuer shall appear at the hearing of an incidental application under paragraph (1) of this rule.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes rules of procedure in the sheriff court for small claims.

Status: *This is the original version (as it was originally made). UK
Statutory Instruments are not carried in their revised form on this site.*

The form of summary cause process known as a small claim applies to such summary cause proceedings as the Lord Advocate has prescribed in the Small Claims (Scotland) Order 1988 under section 35(2) of the Sheriff Courts (Scotland) Act 1971 (as substituted by section 18(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985).