

**ACT OF SEDERUNT (SHERIFF COURT ORDINARY CAUSE RULES) 1993
No.1956 (S.223)**

SCHEDULE 1

Initiation and progress of causes

CHAPTER 7 UNDEFENDED CAUSES

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Application of this Chapter

7.1. This Chapter applies to any cause other than an action in which the sheriff may not grant decree without evidence.

Minute for granting of decree without attendance

- 7.2. (1) Subject to the following paragraphs, where the defender-
- (a) does not lodge a notice of intention to defend,
 - (b) does not lodge an application for a time to pay direction under the Debtors (Scotland) Act 1987 or a time order under the Consumer Credit Act 1974,
 - (c) has lodged such an application for a time to pay direction or time order and the pursuer does not object to the application or to any recall or restriction of an arrestment sought in the application,

the sheriff may, on the pursuer endorsing a minute for decree on the initial writ, at any time after the expiry of the period for lodging that notice or application, grant decree in absence or other order in terms of the minute so endorsed without requiring the attendance of the pursuer in court.

- (2) The sheriff shall not grant decree under paragraph (1)
 - (a) unless it appears ex facie of the initial writ that a ground of jurisdiction exists under the Civil Jurisdiction and Judgments Act 1982 where that Act applies; and
 - (b) the cause is not a cause-

- (i) in which decree may not be granted without evidence;
- (ii) to which paragraph (4) applies; or
- (iii) to which rule 33.31 (procedure in undefended family action for a section 11 order) applies.

(3) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the initial writ in sufficient time to arrange for his defence or that all necessary steps have been taken to that end; and for the purposes of this paragraph-

(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;

(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.

(4) Where an initial writ 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 applies, decree shall 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.

Applications for time to pay directions or time orders in undefended causes

7.3. (1) This rule applies to a cause in which

(a) a time to pay direction may be applied for under the Debtors (Scotland) Act 1987; or

(b) a time order may be applied for under the Consumer Credit Act 1974.

(2) A defender in a cause which is otherwise undefended, who wishes to apply for a time to pay direction or time order, and where appropriate, to have an arrestment recalled or restricted, shall complete and lodge with the sheriff clerk the appropriate part of Form O3 before the expiry of the period of notice.

(2A) As soon as possible after the application of the defender is lodged, the sheriff clerk shall send a copy of it to the pursuer by first class ordinary post.

(3) Where the pursuer does not object to the application of the defender made in accordance with paragraph (2), he shall minute for decree in accordance with rule 7.2; and the sheriff may grant decree or other order in terms of the application and minute.

(4) Where the pursuer objects to the application of the defender made in accordance with paragraph (2) he shall on the same date—

- (a) complete and lodge with the sheriff clerk Form O3A;
- (b) minute for decree in accordance with rule 7.2; and
- (c) send a copy of Form O3A to the defender.

(4A) The sheriff clerk shall then fix a hearing on the application of the defender and intimate the hearing to the pursuer and the defender.

(4B) The hearing must be fixed for a date within 28 days of the date on which the Form O3A and the minute for decree are lodged.

(5) The sheriff may determine an application in which a hearing has been fixed under paragraph (4) whether or not any of the parties appear.

Decree for expenses

7.4. On granting decree in absence or thereafter, the sheriff may grant decree for expenses.

Finality of decree in absence

7.5. Subject to section 9(7) of the Land Tenure Reform (Scotland) Act 1974 (decree in action of removing for breach of condition of long lease to be final when extract recorded in Register of Sasines), a decree in absence which has not been recalled or brought under review by suspension or by reduction shall become final and shall have effect as a decree *in foro contentioso*-

- (a) on the expiry of six months from the date of the decree or from the date of a charge made under it, as the case may be, where the service of the initial writ or of the charge has been personal; and
- (b) in any event, on the expiry of 20 years from the date of the decree.

Amendment of initial writ

7.6. (1) In an undefended cause, the sheriff may-

- (a) allow the pursuer to amend the initial writ in any way permitted by rule 18.2 (powers of sheriff to allow amendments); and
- (b) order the amended initial writ to be re-served on the defender on such period of notice as he thinks fit.

(2) The defender shall not be liable for the expense occasioned by any such amendment unless the sheriff so orders.

(3) Where an amendment has been allowed under paragraph (1), the amendment-

- (a) shall not validate diligence used on the dependence of a cause so as to

prejudice the rights of creditors of the party against whom the diligence has been executed, who are interested in defeating such diligence; and

(b) shall preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.

Disapplication of certain rules

7.7. The following rules in Chapter 15 (motions) shall not apply to an action in which no notice of intention to defend has been lodged or to any action in so far as it proceeds as undefended:-

rule 15.2 (intimation of motions),

rule 15.3 (opposition to motions),

rule 15.5 (hearing of motions).