

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

SCHEDULE 1

Initiation and progress of causes

CHAPTER 19 COUNTERCLAIMS

- [19.1.](#) Counterclaims
- [19.2.](#) Warrants for diligence on counterclaims
- [19.2A.](#) Form of record where counterclaim lodged
- [19.3.](#) Effect of abandonment of cause
- [19.4.](#) Disposal of counterclaims

Counterclaims

19.1. (1) In any action other than a family action within the meaning of rule 33.1(1), a civil partnership action within the meaning of rule 33A.1(1) or an action of multiplepounding, a defender may counterclaim against a pursuer-

(a) where the counterclaim might have been made in a separate action in which it would not have been necessary to call as defender any person other than the pursuer; and

(b) in respect of any matter-

(i) forming part, or arising out of the grounds, of the action by the pursuer;

(ii) the decision of which is necessary for the determination of the question in controversy between the parties; or

(iii) which, if the pursuer had been a person not otherwise subject to the jurisdiction of the court, might have been the subject-matter of an action against that pursuer in which jurisdiction would have arisen by reconvention.

(2) A counterclaim shall be made in the defences-

(a) when the defences are lodged or during the period for adjustment;

(b) by amendment at any other stage, with the leave of the sheriff and subject to such conditions, if any, as to expenses or otherwise as the sheriff thinks fit.

(3) Defences which include a counterclaim shall commence with a crave setting out the counterclaim in such form as, if the counterclaim had been made in a separate action, would have been appropriate in the initial writ in that separate action and shall include-

- (a) answers to the condescence of the initial writ as required by rule 9.6(2) (form of defences);
- (b) a statement of facts in numbered paragraphs setting out the facts on which the counterclaim is founded, incorporating by reference, if necessary, any matter contained in the defences; and
- (c) appropriate pleas-in-law.

Warrants for diligence on counterclaims

19.2. (1) A defender who makes a counterclaim may apply for a warrant for interim diligence which would have been permitted had the warrant been sought in an initial writ in a separate action.

Form of record where counterclaim lodged

19.2A. Where, under rule 9.10 (open record), 9.11 (record for Options Hearing), 10.4 (open record), or 10.5 (closed record), a record requires to be lodged in an action in which a counterclaim is included in the defences, the pleadings of the parties shall be set out in the record in the following order:-

- (a) the crave of the initial writ;
- (b) the condescence and answers relating to the initial writ;
- (c) the pleas-in-law of the parties relating to the crave of the initial writ;
- (d) the crave of the counterclaim;
- (e) the statement of facts and answers relating to the counterclaim; and
- (f) the pleas-in-law of the parties relating to the counterclaim.

Effect of abandonment of cause

19.3. (1) The right of a pursuer to abandon a cause under rule 23.1 shall not be affected by a counterclaim; and any expenses for which the pursuer is found liable as a condition of, or in consequence of, such abandonment shall not include the expenses of the counterclaim.

(2) Notwithstanding abandonment by the pursuer, a defender may insist in his counterclaim; and the proceedings in the counterclaim shall continue in dependence as if the counterclaim were a separate action.

Disposal of counterclaims

19.4. The sheriff may-

- (a) deal with a counterclaim as if it had been stated in a separate action;
- (b) regulate the procedure in relation to the counterclaim as he thinks fit; and
- (c) grant decree for the counterclaim in whole or in part or for the difference

between it and the sum sued for by the pursuer.