

CHAPTER 19

DECREES IN ABSENCE

Decrees in absence

19.1.-(1) This rule applies to any action other than an action in which the court may not grant decree without evidence.

(2) Where a defender-

- (a) fails to enter appearance in accordance with rule 17.1(1), or
- (b) having entered appearance, fails to lodge defences in accordance with rule 18.1(2), the pursuer may apply by motion for decree in absence against him.

(3) A motion enrolled under paragraph (2) shall specify-

- (a) the decree sought; and
- (b) where appropriate, whether expenses are sought-
 - (i) as taxed by the Auditor; or
 - (ii) as elected by the pursuer under Part I of Chapter III of the Table of Fees in rule 42.16.

(4) Where a motion has been enrolled under paragraph (2), the court shall grant decree in absence in terms of all or any of the conclusions of the summons-

- (a) subject to such restrictions, if any, as may be set out in a minute appended to the summons and signed by the pursuer;
- (b) if satisfied that it has jurisdiction;
- (c) if satisfied that the rules of service have been complied with; and
- (d) where the summons was served on the defender furth of Scotland, if satisfied about service on the defender-
 - (i) in a case to which the Civil Jurisdiction and Judgments Act 1982 (a) applies, as required by Article 20(2) or (3) of the convention in Schedule 1, or 3C, or Article 20(2) of Schedule 4, to that Act (b) as the case may be;
 - (ii) in a case in which service has been executed on the defender under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated 15th November 1965 (c), as required by Article 15 of that convention; or
 - (iii) in a case in which service has been executed on the defender under a convention between the United Kingdom and the country in which service was executed, as required by the provisions of that convention.

(5) In an undefended action in which a defender is designed as resident or carrying on business furth of the United Kingdom and has no known solicitor in Scotland, the court shall, in the interlocutor granting decree in absence against him, supersede extract of that decree for such period beyond 7 days as it thinks fit to allow for the number of days required in the ordinary course of post for the transmission of a letter from Edinburgh to the residence, registered office, other official address or place of business, as the case may be, of that defender and the transmission of an answer from there to Edinburgh.

(a) 1982 c.27.

(b) Schedule 1 to the Act of 1982 was substituted by S.I. 1990/2591 and Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991 (c.12), section 1(3).

(c) Cmnd. 3986 (1969).

(6) Where a copy of the summons has been served on the defender furth of the United Kingdom under rule 16.2 and decree in absence is pronounced against him as a result of his failure to enter appearance, a certified copy of the interlocutor granting decree shall be served on him forthwith by the pursuer.

(7) Where a decree in absence on which a charge may be made has been granted after personal service of a summons on the defender or after the defender has entered appearance, and-

- (a) the decree has not been recalled,
- (b) the decree has been extracted,
- (c) a charge on the decree has not been brought under review by suspension, and
- (d) 60 days have elapsed since the expiry of the charge,

that decree shall have effect as a decree *in foro contentioso*.

Recall of decrees in absence

19.2.-(1) A decree in absence may not be reclaimed against.

(2) A defender may, not later than-

- (a) 7 days after the date of a decree in absence against him, or
- (b) the last day of the period for which extract of the decree has been superseded,

apply by motion for recall of the decree and to allow defences to be received.

(3) Where a defender enrolls a motion under paragraph (2), he shall-

- (a) at the same time lodge defences in process;
- (b) have paid the sum of £25 to the pursuer; and
- (c) lodge the receipt for that sum in process.

(4) On compliance by the defender with paragraphs (2) and (3), the court shall recall the decree against him and allow the defences to be received; and the action shall proceed as if the defences had been lodged timeously.

(5) Where a summons has been served on a defender furth of the United Kingdom under rule 16.2 and decree in absence has been pronounced against him as a result of his failure to enter appearance, the court may, on the motion of that defender, recall the decree and allow defences to be received if-

- (a) without fault on his part, he did not have knowledge of the summons in sufficient time to defend;
- (b) he has disclosed a *prima facie* defence to the action on the merits; and
- (c) the motion is enrolled 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 the decree;

and, where that decree is recalled, the action shall proceed as if the defences had been lodged timeously.

(6) On enrolling a motion under paragraph (5), the defender shall lodge defences in process.

(7) The recall of a decree under this rule shall be without prejudice to the validity of anything already done or transacted, of any contract made or obligation incurred, or of any appointment made or power granted, in or by virtue of that decree.