

# ACT OF SEDERUNT (SMALL CLAIM RULES) 2002 NO. 133

## CHAPTER 9 DEFENDED CLAIM

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### The Hearing

- 9.1.** (1) Where a defender intends to-
- (a) challenge the jurisdiction of the court;
  - (b) state a defence (including, where appropriate, a counterclaim);
- or
- (c) dispute the amount of the claim,
- he must complete the form of response part of Form 1a or 1b as appropriate indicating that intention and lodge it with the sheriff clerk on or before the return day.
- (2) Where the defender has lodged a form of response in accordance with paragraph (1) the claim will call in court for a hearing ("the Hearing").
- (3) The Hearing shall be held on the hearing date which shall be 14 days after the return day.
- (4) If the claim is not resolved at the Hearing, the sheriff may continue the Hearing to such other date as he considers to be appropriate.
- (5) The defender must attend or be represented at the Hearing and the sheriff shall note any challenge, defence or dispute, as the case may be, on the summons.
- (6) Where at the Hearing the defender-
- (a) does not appear or is not represented; and
  - (b) the pursuer is present or is represented,
- decree may be granted against the defender in terms of the summons.
- (7) Where at the Hearing-
- (a) the pursuer does not appear or is not represented; and
  - (b) the defender is present or represented,
- the sheriff may grant decree of dismissal.
- (8) If all parties fail to appear at the Hearing, the sheriff shall, unless sufficient reason appears to the contrary, dismiss the claim.

### Purpose of the Hearing

- 9.2.** (1) If, at the Hearing, the sheriff is satisfied that the claim is incompetent or that there is a patent defect of jurisdiction, he must grant decree of dismissal in favour of the defender or, if appropriate, transfer the claim in terms of rule 15.1(2).

- (2) At the Hearing, the sheriff shall-
  - (a) ascertain the factual basis of the claim and any defence, and the legal basis on which the claim and defence are proceeding; and
  - (b) seek to negotiate and secure settlement of the claim between the parties.
- (3) If the sheriff cannot secure settlement of the claim between the parties, he shall-
  - (a) identify and note on the summons the issues of fact and law which are in dispute;
  - (b) note on the summons any facts which are agreed; and
  - (c) if possible reach a decision on the whole dispute on the basis of the information before him;
  - (d) enquire whether there is or is likely to be a vulnerable witness within the meaning of section 11(1) of the 2004 Act who is to give evidence at any proof or hearing, consider any child witness notice or vulnerable witness application that has been lodged where no order has been made and consider whether any order under section 12(1) of the 2004 Act requires to be made.
- (4) Where evidence requires to be led for the purposes of reaching a decision on the dispute, the sheriff shall-
  - (a) direct parties to lead evidence on the disputed issues of fact which he has noted on the summons;
  - (b) indicate to the parties the matters of fact that require to be proved, and may give guidance on the nature of the evidence to be led; and
  - (c) fix a hearing on evidence for a later date for that purpose.

### **Conduct of hearings**

- 9.3.** (1) Any hearing in a claim shall be conducted in accordance with the following paragraphs of this rule.
- (2) A hearing shall be conducted as informally as the circumstances of the claim permit.
  - (3) The procedure to be adopted at a hearing shall be such as the sheriff considers-
    - (a) to be fair;
    - (b) best suited to the clarification and determination of the issues before him; and
    - (c) gives each party sufficient opportunity to present his case.
  - (4) Before proceeding to hear evidence, the sheriff shall explain to the parties the form of procedure which he intends to adopt.
  - (5) Having considered the circumstances of the parties and whether (and to what extent) they are represented, the sheriff-
    - (a) may, in order to assist resolution of the disputed issues of fact, put questions to parties and to witnesses; and
    - (b) shall (if he considers it necessary for the fair conduct of the hearing) explain any legal terms or expressions which are used.

(6) Evidence will normally be taken on oath or affirmation but the sheriff may dispense with that requirement if it appears reasonable to do so.

#### **Inspection of places and objects**

- 9.4.** (1) If, at any hearing, 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.
- (2) The sheriff may, if he considers it appropriate, inspect any place that is material to the disputed issues in the presence of the parties or their representatives.

#### **Remit to determine matter of fact**

- 9.5.** (1) The sheriff may, where parties agree, remit to any suitable person to report on any matter of fact.
- (2) Where a remit is made under paragraph (1) above, the report of such person shall be final and conclusive with respect to the matter of fact which is the subject of the remit.
- (3) A remit shall not be made under paragraph (1) of this rule unless parties have previously agreed the basis upon which the fees, if any, of such person shall be met.

#### **Noting of evidence**

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

#### **Application for time to pay direction or time order in defended claim**

**9.7.** A defender in a claim which proceeds as defended may, where it is competent to do so, make an incidental application or apply orally at any hearing, at any time before decree is granted, for a time to pay direction (including where appropriate, an order recalling or restricting an arrestment on the dependence) or a time order.

#### **Pronouncement of decision**

- 9.8.** (1) The sheriff must, where practicable, give his decision and a brief statement of his reasons at the end of the hearing of a claim, or he may reserve judgment.
- (2) If the sheriff reserves judgment, he must, within 28 days of the hearing, give his decision in writing together with a brief note of his reasons, and the sheriff clerk must send a copy to the parties.
- (3) After giving his judgment, the sheriff must-
- (a) deal with the question of expenses and, where appropriate, make an award of expenses; and
  - (b) grant decree as appropriate.
- (4) The decree of the sheriff shall be a final decree.