

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

CHAPTER 22 RECALL OF DECREE

(Actions raised prior to 4th April 2011 but not determined prior to 4th April 2011)

Recall of decree

- 22.1.** (1) A party may apply for recall of a decree granted under rule 8.1(3), rule 9.1(6), (7) or (8) or rule 11.1(8) by lodging with the sheriff clerk a minute in Form 20, explaining the party's failure to appear and in the case of-
- (a) a defender; or
 - (b) where decree has been granted in respect of a counterclaim, a pursuer,
- stating, where he has not already done so-
- (i) his proposed defence, in the case of a defender; or
 - (ii) his proposed answer, in the case of a pursuer responding to a counterclaim.
- (2) A party may apply for recall of a decree in the same claim on one occasion only.
- (3) Except in relation to an application to which paragraph (4) applies, a minute by a pursuer under paragraph (1) must be lodged within 14 days of the grant of the decree.
- (4) A minute lodged by-
- (a) a pursuer in respect of a decree granted in terms of a counterclaim; or
 - (b) a defender,
- shall be lodged-
- (i) if the claim has been served outwith the United Kingdom under rule 6.5, within a reasonable time after he had knowledge of the decree against him or in any event before the expiry of one year from the date of that decree; or
 - (ii) in any other case, within 14 days of the execution of a charge or execution of arrestment, whichever first occurs, following on the grant of decree.
- (5) On the lodging of a minute for recall of a decree, the sheriff clerk must fix a date, time and place for a hearing of the minute.
- (6) If a hearing has been fixed under paragraph (5), the party seeking recall must serve upon the other party not less than seven days before the date fixed for the hearing-
- (a) a copy of the minute in Form 20a; and
 - (b) a note of the date, time and place of the hearing.
- (7) If the party seeking recall-
- (a) is not a partnership or body corporate;
 - (b) is not acting in a representative capacity; and
 - (c) is not represented by a solicitor,

the sheriff clerk must assist that party to complete and lodge the minute for recall and must arrange service of it-

- (i) by first class recorded delivery post; or
- (ii) on payment of the fee prescribed by the Scottish Ministers by order, by sheriff officer.

(8) At a hearing fixed under paragraph (5), the sheriff shall recall the decree so far as not implemented and the hearing shall then proceed as a Hearing under rules 9.1(4) to (8) and 9.2.

(9) A minute for recall of a decree, when 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.

(10) On receipt of the copy minute for recall of a decree, any party in possession of an extract decree must return it forthwith to the sheriff clerk.

(11) If it appears to the sheriff that there has been any failure or irregularity in service of the minute for recall of a decree, he may order re-service of the minute on such conditions as he thinks fit.