

ACT OF SEDERUNT (SUMMARY CAUSE RULES) 2002 NO. 132

CHAPTER 7 UNDEFENDED ACTION

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Undefended action

- 7.1.** (1) Subject to paragraphs (4), (5) and (6), where the defender has not lodged a form of response on or before the return day-
- (a) the action shall not require to call in court on the calling date; and
 - (b) the pursuer must lodge a minute in Form 17 before the sheriff clerk's office closes for business on the second day before the calling date.
- (2) If the pursuer does not lodge a minute in terms of paragraph (1), the sheriff must dismiss the action.
- (3) If the sheriff is not prepared to grant the order requested in Form 17, the sheriff clerk must-
- (a) fix a date, time and place for the pursuer to be heard; and
 - (b) inform the pursuer of-
 - (i) that date, time and place; and
 - (ii) the reasons for the sheriff wishing to hear him.
- (4) Where no form of response has been lodged in an action-
- (a) for recovery of possession of heritable property; or
 - (b) of sequestration for rent,
- the action shall call in court on the calling date and the sheriff shall determine the action as he thinks fit.
- (5) Where no form of response has been lodged in an action of multipointing the action shall proceed in accordance with rule 27.9(1)(a).
- (6) Where no form of response has been lodged in an action of count, reckoning and payment the action shall proceed in accordance with rule 29.2.
- (7) If the defender does not lodge a form of response in time or if the sheriff is satisfied that he does not intend to defend the action on the merits or on the amount of the sum due, the sheriff may grant decree with expenses against him.

Application for time to pay direction or time order

- 7.2.** (1) If the defender admits the claim, he may, where competent-
- (a) make an application for a time to pay direction (including, where appropriate, an application for recall or restriction of an arrestment) or a time order by completing the appropriate part of the form of response contained in the defender's copy summons and lodging it with the sheriff clerk on or before the return day; or
 - (b) lodge a form of response indicating that he admits the claim and intends to apply orally for a time to pay direction (including, where

appropriate, an application for recall or restriction of an arrestment) or time order.

(1A) The sheriff clerk must on receipt forthwith intimate to the pursuer a copy of any response lodged under paragraph (1).

(2) Where the defender has lodged an application in terms of paragraph (1)(a), the pursuer may intimate that he does not object to the application by lodging a minute in Form 18 before the time the sheriff clerk's office closes for business on the day occurring 9 days before the calling date stating that he does not object to the defender's application and seeking decree.

(3) If the pursuer intimates in accordance with paragraph (2) that he does not object to the application-

(a) the sheriff may grant decree on the calling date;

(b) the parties need not attend; and

(c) the action will not call in court.

(4) If the pursuer wishes to oppose the application for a time to pay direction or time order made in accordance with paragraph (1)(a) he must before the time the sheriff clerk's office closes for business on the day occurring 9 days before the calling date—

(a) lodge a minute in Form 19; and

(b) send a copy of that minute to the defender.

(5) Where the pursuer objects to an application in terms of paragraph (1)(a) or the defender has lodged a form of response in accordance with paragraph (1)(b), the action shall call on the calling date when the parties may appear and the sheriff must decide the application and grant decree accordingly.

(6) The sheriff shall decide an application in accordance with paragraph (5) whether or not any of the parties appear.

(7) Where the defender has lodged an application in terms of paragraph (1)(a) and the pursuer fails to proceed in accordance with either of paragraphs (2) or (4) the sheriff may dismiss the claim.

Decree in actions to which the Hague Convention or Civil Jurisdiction and Judgments Act 1982 apply

7.3. (1) If the summons 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 must 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.

(2) Where a defender is domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree until it has been shown that the defender has been able to receive the summons in sufficient time to arrange his defence or that all necessary steps have been taken to that end.

(3) For the purposes of paragraph (2)-

- (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.