

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

CHAPTER 8 DEFENDED ACTION

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Response to summons

- 8.1.** (1) If the defender intends-
- (a) to challenge the jurisdiction of the court or the competency of the action;
 - (b) to defend the action (whether as regards the amount claimed or otherwise); or
 - (c) state a counterclaim,
- he must complete and lodge with the sheriff clerk on or before the return day the form of response contained in the defender's copy summons including a statement of his response which gives fair notice to the pursuer.
- (2) The sheriff clerk must upon receipt intimate to the pursuer a copy of any response lodged under paragraph (1).

Procedure in defended action

- 8.2.** (1) Where the defender has lodged a form of response in accordance with rule 8.1(1) the action will call in court for a hearing.
- (2) The hearing shall be held on the calling date.
- (3) The sheriff may continue the hearing to such other date as he considers appropriate.
- (4) The defender must either be present or be represented at the hearing.
- (5) Where 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.

(6) Where at the hearing-

- (a) the pursuer does not appear or is not represented; and
- (b) the defender is present or represented,

the sheriff shall dismiss the action and may grant decree in terms of any counterclaim.

(7) If all parties fail to appear at the hearing, the sheriff shall, unless sufficient reason appears to the contrary, dismiss the action and any counterclaim.

Purpose of hearing

8.3. (1) If, at the hearing, the sheriff is satisfied that the action 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 action in terms of rule 16.1(2).

(2) At the hearing, the sheriff shall-

- (a) ascertain the factual basis of the action and any defence, and the legal basis on which the action and defence are proceeding; and
- (b) seek to negotiate and secure settlement of the action between the parties.

(3) If the sheriff cannot secure settlement of the action 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;
- (c) where it appears that the claim as stated or any defence stated in response to it is not soundly based in law in whole or in part, hear parties forthwith on that matter and may grant decree in favour of any party; and
- (d) if satisfied that the claim and any defence have or may have a sound basis in law and that the dispute between the parties depends upon resolution of disputed issues of fact, fix a diet of proof or, alternatively, if satisfied that the claim and any defence have a sound basis in law and that the facts of the case are sufficiently agreed, hear parties forthwith on the merits of the action and may grant decree in whole or in part in favour of any party
- (e) 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 the sheriff fixes a proof, the sheriff clerk shall make up a folder for the case papers.

Remit to person of skill

- 8.4.** (1) The sheriff may, on an incidental application by any party or on a joint application, remit to any person of skill, or other person, to report on any matter of fact.
- (2) If a remit under paragraph (1) is made by joint application or of consent of all parties, 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) If a remit under paragraph (1) is made-
- (a) on the application of one of the parties, the expenses of its execution must, in the first instance, be met by that party; or
 - (b) on a joint application or of consent of all parties, the expenses must, in the first instance, be met by the parties equally, unless the sheriff otherwise orders.

Inspection and recovery of documents

- 8.5.** (1) Each party shall, within 28 days after the date of the fixing of a proof, intimate to every other party, and lodge with the sheriff clerk, a list of documents, which are or have been in his possession or control which he intends to use or put in evidence at the proof, including the whereabouts of those documents.
- (2) A party who has received a list of documents from another party under paragraph (1) may inspect those documents which are in the possession or control of the party intimating the list at a time and place fixed by that party which is reasonable to both parties.
- (3) Nothing in this rule shall affect-
- (a) the law relating, or the right of a party to object, to the inspection of a document on the ground of privilege or confidentiality; or
 - (b) the right of a party to apply under rule 18.1 for a commission and diligence for recovery of documents or under rule 18.3 for an order under section 1 of the Administration of Justice (Scotland) Act 1972.

Exchange of lists of witnesses

- 8.6.** (1) Within 28 days after the date of the fixing of a proof, each party shall intimate to every other party, and lodge with the sheriff clerk, a list of witnesses, including any skilled witnesses, whom he intends to call to give evidence.
- (2) A party who seeks to call as a witness a person not on his list intimated and lodged under paragraph (1) shall, if any other party objects to such a witness being called, seek leave of the sheriff to call that person as a witness; and such leave may be granted on such conditions, if any, as the sheriff thinks fit.
- (3) The list of witnesses intimated under paragraph (1) shall include the name, occupation (where known) and address of each intended witness and indicate whether the witness is considered to be a vulnerable witness within the meaning of section 11(1) of the 2004 Act and whether any child witness

notice or vulnerable witness application has been lodged in respect of that witness.

Exchange of reports of skilled witnesses

- 8.7.** (1) Not less than 28 days before the diet of proof, a party shall-
- (a) disclose to every other party in the form of a written report the substance of the evidence of any skilled person whom he intends to call as a witness; and
 - (b) lodge a copy of that report in process.
- (2) Except on special cause shown, a party may only call as a skilled witness any person the substance of whose evidence has been disclosed in accordance with paragraph (1).

Evidence generally

8.8. Where possible, the parties shall agree photographs, sketch plans, and any statement or document not in dispute.

Notices to admit and notices of non-admission

8.8A.—(1) At any time after a form of response has been lodged, a party may intimate to any other party a notice or notices calling on him or her to admit for the purposes of that cause only—

- (a) such facts relating to an issue averred in the statement of claim or form of response as may be specified in the notice;
 - (b) that a particular document lodged with the sheriff clerk and specified in the notice is—
 - (i) an original and properly authenticated document; or
 - (ii) a true copy of an original and properly authenticated document.
- (2) Where a party on whom a notice is intimated under paragraph (1)—
- (a) does not admit a fact specified in the notice, or
 - (b) does not admit, or seeks to challenge, the authenticity of a document specified in the notice,

he or she must, within 21 days after the date of intimation of the notice under paragraph (1), intimate a notice of non-admission to the party intimating the notice to him or her under paragraph (1) stating that he or she does not admit the fact or document specified.

(3) A party who fails to intimate a notice of non-admission under paragraph (2) will be deemed to have admitted the fact or document specified in the notice intimated to him or her under paragraph (1); and such fact or document may be used in evidence at a proof if otherwise admissible in evidence, unless the sheriff, on special cause shown, otherwise directs.

(4) The party serving a notice under paragraph (1) or (2) must lodge a copy of it with the sheriff clerk.

(5) A deemed admission under paragraph (3) must not be used—

- (a) against the party by whom it was deemed to be made other than in the cause for the purpose for which it was deemed to be made; or
 - (b) in favour of any person other than the party by whom the notice was given under paragraph (1).
- (6) The sheriff may, at any time, allow a party to amend or withdraw an admission made by him or her on such conditions, if any, as the sheriff thinks fit.
- (7) A party may, at any time, withdraw in whole or in part a notice of non-admission by intimating a notice of withdrawal.

Hearing parts of action separately

- 8.9.** (1) In any action which includes a claim for payment of money, the sheriff may-
- (a) of his own accord; or
 - (b) on the incidental application of any party,
- order that proof on liability or any specified issue be heard separately from proof on any other issue and determine the order in which the proofs shall be heard.
- (2) The sheriff shall pronounce such interlocutor as he thinks fit at the conclusion of the first proof of any action ordered to be heard in separate parts under paragraph (1).

Returning borrowed parts of process before proof

8.10. All parts of process which have been borrowed must be returned to process not later than noon on the day preceding the proof.

Conduct of proof

8.11. The pursuer must lead in the proof unless the sheriff, on the incidental application of any of the parties which has been intimated to the other parties not less than seven days before the diet of proof, directs otherwise.

Administration of oath or affirmation to witness

8.12. The sheriff must administer the oath to a witness in Form 20 or, where the witness elects to affirm, the affirmation in Form 21.

Noting of evidence, etc.

- 8.13.** (1) The sheriff who presides at the proof may make a note of any facts agreed by the parties since the hearing held in terms of rule 8.2(1).
- (2) The parties may, and must if required by the sheriff, lodge a joint minute of admissions of the facts upon which they have reached agreement.
- (3) The sheriff must-
- (a) make for his own use notes of the evidence led at the proof, including any evidence the admissibility of which is objected to, and of the nature of any such objection; and
 - (b) retain these notes until after any appeal has been disposed of.

Parties to be heard at close of proof

- 8.14.** (1) After all the evidence has been led relevant to the particular proof, the sheriff must hear parties on the evidence.
- (2) At the conclusion of that hearing, the sheriff may-
- (a) pronounce his decision; or
 - (b) reserve judgment.

Objections to admissibility of evidence

8.15. If in the course of a proof an objection is made to the admissibility of any evidence and that line of evidence is not abandoned by the party pursuing it, the sheriff must except where-

- (a) he is of the opinion that the evidence is clearly irrelevant or scandalous; or
- (b) it is an objection falling within rule 8.16(1),

note the terms of the objection and allow the evidence to be led reserving the question of its admissibility to be decided by him at the close of the proof.

Incidental appeal against rulings on confidentiality of evidence and production of documents

8.16. (1) Where a party or any other person objects to the admissibility of oral or documentary evidence on the ground of confidentiality or to the production of a document on any ground, he may, if dissatisfied with the ruling of the sheriff on the objection, express immediately his formal dissatisfaction with the ruling and, with leave of the sheriff, appeal to the sheriff principal.

(2) The sheriff principal shall dispose of an appeal under paragraph (1) with the least possible delay.

(3) Except as provided in paragraph (1), no appeal may be made during a proof against any decision of the sheriff as to the admissibility of evidence or the production of documents.

(4) The appeal referred to in paragraph (1) shall not remove the action from the sheriff who may proceed with the action in relation to any issue which is not dependent on the ruling appealed against.

Application for time to pay direction or a time order in defended action

8.17. A defender in an action which proceeds as defended may, where it is competent to do so, make a 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 time order.

Pronouncement of decision

8.18. (1) If the sheriff pronounces his decision at the end of the hearing held in terms of rule 8.2(1) or any proof, he must state briefly the grounds of his decision, including the reasons for his decision on any question of law or of admissibility of evidence.

(2) If the sheriff pronounces his decision after reserving judgement, he must give to the sheriff clerk within 28 days-

- (a) a statement of his decision; and
- (b) a brief note of the matters mentioned in paragraph (1).

(3) The sheriff clerk must send copies of the documents mentioned in paragraphs (2)(a) and (b) to each of the parties.