

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

### CHAPTER 23 DECREES, EXTRACTS, EXECUTION AND VARIATION

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#### **Decree**

**23.1.** The sheriff must not grant decree against-

- (a) a defender or a third party in respect of a claim; or
- (b) pursuer in respect of a counterclaim,

under any provision of these Rules unless satisfied that a ground of jurisdiction exists.

#### **Final decree**

**23.2.** The final decree of the sheriff principal or the sheriff shall be granted, where expenses are awarded, only after expenses have been dealt with in accordance with rule 23.3, 23.3A and 23.3B.

#### **Expenses**

**23.3.** (1) Subject to rule 23.3A and paragraphs (2) to (4), the sheriff clerk must, with the approval of the sheriff, assess the amount of expenses including the fees and outlays of witnesses awarded in any cause, in accordance with the applicable statutory table of fees.

(2) A party litigant, who is not represented by a solicitor or advocate and who would have been entitled to expenses if he had been so represented, may be awarded any outlays or expenses to which he might be found entitled by virtue of the 1975 Act or any enactment under that Act.

(3) A party who is or has been represented by an authorised lay representative or a person authorised under any enactment to conduct proceedings in the sheriff court and who would have been found entitled to expenses if he had been represented by a solicitor or an advocate may be awarded any outlays or expenses to which a party litigant might be found entitled in accordance with paragraph (2).

(4) A party who is not an individual, and-

- (i) is or has been represented by an authorised lay representative or a person authorised under any enactment to conduct proceedings in the sheriff court;
- (ii) if unrepresented, could not represent itself; and
- (iii) would have been found entitled to expenses if it had been represented by a solicitor or an advocate,

may be awarded any outlays to which a party litigant might be found entitled under the 1975 Act or any enactment made under that Act.

(5) Except where an account of expenses is allowed to be taxed under rule 23.3A, in every case including an appeal where expenses are awarded, the sheriff clerk shall hear the parties or their solicitors on the claims for expenses including fees, if any, and outlays.

(6) Except where the sheriff principal or the sheriff has reserved judgment or where he orders otherwise, the hearing on the claim for expenses must take place immediately upon the decision being pronounced.

(7) When that hearing is not held immediately, the sheriff clerk must-

- (a) fix the date, time and place when he shall hear the parties or their solicitors; and
- (b) give all parties at least 14 days' notice in writing of the hearing so fixed.

(8) The party awarded expenses must-

- (a) lodge his account of expenses in court at least seven days prior to the date of any hearing fixed under paragraph (7); and
- (b) at the same time forward a copy of that account to every other party.

(9) The sheriff clerk must-

- (a) fix the amount of the expenses; and
- (b) report his decision to the sheriff principal or the sheriff in open court for his approval at a diet which the sheriff clerk has intimated to the parties.

(10) The sheriff principal or the sheriff, after hearing parties or their solicitors if objections are stated, must pronounce final decree including decree for payment of expenses as approved by him.

(11) In an appeal, the sheriff may pronounce decree under paragraph (10) on behalf of the sheriff principal.

(12) Failure by-

- (a) any party to comply with any of the foregoing provisions of this rule; or
- (b) the successful party or parties to appear at the hearing on expenses,

must be reported by the sheriff clerk to the sheriff principal or the sheriff at a diet which the sheriff clerk has intimated to the parties.

(13) In either of the circumstances mentioned in paragraphs (12)(a) or (b), the sheriff principal or sheriff must, unless sufficient cause be shown, pronounce decree on the merits of the action and find no expenses due to or by any party.

(14) A decree pronounced under paragraph (13) shall be held to be the final decree for the purposes of these Rules.

(15) The sheriff principal or sheriff may, if he thinks fit, on the application of the solicitor of any party to whom expenses may be awarded, made at or before the time of the final decree being pronounced, grant decree in favour of that solicitor for the expenses of the action.

## **Taxation**

**23.3A**(1) Either-

- (a) the sheriff, on his own motion or on the motion of any party; or
- (b) the sheriff clerk on cause shown,

may allow an account of expenses to be taxed by the auditor of court instead of being assessed by the sheriff clerk under rule 23.3.

(2) Where an account of expenses is lodged for taxation, the account and process shall be transmitted by the sheriff clerk to the auditor of court.

(3) The auditor of court shall-

- (a) assign a diet of taxation not earlier than 7 days from the date he receives the account from the sheriff clerk; and
- (b) intimate that diet forthwith from to the party who lodged the account.

(4) The party who lodged the account of expenses shall, on receiving intimation from the auditor of court under paragraph (3)-

- (a) send a copy of the account; and
- (b) intimate the date, time and place of the diet of taxation,

to every other party.

(5) After the account has been taxed, the auditor of court shall transmit the process with the account and his report to the sheriff clerk.

(6) Where the auditor of court has reserved consideration of the account at the date of the taxation, he shall intimate his decision to the parties who attended the taxation.

(7) Where no objections are lodged under rule 23.3B (objections to auditor's report), the sheriff may grant decree for the expenses as taxed.

## **Objections to auditor's report**

**23.3B**(1) A party may lodge a note of objections to an account as taxed only where he attended the diet of taxation.

(2) Such a note shall be lodged within 7 days after-

- (a) the diet of taxation; or
- (b) where the auditor of court reserved consideration of the account under paragraph (6) of rule 23.3A, the date on which the auditor of court intimates his decision under that paragraph.

(3) The sheriff shall dispose of the objection in a summary manner, with or without answers.

## **Correction of interlocutor or note**

**23.4.** At any time before extract, the sheriff may correct any clerical or incidental error in an interlocutor or note attached to it.

## **Taxes on funds under control of the court**

**23.5.** (1) Subject to paragraph (2), in an action in which money has been consigned into court under the Sheriff Court Consignations (Scotland) Act 1893, no decree, warrant or order for payment to any person shall be granted until there has been lodged with the sheriff clerk a certificate by an authorised officer of the Inland Revenue stating that all taxes or duties payable to the Commissioners of Inland Revenue have been paid or satisfied.

(2) In an action of multiplepointing, it shall not be necessary for the grant of a decree, warrant or order for payment under paragraph (1) that all of the taxes or duties payable on the estate of a deceased claimant have been paid or satisfied.

### **Extract of decree**

**23.6.** — (1) Extract of a decree signed by the sheriff clerk may be issued only after the lapse of 14 days from the granting of the decree unless the sheriff on application orders earlier extract.

(2) In an action (other than an action to which rule 30.2 applies) where an appeal has been lodged, the extract may not be issued until the appeal has been disposed of.

(3) The extract decree-

- (a) may be written on the summons or on a separate paper;
- (b) may be in one of Forms 28 to 28k; and
- (c) shall be warrant for all lawful execution.

### **Charge**

**23.7.** (1) The period for payment specified in any charge following on a decree for payment granted in an action shall be-

- (a) 14 days if the person on whom it is served is within the United Kingdom; and
- (b) 28 days if he is outside the United Kingdom or his whereabouts are unknown.

(2) The period in respect of any other form of charge on a decree in an action shall be 14 days.

### **Service of charge where address of defender is unknown**

**23.8.** (1) If the address of a defender is not known to the pursuer, a charge shall be deemed to have been served on the defender if it is-

- (a) served on the sheriff clerk of the sheriff court district where the defender's last known address is located; and
- (b) displayed by the sheriff clerk on the walls of court for the period of the charge.

(2) On receipt of such a charge, the sheriff clerk must display it on the walls of court and it must remain displayed for the period of the charge.

(3) The period specified in the charge shall run from the first date on which it was displayed on the walls of court.

(4) On the expiry of the period of charge, the sheriff clerk must endorse a certificate in Form 29 on the charge certifying that it has been displayed in accordance with this rule and must then return it to the sheriff officer by whom service was executed.

### **Diligence on decree in actions for delivery**

**23.9.** (1) In an action for delivery, the court may, when granting decree, grant warrant to search for and take possession of goods and to open shut and lockfast places.

(2) A warrant granted under paragraph (1) shall only apply to premises occupied by the defender.

### **Applications in same action for variation, etc. of decree**

**23.10.** (1) If by virtue of any enactment the sheriff, without a new action being initiated, may order that-

(a) a decree granted be varied, discharged or rescinded; or

(b) the execution of that decree in so far as it has not already been executed be sisted or suspended,

the party requesting the sheriff to make such an order must do so by lodging a minute to that effect, setting out briefly the reasons for the application.

(2) On the lodging of such a minute by the pursuer, the sheriff clerk must grant warrant for service upon the defender (provided that the pursuer has returned the extract decree).

(3) On the lodging of such a minute by the defender, the sheriff clerk must grant warrant for service upon the pursuer ordaining him to return the extract decree and may, where appropriate, grant interim sist of execution of the decree.

(4) Subject to paragraph (5), the minute shall not be heard in court unless seven days' notice of the minute and warrant has been given to the other parties by the party lodging the minute.

(5) The sheriff may, on cause shown, alter the period of seven days referred to in paragraph (4) but may not reduce it to less than two days.

(6) This rule shall not apply to any proceedings under the Debtors (Scotland) Act 1987 or to proceedings which may be subject to the provisions of that Act.