

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

CHAPTER 24 RECALL OF DECREE (Actions raised on or after 4th April 2011; and for actions raised and determined prior to April 4th April 2011)

Recall of decree

24.1.(1) A party may apply for recall of a decree granted under any of the following provisions—

- (a) rule 7.1; or
- (b) paragraph (5), (6) or (7) of rule 8.2.

(2) The application is to be by minute in Form 30, which must be lodged with the sheriff clerk.

(3) The application must include where appropriate (and if not already lodged with the sheriff clerk), the proposed defence or the proposed answer to the counterclaim.

(4) A party may apply for recall of a decree in the same action on one occasion only.

(5) A minute for recall of a decree of dismissal must be lodged within 14 days of the date of decree.

(6) Subject to paragraphs (7) to (9), a minute for recall of any other kind of decree may be lodged at any time before the decree is fully implemented.

(7) Subject to paragraphs (8) and (9), where a charge or arrestment has been executed following the decree, the minute must be lodged within 14 days of that execution (or the first such execution where there has been more than one).

(8) Subject to paragraph (9), in the case of a party seeking recall who was served with the action under rule 5.7, the minute must be lodged—

- (a) within a reasonable time of such party having knowledge of the decree against him or her; but
- (b) in any event, within one year of the date of decree.

(9) Where the decree includes a decree for removing from heritable property to which section 216(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007(1) applies, the minute may be lodged at any time before the defender has been removed from the subjects or premises.

(10) 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.

(11) Where a hearing has been fixed under paragraph (10), the party seeking recall must, not less than 7 days before the date fixed for the hearing, serve upon the other party—

(a) a copy of the minute in Form 30a; and

(b) a note of the date, time and place of the hearing.

(12) At a hearing fixed under paragraph (10), the sheriff must recall the decree so far as not implemented and the hearing must then proceed as a hearing held under rules 8.2(3) to (7) and 8.3.

(13) A minute for recall of a decree, when lodged and served in terms of this rule, will have the effect of preventing any further action being taken by the other party to enforce the decree.

(14) 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.

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