

SCHEDULE 1

## The Simple Procedure Rules

### Part 17: Miscellaneous matters

- 17.1 [What is this Part about?](#)
- 17.2 [How can a case be transferred out of the simple procedure?](#)
- 17.3 [How can the sheriff make a reference to the Court of Justice of the European Union?](#)
- 17.4 [How can the Commission for Equality and Human Rights \(“CEHR”\) or the Scottish Commission for Human Rights \(“SCHR”\) intervene?](#)
- 17.5 [What can the CEHR or the SCHR do in an intervention?](#)
- 17.6 [When is a damages management order available?](#)
- 17.7 [When must the sheriff make a damages management order?](#)
- 17.8 [What can the sheriff do in a damages management order?](#)
- 17.9 [How can the damages management order be changed?](#)
- 17.10 [How can further instructions about managing the money be given?](#)
- 17.11 [When can someone apply for a child’s property administration order?](#)
- 17.12 [How can someone apply for a child’s property administration order?](#)
- 17.13 [What is an Equality Act 2010 claim?](#)
- 17.14 [How can the Commission for Equality and Human Rights \(“the CEHR”\) be notified of an Equality Act 2010 claim?](#)
- 17.15 [How can an Equality Act 2010 claim be transferred to the Employment Tribunal?](#)
- 17.16 [How can an Employment Tribunal case be transferred to simple procedure?](#)
- 17.17 [What if a question of national security arises in an Equality Act 2010 claim?](#)

### **17.1 What is this Part about?**

- (1) This Part is about some miscellaneous matters which can arise during a case.

### **17.2 How can a case be transferred out of the simple procedure?**

- (1) Where a sheriff orders that a case should no longer proceed subject to these rules, that order must identify the procedure under which the case is to continue.
- (2) If the sheriff orders that the case should proceed as an ordinary cause, the sheriff must also order three things:
  - (a) that the claimant must lodge an initial writ and intimate it to every other party within 2 weeks from the date of the order,
  - (b) that the respondent must lodge defences within 4 weeks from the date of the order, and
  - (c) that an options hearing is to be held on the first suitable court day occurring not sooner than 10 weeks (or such lesser period as the sheriff considers appropriate) after the last date for lodging the initial writ.
- (3) If the sheriff orders that the case should proceed as an ordinary cause the sheriff may also certify in the order that the importance or difficulty of the proceedings makes it appropriate to transfer the case to the Sheriff Personal Injury Court.

### **17.3 How can the sheriff make a reference to the Court of Justice of the European Union?**

- (1) If a question of EU law arises in a case, the sheriff may refer that question to the Court of Justice of the European Union using the CJEU Reference Form.
- (2) The sheriff may decide to do this when asked to by a party, or without being asked.
- (3) The sheriff must draft the reference within 4 weeks of deciding to do so.
- (4) Once a reference has been drafted, the sheriff clerk must send a copy to the parties.
- (5) Once the draft reference has been sent to the parties, each party has 4 weeks to send suggested amendments of that reference to the sheriff.

- (6) Once that 4 weeks has passed, the sheriff has 2 weeks to consider any suggested amendments.
- (7) At the end of that period of 2 weeks, the sheriff must finalise and sign the reference.
- (8) The sheriff clerk must transmit the reference to the Court of Justice of the European Union and inform parties that the reference has been made.

**17.4 How can the Commission for Equality and Human Rights (“CEHR”) or the Scottish Commission for Human Rights (“SCHR”) intervene?**

- (1) The CEHR and the SCHR may apply to the sheriff to intervene in a case by sending to the court and to the parties an Application to Intervene.
- (2) The Application to Intervene must set out the reasons for the proposed intervention, the issues which the intervention would address, and the reasons why the intervention would assist the sheriff.
- (3) The sheriff may grant the application with or without a discussion, but there must be a discussion if a party asks for one.
- (4) The sheriff may grant the Application to Intervene only if satisfied that:
  - (a) the case has a relevant connection to one of the functions of the CEHR or the SCHR,
  - (b) the intervention is likely to assist the sheriff, and
  - (c) the intervention will not unduly delay or otherwise prejudice the interests of the parties, including their liability for expenses.
- (5) The sheriff may impose conditions on the intervention.
- (6) The sheriff may invite the CEHR or SCHR to intervene in a simple procedure case by sending to the CEHR or SCHR and to all parties an Invitation to Intervene.
- (7) An Invitation to Intervene must be accompanied by a copy of the Claim Form and the Response Form, and any other documents relevant to the reasons for the proposed intervention.
- (8) The sheriff may impose conditions on an intervention when making an invitation.

### **17.5 What can the CEHR or the SCHR do in an intervention?**

- (1) An intervention is a written submission of 5,000 words or less (including any appendices).
- (2) A copy of the intervention must be sent to all parties.
- (3) In exceptional circumstances, the sheriff may allow a longer written submission or an oral submission.

### *Management of damages*

### **17.6 When is a damages management order available?**

- (1) Damages management orders are available:
  - (a) where a claimant who is under a legal disability asks for the payment of a sum of money as damages,
  - (b) where another person makes a claim on behalf of a person who is under a legal disability asking for the payment of a sum of money as damages.
- (2) In either case, a damages management order is only available if the person who is under a legal disability is 16 years of age or older.

### **17.7 When must the sheriff make a damages management order?**

- (1) The sheriff must make a damages management order if the sheriff orders the respondent to pay the claimant a sum of money as damages.
- (2) The sheriff must also make a damages management order if the claimant accepts an offer from the respondent to pay a sum of money as damages to settle the claim.

### **17.8 What can the sheriff do in a damages management order?**

- (1) The sheriff must make an order about how the money is to be paid to and managed for the person under a legal disability.
- (2) The sheriff may order the money to be paid to different people to be managed for the benefit of the person under a legal disability.

- (3) The sheriff may order the money to be paid to:
  - (a) the Accountant of Court,
  - (b) the sheriff clerk, or
  - (c) the guardian of the person who is under a legal disability.
- (4) Alternatively, the sheriff may decide that the person under a legal disability is capable of managing the money and order that the money is paid directly to that person.
- (5) Where the sheriff orders the money to be paid to the sheriff clerk or a guardian, the sheriff may also tell that person how to manage the money for the benefit of the person under a legal disability.

#### **17.9 How can the damages management order be changed?**

- (1) An interested person can ask the sheriff to change the damages management order by sending an Application to Change a Damages Management Order to the court and every party.
- (2) If a person who has been sent the Application to Change a Damages Management Order objects to the proposed orders, that person must send that Application to Change a Damages Management Order to the court within 10 days of it being sent, setting out that objection.
- (3) After considering the Application to Change a Damages Management Order, and any objection that may have been sent, the sheriff may do one of three things:
  - (a) grant the application, and send written orders to the parties and the interested person,
  - (b) refuse the application,
  - (c) order the parties and the interested person to appear at a discussion in court, where the sheriff will consider whether to make any orders.

#### **17.10 How can further instructions about managing the money be given?**

- (1) An interested person can also ask the sheriff to tell the sheriff clerk or a guardian how to manage the money by sending an Application for Instructions about a Damages Management Order to the court and every party.

- (2) If a guardian is managing the money, the Application for Instructions about a Damages Management Order must also be sent to the guardian.
- (3) If a person who has been sent the Application for Instructions about a Damages Management Order, objects to the proposed instructions, that person must send that Application for Instructions about a Damages Management Order to the court within 10 days of it being sent, with a note setting out that objection.
- (4) After considering the Application for Instructions about a Damages Management Order, and any objection that may have been sent, the sheriff may do one of three things:
  - (a) grant the application, and send further instructions to the parties, the interested person and the sheriff clerk or guardian,
  - (b) refuse the application,
  - (c) order the parties, the interested person and the guardian (if there is one) to appear at a discussion in court, where the sheriff will consider whether to give further instructions.

#### **17.11 When can someone apply for a child's property administration order?**

- (1) A person may ask the sheriff to make a child's property administration order in any simple procedure case where the sheriff has made an order under section 13 of the Children (Scotland) Act 1995 (section 13 is about the payment and management of money to (or for the benefit of) a child).

#### **17.12 How can someone apply for a child's property administration order?**

- (1) A person can ask the sheriff to make a child's property administration order by sending an Application for a Child's Property Administration Order to the court and every party.
- (2) If a person who has been sent the Application for a Child's Property Administration Order objects to the proposed orders, that person must send that Application for a Child's Property Administration Order to the court within 10 days of it being sent, setting out that objection.
- (3) After considering the Application for a Child's Property Administration Order, and any objection that may have been sent, the sheriff may do one of three things:
  - (a) grant the application, and send written orders to the parties and the applicant,

- (b) refuse the application,
- (c) order the parties and the applicant to appear at a discussion in court, where the sheriff will consider whether to make any orders.

### *The Equality Act 2010*

#### **17.13 What is an Equality Act 2010 claim?**

- (1) An Equality Act 2010 claim is a claim made under section 114(1) of the Equality Act 2010 (section 114 is about claims related to the provision of services, the exercise of public functions, the disposal and management of premises, education (other than in relation to disability), and associations).

#### **17.14 How can the Commission for Equality and Human Rights (“the CEHR”) be notified of an Equality Act 2010 claim?**

- (1) The claimant must send a copy of the Claim Form in an Equality Act 2010 claim to the CEHR.

#### **17.15 How can an Equality Act 2010 claim be transferred to the Employment Tribunal?**

- (1) The sheriff may order an Equality Act 2010 claim to be transferred to the Employment Tribunal.
- (2) The sheriff must state in that order the reasons for making it.
- (3) That order may include an order about expenses.
- (4) When the sheriff makes that order, the sheriff clerk must transmit, within one week of the order, the following things to the Employment Tribunal:
  - (a) the Claim Form,
  - (b) the Response Form,
  - (c) any written orders, and
  - (d) any other document the sheriff orders to be transmitted.

**17.16 How can an Employment Tribunal case be transferred to simple procedure?**

- (1) When proceedings are transferred to simple procedure from the Employment Tribunal under section 140(3) of the Equality Act 2010, the sheriff clerk must register those proceedings as a claim.
- (2) The sheriff must, within 2 weeks of the claim being registered, order a case management discussion.

**17.17 What if a question of national security arises in an Equality Act 2010 claim?**

- (1) Where the sheriff considers it expedient in the interests of national security, the sheriff may order any of the following persons to be excluded from any or all hearings, case management discussions or discussions in court of an Equality Act 2010 claim:
  - (a) the claimant,
  - (b) the claimant's representative,
  - (c) the claimant's courtroom supporter.
- (2) That order may allow an excluded claimant or representative to send a written statement to the court before the case (or part of the case) from which they have been excluded.
- (3) When the sheriff makes an order excluding persons, the sheriff clerk must send a copy of the order to the Advocate General for Scotland.
- (4) Where the sheriff considers it expedient in the interests of national security, the sheriff may take any steps or make any order required to keep secret any or all of the reasons for the sheriff's decision in an Equality Act 2010 claim.