

SCHEDULE 1

SMALL CLAIM RULES 2002

CHAPTER 23

Appeals

Appeals

23.1.—(1) An appeal to the sheriff principal, other than an appeal to which rule 23.4 applies, must be by note of appeal in Form 21 and lodged with the sheriff clerk not later than 14 days after the date of final decree—

- (a) requesting a stated case; and
- (b) specifying the point of law upon which the appeal is to proceed.

(2) The appellant must, at the same time as lodging a note of appeal, intimate a copy of it to every other party.

(3) The sheriff must, within 28 days of the lodging of a note of appeal, issue a draft stated case containing—

- (a) findings in fact and law or, where appropriate, a narrative of the proceedings before him;
- (b) appropriate questions of law; and
- (c) a note stating the reasons for his decisions in law,

and the sheriff clerk must send a copy of the draft stated case to the parties.

(4) Within 14 days of the issue of the draft stated case—

- (a) a party may lodge with the sheriff clerk a note of any adjustments which he seeks to make;
- (b) a respondent may state any point of law which he wishes to raise in the appeal; and
- (c) the note of adjustment and, where appropriate, point of law must be intimated to every other party.

(5) The sheriff may, on the motion of a party or of his own accord, and must where he proposes to reject any proposed adjustment, allow a hearing on adjustments and may provide for such further procedure under this rule prior to the hearing of the appeal as he thinks fit.

(6) The sheriff must, within 14 days after—

- (a) the latest date on which a note of adjustments has been or may be lodged; or
- (b) where there has been a hearing on adjustments, that hearing,

and after considering such note and any representations made to him at the hearing, state and sign the case.

(7) If the sheriff is temporarily absent from duty for any reason, the sheriff principal may extend any period specified in paragraphs (3) or (6) for such period or periods as he considers reasonable.

(8) The stated case signed by the sheriff must include questions of law, framed by him, arising from the points of law stated by the parties and such other questions of law as he may consider appropriate.

(9) After the sheriff has signed the stated case, the sheriff clerk must—

- (a) place before the sheriff principal all documents and productions in the case together with the stated case; and
- (b) send to the parties a copy of the stated case together with a written note of the date, time and place of the hearing of the appeal.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Effect of and abandonment of appeal

23.2.—(1) When a note of appeal has been lodged, it may be insisted on by all other parties in the claim although they may not have lodged separate appeals.

(2) After a note of appeal has been lodged, the appellants shall not be at liberty to withdraw it, except—

- (a) with the consent of the other parties which may be incorporated in a joint minute; or
- (b) by leave of the sheriff principal and on such terms as to expenses or otherwise as to him seem proper.

Hearing of appeal

23.3.—(1) The sheriff principal shall hear the parties or their solicitors orally on all matters connected with the appeal including liability for expenses, but if any party moves that the question of liability for expenses be heard after the sheriff principal has given his decision the sheriff principal may grant that motion.

(2) In the hearing of an appeal, a party shall not be allowed to raise questions of law of which notice has not been given except on cause shown and subject to such conditions as to expenses or otherwise as the sheriff principal may consider appropriate.

(3) The sheriff principal may permit a party to amend any question of law or to add any new question in accordance with paragraph (2).

(4) The sheriff principal may—

- (a) adhere to or vary the decree appealed against;
- (b) recall the decree appealed against and substitute another therefor; or
- (c) remit, if he considers it desirable, to the sheriff, for any reason other than to have further evidence led.

(5) At the conclusion of the hearing, the sheriff principal may either pronounce his decision or reserve judgment in which case he must give his decision in writing within 28 days and the sheriff clerk must forthwith intimate it to the parties.

Appeal in relation to a time to pay direction

23.4.—(1) This rule applies to appeals to the sheriff principal or to the Court of Session which relate solely to any application in connection with a time to pay direction.

(2) Rules 23.1, 23.2 and 23.3(2) and (3) shall not apply to appeals under this rule.

(3) An application for leave to appeal against a decision in an application for a time to pay direction or any order connected therewith must—

- (a) be made in Form 22, within seven days of that decision, to the sheriff who made the decision; and
- (b) must specify the question of law upon which the appeal is to proceed.

(4) If leave to appeal is granted, the appeal must be lodged in Form 23 and intimated by the appellants to every other party within 14 days of the order granting leave and the sheriff must state in writing his reasons for his original decision.

(5) An appeal under this rule to the sheriff principal shall proceed in accordance with paragraphs (1), (4) and (5) of rule 23.3.

Sheriff to regulate interim possession

- 23.5.**—(1) Notwithstanding an appeal, the sheriff shall have power—
- (a) to regulate all matters relating to interim possession;
 - (b) to make any order for the preservation of any property to which the claim relates or for its sale, if perishable;
 - (c) to make any order for the preservation of evidence; or
 - (d) to make in his discretion any interim order which a due regard for the interests of the parties may require.
- (2) An order under paragraph (1) shall not be subject to review except by the appellate court at the hearing of the appeal.