SCOTTISH STATUTORY INSTRUMENTS

2002 No. 570

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Personal Injuries Actions) 2002

Made - - - - 23rd December 2002

Coming into force - - 1st April 2003

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(**1**) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Personal Injuries Actions) 2002 and shall come into force on 1st April 2003.

(2) In this Act of Sederunt, "the principal Rules" means the Rules of the Court of Session 1994(**2**).

Procedure for actions of damages

2.—(1) For Chapter 43 of the principal Rules substitute–

"CHAPTER 43

ACTIONS OF DAMAGES FOR, OR ARISING FROM, PERSONAL INJURIES

Application and interpretation of this chapter

43.1.—(1) This Chapter applies to a personal injuries action.

(2) In this Chapter–

"connected person" means a person, not being a party to the action, who has title to sue the defender in respect of the personal injuries from which a deceased died or in respect of his death;

"personal injuries" includes any disease or impairment, whether physical or mental;

(**1**) 1988 c. 36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(3) and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 45.

(**2**) SI 1994/1443, to which there are amendments not relevant to this Act of Sederunt.

"personal injuries action" means an action of damages for, or arising from, personal injuries or death of a person from personal injuries; and

"relative" has the meaning assigned to it in Schedule 1 to the Damages (Scotland) Act 1976.

(3) The following rules shall not apply to an action to which this Chapter applies:–

(a) rule 4.9(2) (prorogation of time for lodging document);

(b) rule 6.2 (fixing and allocation of diets in the Outer House);

(c) rule 13.2 (form of summons);

(d) rule 13.6(b) (arrestment to found jurisdiction);

(e) rule 13.7 (service and intimation of summons);

(f) rule 13.13(6) (calling);

(g) rule 22.1 (open records);

(h) rule 22.2 (time for adjustments on Adjustment Roll);

(j) rule 22.3 (closing of record);

(k) rule 36.3 (lodging of productions).

Form of summons

43.2.—(1) The summons shall be in Form 43.2-A and there shall be annexed to it a brief statement containing–

(a) averments in numbered paragraphs relating only to those facts necessary to establish the claim; and

(b) the names of every medical practitioner from whom, and every hospital or other institution in which, the pursuer or, in an action in respect of the death of a person, the deceased received treatment for the personal injuries.

(2) An application for an order under section 12(2)(a) of the Administration of Justice Act 1982(**3**) (provisional damages for personal injuries) shall be made by including in the summons a conclusion for provisional damages; and, where such an application is made, averments as to the matters referred to in paragraphs (a) and (b) of section 12(1) of that Act shall be included in the statement made under paragraph (1)(a).

(3) In paragraph (2) above "provisional damages" means the damages referred to in section 12(4)(a) of the Administration of Justice Act 1982.

(4) A summons may include–

(a) warrants for intimation in so far as permitted under these Rules; and

(b) a specification of documents in Form 43.2-B.

(5) In relation to an action to which this Chapter applies, any references to the condescendence of a summons and to articles of the condescendence shall be construed as a reference to the statement required under paragraph (1) above and numbered paragraphs of that statement.

Service and calling of summons

43.3.—(1) Where a summons in an action to which this Chapter applies is to be executed, a copy of the summons which has passed the signet shall be–

(**3**) 1982 c. 53, to which there are amendments not relevant to this Act of Sederunt.

(a) served on the defender with a citation in Form 43.3 attached to it; and

(b) intimated to any person named in a warrant for intimation.

(2) Where a summons has not called within three months and a day after the date of signeting, the instance shall fall.

(3) Where a summons cannot be served within the period of notice determined in accordance with rule 13.4 and called before the expiry of the period mentioned in paragraph (2), the Court may–

(i) on the application of the pursuer by motion; and

(ii) on cause shown,

extend that period.

(4) An application under paragraph (3) shall be made before the expiry of the period mentioned in paragraph (2).

Inspection and recovery of documents

43.4.—(1) This rule applies where the summons contains a specification of documents by virtue of rule 43.2(4)(b).

(2) Upon signet an order granting commission and diligence for the production and recovery of the documents mentioned in the specification shall be granted and the Deputy Principal Clerk of Session shall certify Form 43.2-B to that effect.

(3) An order under paragraph (2) shall be treated for all purposes as an interlocutor of the court granting commission and diligence signed by the Lord Ordinary.

(4) The pursuer may serve an order under paragraph (2) and the provisions of rule 35.2 shall thereafter apply, subject to any necessary modifications, as if the order were an order obtained on an application made under rule 35.2(1)(a).

(5) Nothing in this rule shall affect the right of a party to apply under rule 35.2 for a commission and diligence for recovery of documents or for an order under section 1 of the Administration of Justice (Scotland) Act 1972 in respect of any document or other property not mentioned in the specification annexed to the summons.

Motions to dispense with timetable

43.5.—(1) Any party to an action may, within 28 days of the lodging of defences, by motion apply to have the action withdrawn from the procedure in this Chapter and to be appointed to proceed as an ordinary action.

(2) No motion under paragraph (1) shall be granted unless the court is satisfied that there are exceptional reasons for not following the procedure in this Chapter.

(3) In determining whether there are exceptional reasons justifying the granting of a motion made under paragraph (1), the Lord Ordinary shall have regard to–

(a) the likely need for detailed pleadings;

(b) the length of time required for preparation of the action; and

(c) any other relevant circumstances.

(4) Where the court appoints the cause to proceed as an ordinary action under paragraph (1)–

(a) the pursuer shall, within seven days, lodge an open record in terms of rule 22.1; and

(b) rules 43.11, 43.12 and 43.13 shall apply to the action.

Allocation of diets and timetables

43.6.—(1) The Keeper of the Rolls shall, on the lodging of defences or, where there is more than one defender the first lodging of defences–

(a) allocate a diet for proof of the action;

(b) issue a timetable stating the date mentioned in sub-paragraph (a) and calculated by reference to periods specified from time to time by the Lord President, in accordance with which–

(i) an application for a third party notice under rule 26.1 may be made;

(ii) the pursuer may execute a commission for recovery of documents under rule 43.4;

(iii) parties may adjust their pleadings;

(iv) the pursuer shall lodge a statement of valuation of claim in process;

(v) the pursuer shall lodge a record;

(vi) the defender (and any third party to the action) shall lodge a statement of valuation of claim in process;

(vii) the parties shall each lodge in process a list of witnesses together with any productions upon which they wish to rely; and

(viii) the pursuer shall lodge in process the minute of the pre-trial meeting.

(2) A timetable issued under paragraph (1) shall be in Form 43.6 and shall be treated for all purposes as an interlocutor of the court signed by the Lord Ordinary; and so far as the timetable order is inconsistent with any provision in these rules which relates to a matter to which the timetable relates, the timetable shall prevail.

(3) Where a party fails to comply with any requirement of a timetable other than that referred to in paragraph (7), the Keeper of the Rolls may put the cause out to be heard on the By Order roll.

(4) The pursuer shall lodge two copies of the record, which shall consist of the pleadings of the parties, in process by the date specified in the timetable and shall at the same time send one copy to the defender and any other parties.

(5) The pursuer shall, on lodging the copies of the record as required by paragraph (4), enrol a motion craving the court–

(a) to allow to parties a preliminary proof on specified matters;

(b) to allow a proof;

(c) to allow issues for jury trial; or

(d) to make some other specified order.

(6) In the event that any party proposes to ask the court to make any order other than one of those specified in sub-paragraphs (b) or (c) of paragraph (5), that party shall, on enrolling or opposing (as the case may be) the pursuer's motion, specify the order to be sought and give full notice in the motion or notice of opposition, of the grounds thereof.

(7) Where a pursuer fails to lodge a record by the date specified in a timetable issued under paragraph (1), the Keeper of the Rolls shall put the case out to be heard on the By Order roll.

(8) A production which is not lodged in accordance with paragraph (1)(b)(vii) shall not be used or put in evidence at a proof unless–

(a) by consent of parties; or

(b) with the leave of the court on cause shown and on such conditions, if any, as to expenses or otherwise as the court thinks fit.

(9) In a cause which is one of more than one cause arising out of the same cause of action, the court may–

(a) on the motion of a party to that cause; and

(b) after hearing parties to all those causes,

appoint that cause or any other of those causes to be the leading cause and to sist the other causes pending the determination of the leading cause.

(10) In this rule, "pursuer" includes additional pursuer, noter or minuter, as the case may be.

Hearings on the By Order roll

43.7. •

(1) Where the Keeper of the Rolls puts a case out to be heard on the By Order roll under paragraphs (3) or (7) of rule 43.6 or paragraph (3) of rule 43.10 he shall–

(a) put the cause out to be heard not less than seven days after the date of the notice referred to in sub-paragraph (b) on the By Order roll; and

(b) give notice to the parties to the action–

(i) of the date of the hearing of the cause on the By Order roll; and

(ii) requiring the party in default to lodge in process a written explanation as to why the timetable has not been complied with and to intimate a copy to all other parties, not less than two clear working days before the date of the hearing.

(2) At a hearing on the By Order roll under any of the provisions mentioned in the foregoing paragraph, the Lord Ordinary–

(a) shall consider any explanation provided by the party in default;

(b) may award expenses against that party; and

(c) may make any other appropriate order, including decree of dismissal.

(3) Expenses awarded under paragraph (2)(b) shall not exceed the expenses of the process before the date of the hearing on the By Order roll.

Applications for sist or for variation of timetable order

43.8.—(1) The action may be sisted or the timetable issued under rule 43.6 may be varied by the court on an application by any party to the action by motion.

(2) An application under paragraph (1)–

(a) shall be placed before the Lord Ordinary; and

(b) shall be granted only on special cause shown.

(3) Any sist of an action shall be for a specific period.

(4) Where a timetable issued under rule 43.6 is varied under this rule, the Keeper of the Rolls shall issue a revised timetable in Form 43.6.

(5) A revised timetable issued under paragraph (4) shall have effect as if it were a timetable issued under rule 43.6 and any reference in this Chapter to any action being taken in accordance with the timetable shall be construed as a reference to its being taken in accordance with the timetable as varied under this rule.

Statements of valuation of claim

43.9.—(1) Each party to an action shall make a statement of valuation of claim in Form 43.9.