SCOTTISH STATUTORY INSTRUMENTS

2000 No. 239

SHERIFF COURT

Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 2000

Made - - - -	*12th July 2000*
Coming into force - -	*2nd October 2000*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 13 of the Sheriff Courts (Scotland) Extracts Act 1892(**1**), section 32 of the Sheriff Courts (Scotland) Act 1971(**2**) and of all other powers enabling them in that behalf, having approved, with modifications, draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Ordinary Cause Rules Amendment) (Miscellaneous) 2000 and shall come into force on 2nd October 2000.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of Savings

2. For paragraph 6 of the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993(**3**) there is substituted the following:–

"**Savings for causes already commenced**

6.—(1) Subject to paragraph (2) below, nothing in this Act of Sederunt shall affect any cause commenced before the date of the coming into force of this Act of Sederunt, and any such cause shall proceed according to the law and practice in force immediately before that date.

(2) Where–

(**1**) 1892 c. 17.
(**2**) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), and by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2).
(**3**) 1993/1956.

(a) a family action as defined in rule 33.1 of the Ordinary Cause Rules 1993 was commenced prior to 1st January 1994;

(b) decree has been granted in that action; and

(c) an application is made to the court on or after 2nd October 2000 to vary that decree,

that application, and any subsequent application in the same process, shall proceed in accordance with the Ordinary Cause Rules 1993.".

Amendment of Ordinary Cause Rules 1993

3.—(1) The Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(**4**) shall be amended in accordance with the following paragraphs.

(2) In rule 8.1 (reponing) after paragraph (4), there is inserted the following:–

"(4A) Where an initial writ has been served on a defender furth of the United Kingdom under rule 5.5(1)(b) (service on persons furth of Scotland) and decree in absence has been pronounced against him as a result of his failure to enter appearance, the court may, on the defender applying to be reponed in accordance with paragraph (1) above, recall the decree and allow defences to be received if–

(a) without fault on his part, he did not have knowledge of the initial writ in sufficient time to defend;

(b) he has disclosed a *prima facie* defence to the action on the merits; and

(c) the reponing note is lodged within a reasonable time after he had knowledge of the decree or in any event before the expiry of one year from the date of decree.".

(3) In rule 9.2 (fixing date for Options Hearing)–

(a) in paragraph (1), at the beginning insert the words "Subject to paragraph (1A),"; and

(b) after paragraph (1), there is inserted the following:–

"(1A) Where in a family action–

(i) the only matters in dispute are an order in terms of section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.)(**5**); or

(ii) the matters in dispute include an order in terms of section 11 of that Act,

there shall be no requirement to fix an Options Hearing in terms of paragraph (1) above insofar as the matters in dispute relate to an order in terms of section 11(2) of the Children (Scotland) Act 1995.

(1B) In paragraph (1A) above, "family action" has the meaning given to it in rule 33.1(1).".

(4) In rule 9.14 (exchange of lists of witnesses)–

(a) for paragraph (1), there is substituted the following:–

"(1) Within 28 days after the date of the interlocutor allowing a proof or proof before answer, each party shall–

(a) intimate to every other party a list of witnesses, including any skilled witnesses, on whose evidence he intends to rely at proof; and

(**4**) 1907 c. 51; Schedule 1 was substituted by S.I.1993/1956 and amended by S.I. 1996/2167 and 2445.
(**5**) 1995 c. 36.

(b) lodge a copy of that list in process."; and

(b) in paragraph (2)–

(i) for the words "call as a witness" there are substituted the words "rely on the evidence of";

(ii) for the words "a witness being called" there are substituted the words "evidence being admitted"; and

(iii) for the words "call that person as a witness" there are substituted the words "admit that evidence whether it is to be given orally or not".

(5) After rule 15.5 (hearing of motions), there is inserted the following:–

"**Motions to sist**

15.6.—(1) Where a motion to sist is made, either orally or in writing in accordance with rule 15.1(1)(a) or (b)–

(a) the reason for the sist shall be stated by the party seeking the sist; and

(b) that reason shall be recorded in the interlocutor.

(2) Where a cause has been sisted, the sheriff may, after giving parties an opportunity to be heard, recall the sist.".

(6) In rule 17.2 (applications for summary decree), paragraph (3) is omitted.

(7) In rule 18.3 (applications to amend) after paragraph (2) there is inserted the following:–

"(3) Any adjustment to any minute of amendment or answers shall be exchanged between parties and not lodged in process.

(4) Parties shall be responsible for maintaining a record of adjustment made and the date of their intimation.

(5) No adjustments shall be permitted after the period of adjustment allowed, except with leave of the sheriff.

(6) Each party shall, no later than 2 days before the hearing fixed in terms of paragraph (2), lodge in process a copy of their minute of amendment or answers with all adjustments made thereto in italic or bold type, or underlined.".

(8) In rule 22.1 (note of basis of preliminary plea), in paragraph (4), after the word "may" insert the words "on cause shown".

(9) In rule 24.1 (intimation of withdrawal to court)–

(a) in paragraph (1), at the beginning of that paragraph insert the words "Subject to paragraph (3),";

(b) in paragraph (2), after the word "shall" insert the word "forthwith"; and

(c) after paragraph (2), insert the following–

"(3) Where a solicitor withdraws from acting on behalf of a party in open court and in the presence of the other parties to the action or their representatives, paragraph (1) shall not apply.".

(10) In rule 24.2 (intimation to party whose solicitor has withdrawn)–

(a) in paragraph (1), at the beginning insert "Subject to paragraph (1A),"; and

(b) after paragraph (1) insert–

"(1A) Where any previously fixed diet is to occur within 14 days from the date when the sheriff first considers the solicitor's withdrawal, the sheriff may either–

(a) pronounce an interlocutor in accordance with paragraph (1); or

(b) consider the matter at the previously fixed diet.".

(11) Rule 29.3 (evidence generally) is omitted.

(12) In rule 29.11 (lodging productions), in paragraph (1), after the words "productions" insert the words "and affidavits".

(13) In rule 29.12 (copy productions), in paragraph (1), after the word "every" insert the word "documentary".

(14) In rule 29.14 (notices to admit and notices of non admission)–

(a) in paragraph (1), for the words "a proof has been allowed" there are substituted the words "the record has closed"; and

(b) after paragraph (6), there is inserted the following:–

"(7) The sheriff may, at any time, allow a party to amend or withdraw an admission made by him on such conditions, if any, as he thinks fit.

(8) A party may, at any time, withdraw in whole or in part a notice of non admission by intimating a notice of withdrawal.".

(15) In rule 33.44 (applications after decree relating to a section 11 order), after the word "order" in paragraph (1) there shall be inserted the words "or in relation to the enforcement of such an order".

(16) In rule 33.62 (defenders in action for a section 11 order), paragraph (e) is omitted.

(17) In rule 33.76 (citation and intimation)–

(a) for paragraph (4) there is substituted the following:–

"(4) The citation or intimation required by paragraph (2) shall be made–

(a) by the sheriff clerk by registered post or the first class recorded delivery service in accordance with rule 5.3 (postal service or intimation);

(b) on payment of an additional fee, by a sheriff officer in accordance with rule 5.4(1) and (2) (service within Scotland by sheriff officer); or

(c) where necessary, by the sheriff clerk in accordance with rule 5.5 (service on persons furth of Scotland)."; and

(b) after paragraph (4), there is inserted the following:–

"(5) Where citation or intimation is made in accordance with paragraph (4)(c), the translation into an official language of the country in which service is to be executed required by rule 5.5(6) shall be provided by the party lodging the simplified divorce application.".

(18) After rule 34.10 (applications under Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970), there is inserted the following:–

"**Service on unnamed occupiers**

34.11.—(1) Subject to paragraph (2), this rule applies only to a crave for removing in an action of removing against a person or persons in possession of heritable property without right or title to possess the property.

(2) This rule shall not apply with respect to a person who has or had a title or other right to occupy the heritable property and who has been in continuous occupation since that title or right is alleged to have come to an end.

(3) Where this rule applies, the pursuer may apply by motion to shorten or dispense with the period of notice or other period of time in these Rules relating to the conduct of the action or the extracting of any decree.

(4) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the pursuer shall call that person as a defender by naming him as an "occupier".

(5) Where the name of a person in occupation of the heritable property is not known and cannot reasonably be ascertained, the initial writ shall be served (whether or not it is also served on a named person), unless the court otherwise directs, by a sheriff officer–

(a) affixing a copy of the initial writ and a citation in Form H5 addressed to "the occupiers" to the main door or other conspicuous part of the premises, and if practicable, depositing a copy of each of those documents in the premises; or

(b) in the case of land only, inserting stakes in the ground at conspicuous parts of the occupied land to each of which is attached a sealed transparent envelope containing a copy of the initial writ and a citation in Form H5 addressed to "the occupiers".".

(19) In Chapter 36 (actions of damages), after Part IV (management of damages payable to persons under legal disability), insert the following–

"PART IV A

PRODUCTIONS IN CERTAIN ACTIONS OF DAMAGES

Application of this Part

36.17A. This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.

Averments of medical treatment

36.17B. The condescendence of the initial writ in an action to which this Part applies shall include averments naming–

(a) every general medical practitioner or general medical practice from whom; and

(b) 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 injuries sustained, or disease suffered, by him.

Lodging of medical reports

36.17C.—(1) In an action to which this Part applies, the pursuer shall lodge as productions, with the initial writ when it is presented for warranting in accordance with rule 5.1, all medical reports on which he intends, or intends to reserve the right, to rely in the action.

(2) Where no medical report is lodged as required by paragraph (1), the defender may apply by motion for an order specifying a period within which such a report shall be lodged in process.".

(20) In rule 37.2 (parties to, and service and intimation of, actions of declarator)–

(a) for paragraph (1), there is substituted the following:–

"(1) In an action of declarator–

(a) the missing person shall be named as the defender;