

**2007 No. 282**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session Amendment  
No. 4) (Personal Injuries Actions etc.) 2007**

*Made* - - - - - *11th April 2007*

*Coming into force* - - - - - *2nd May 2007*

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

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Personal Injuries Actions etc.) 2007 and shall come into force on 2nd May 2007.

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

**Amendment of the Rules of the Court of Session**

2.—(1) The Rules of the Court of Session 1994(b) shall be amended in accordance with the following sub-paragraphs.

(2) At the end of rule 13.2 (form of summonses), there shall be inserted the following:—

“(6) A summons may include a draft interlocutor in Form 43.1A (actions based on clinical negligence: authority to raise as ordinary action).”

(3) At the end of Chapter 31 (minutes of sist and transference) there shall be inserted the following:—

**“Death of party: further provisions**

31.3.—(1) Subject to rule 43.20 (Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007), as soon as reasonably practicable after the death of a party, any agent who immediately prior to the death was instructed in a cause by that party shall notify the court of the death.

(2) The notification under paragraph (1) shall be by letter to the Deputy Principal Clerk and shall be accompanied by a certified copy of the death certificate relative to the deceased party.

(3) The letter shall include an estimate of the length of time required for confirmation to the deceased party’s estate by an executor.

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(a) 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.  
(b) S.I. 1994/1443, last amended by S.S.I. 2007/234.

(4) On receipt of the letter, the Deputy Principal Clerk shall place it in the process and shall place the cause before a Lord Ordinary in chambers.

(5) The Lord Ordinary may, if satisfied that the party has died and after considering the estimate provided under paragraph (3), pronounce a sist in the cause for a specified period of not less than three months.

(6) A party may apply by motion for—

- (a) recall of a sist pronounced under paragraph (5); or
- (b) variation of the specified period referred to in paragraph (5).

(7) A motion under paragraph (6)(b) shall be granted only on cause shown.

(8) On pronouncing a sist under paragraph (5); recalling a sist under paragraph (6)(a); or, varying a specified period under paragraph (6)(b), the Lord Ordinary may make such order as regards further procedure as he thinks fit including, in the case of a personal injuries action, such variation of the timetable issued under rule 43.6 as he thinks fit.

(9) Any personal injuries action in which a sist has been pronounced under paragraph (5) and the period of sist has expired may be put out by order by the Keeper of the Rolls.

(10) In this rule, “personal injuries action” has the same meaning as in rule 43.1(2).”.

(4) In rule 35.11 (commissions for examination of witnesses) after paragraph (2) there shall be inserted the following:—

“(2A) A motion under paragraph (2) may include an application for authority to record the proceedings before the commissioner by video recorder.”.

(5) In rule 43.1(1) (application and interpretation of Chapter 43: actions of damages for, or arising from, personal injuries) at the beginning there shall be inserted “Subject to rule 43.1A (actions based on clinical negligence).”.

(6) After rule 43.1 (application and interpretation of Chapter 43: actions of damages for, or arising from, personal injuries) there shall be inserted the following:—

**“Actions based on clinical negligence**

**43.1A.**—(1) At the same time as a summons which includes a draft interlocutor in Form 43.1A is presented for signeting, a pursuer may apply by motion for authority to raise a personal injuries action which is based on alleged clinical negligence as an ordinary action.

(2) On the making of a motion under paragraph (1), the summons shall be placed before a Lord Ordinary in chambers and in the absence of the parties.

(3) On consideration of the summons in accordance with paragraph (2), the Lord Ordinary may—

- (a) if he considers that there are exceptional reasons for not following the procedure in the other rules in this Chapter such as would justify the granting of a motion under rule 43.5(1) (application to have action withdrawn from personal injuries procedure), grant authority for the cause to proceed as an ordinary action by signing the draft interlocutor in the summons; or
- (b) fix a hearing.

(4) The Keeper of the Rolls shall notify the parties of the date and time of any hearing under paragraph (3)(b).

(5) At a hearing under paragraph (3)(b), the Lord Ordinary may refuse the application or, if he considers that there are exceptional reasons for not following the procedure in this Chapter such as would justify the granting of a motion under rule 43.5(1) (application to have action withdrawn from personal injuries procedure), grant authority for the cause to proceed as an ordinary action by signing the draft interlocutor in the summons.

(6) The other rules of this Chapter shall not apply to a cause commenced by a summons in respect of which a Lord Ordinary has granted an application under paragraph (1).

(7) In this rule—

“clinical negligence” means a breach of a duty of care by a health care professional in connection with that person’s diagnosis or the care or treatment of any person, by act or omission, whilst the health care professional was acting in his professional capacity; and

“health care professional” includes doctors, dentists, nurses, midwives, health visitors, pharmacy practitioners, registered ophthalmic practitioners, registered dispensing opticians, members of Professions Allied to Medicine, members of the Allied Health Professions, ambulance personnel, laboratory staff and relevant technicians.”.

(7) In rule 43.6 (allocation of diets and timetables) in paragraph (7) (failure to lodge record) for “shall” there shall be substituted “may”.

(8) In rule 43.9 (statements of valuation of claim)—

(a) for paragraphs (3) to (5) there shall be substituted the following:—

“(3) Each party shall, on lodging a statement of valuation of claim—

(a) intimate the list of documents included in the statement of valuation of claim to every other party; and

(b) lodge each of those documents.”; and

(b) in paragraph (6)—

(i) for “paragraphs (3) to (5)” there shall be substituted “paragraph (3)”; and

(ii) for “inspection” there shall be substituted “recovery”.

(9) After rule 43.19 (failure by connected person to enter process), there shall be inserted the following:—

**“Mesothelioma actions: special provisions**

**43.20.**—(1) This rule applies where liability to a relative of the pursuer may arise under section 1(2A) and (2B) of the Damages (Scotland) Act 1976 (liability where the personal injury in consequence of which the deceased died is mesothelioma)(a).

(2) On settlement of the pursuer’s claim, the pursuer may apply by motion for any or all of the following:—

(a) a sist for a specified period;

(b) discharge of the proof;

(c) variation of the timetable issued under rule 43.6.

(3) Paragraphs (4) to (7) apply where a motion under paragraph (2) has been granted.

(4) As soon as reasonably practicable after the death of the pursuer, any agent who immediately prior to the death was instructed in a cause by the deceased pursuer shall notify the court of the death.

(5) The notification under paragraph (4) shall be by letter to the Deputy Principal Clerk and shall be accompanied by a certified copy of the death certificate relative to the deceased pursuer.

(6) A relative of the deceased may apply by motion for the recall of the sist and for an order for further procedure.

(7) On the expiration of the period of any sist pronounced on a motion under paragraph (2) the Keeper may put the case out to be heard on the By Order roll.”.

(10) In the Appendix—

(a) after Form 42.7 there shall be inserted the form set out in the Schedule to this Act of Sederunt;

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(a) 1976 c.13; section 1 was amended by the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 (asp 18), section 1.

- (b) in Form 43.2-B (form of order of court in personal injury action for recovery of documents)(a) for call 6 there shall be substituted the following:–

“6. Any risk assessment current at the time of the accident referred to in the summons or at the time of the circumstances referred to in the summons giving rise to the cause of action (as the case may be) undertaken by or on behalf of the defender for the purpose of regulation 3 of the Management of Health and Safety at Work Regulations 1992 and subsequently regulation 3 of the Management of Health and Safety at Work Regulations 1999 [*or (specify the regulations or other legislative provision under which the risk assessment is required)*] in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries relating to the risks posed to workers [*or (specify the matters set out in the statement of claim to which the risk assessment relates)*].”;

- (c) in Form 43.10 (minute of pre-trial meeting)–

- (i) at the end of paragraph (2) there shall be inserted the following:–

“(2A) That the following persons were available to provide instructions by telephone:–

(State names and designations of persons available to provide instructions by telephone)”;

- (ii) at the end of paragraph 2 of Section 1 there shall be inserted the following:–

“If yes, does the defender plead contributory negligence?

If yes, is the degree of contributory negligence agreed?

If yes, state % degree of fault attributed to the pursuer”;

- (iii) in Section 2–

- (aa) for “By notice(s) dated [ ], the pursuer called on the defender to make certain admissions.” there shall be substituted the following:–

*“N.B. If the estimate is more or less than the 4 days then this should be brought to the attention of the Keeper. This may affect prioritisation of the case.*

During the course of the pre-trial meeting, the pursuer called on the defender to agree certain facts, questions of law and matters of evidence.”; and

- (bb) for “By notice(s) dated [ ], the defender called on the pursuer to make certain admissions.” there shall be substituted the following:–

“During the course of the pre-trial meeting, the defender called on the pursuer to agree certain facts, questions of law and matters of evidence.”;

- (iv) in Section 3–

- (aa) for “past services” there shall be substituted “past necessary services”;

- (bb) after “past necessary services” there shall be inserted the head of claim “past personal services”;

- (cc) for “future services” there shall be substituted “future necessary services”;

- (dd) after “future necessary services” there shall be inserted the head of claim “future personal services” with the components “Multiplier” and “Multiplicand (showing how calculated)”;

- (d) in the heading of Form 43.9 for “Form of Statement of Value of Claim” there shall be substituted “Form of Statement of Valuation of Claim”.

*A C HAMILTON*  
Lord President  
I.P.D.

Edinburgh  
11th April 2007

## SCHEDULE

Paragraph 2(10)

Form 43.1A

Rule 43.1A(1)

### **Form of draft interlocutor granting authority to raise action based on clinical negligence as an ordinary action**

*[To be inserted on the first page of the summons]*

#### **Authority**

The Lord Ordinary, having considered the application of the pursuer [and having heard counsel thereon], being satisfied that although this is a personal injuries action, there are exceptional reasons for not following the procedure in Chapter 43 of the Rules of the Court of Session 1994 such as would justify the granting of a motion under rule 43.5(1) (application to have action withdrawn from personal injuries procedure) grants authority for the cause to proceed as an ordinary action.

*(Signed)*

Lord/Lady

Date: *(date)*

## **EXPLANATORY NOTE**

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt makes various amendments to the Rules of the Court of Session 1994 (S.I. 1994/1443), particularly those relating to personal injury actions.

Paragraph 2(2), (5) and (6) makes provision for authority to be sought to commence an action based on clinical negligence as an ordinary action rather than under the personal injuries rules.

Paragraph 2(3) makes further provision in relation to the procedure to be followed when a party dies before the disposal of a cause.

Paragraph 2(4) makes provision for an application for authority to make a video recording of proceedings before a commissioner appointed to take the evidence of a witness.

Paragraph 2(7) amends the rules relating to personal injuries actions so that a By Order hearing is not always required where the pursuer fails to lodge a record within the timetable issued by the Keeper of the Rolls.

Paragraph 2(8) amends the rules relating to personal injuries actions by making provision for the lodging of documents which support a statement of valuation of claim or a revised statement of valuation of claim.

Paragraph 2(9) makes special provision for personal injury actions in which the personal injury is mesothelioma and a liability to the relatives of the pursuer may arise under section 1(2A) of the Damages (Scotland) Act 1976 which was inserted by the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007.

Paragraph 2(10) makes amendments to the standard specification of documents in personal injuries actions and the form of minute of a pre-trial meeting in those actions. It also provides a form of petition for the application for authority to commence an action based on clinical negligence as an ordinary action referred to above.

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**£3.00**

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