

2007 No.548

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 10) (Miscellaneous) 2007**

Made - - - - - *4th December 2007*

Coming into force - - - - - *7th January 2008*

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. 10) (Miscellaneous) 2007 and shall come into force on 7th January 2008.

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

Amendment of the Rules of the Court of Session

2. The Rules of the Court of Session 1994(b) are amended in accordance with paragraphs 3 to 5.

Written estimates of diets

3.—(1) In rule 6.2 (fixing and allocation of diets in Outer House)(c)—

(a) after paragraph (2) insert—

“(2A) Where a party enrolls a motion for a cause to be appointed to the Procedure Roll he shall include in the enrolled motion his estimate of the likely duration of the Procedure Roll hearing.

(2B) If any other party considers that the estimate included under paragraph (2A) is too low, he shall record upon the enrolled motion his own estimate.

(2C) On such papers (whether or not the closed record) as are transmitted to the Keeper of the Rolls for the purposes of his carrying out the functions conferred on him by paragraphs (3) and (4), the clerk of court shall note the estimate provided in pursuance of paragraph (2A) unless a higher estimate is recorded under paragraph (2B), in which case the note shall only be of the higher (or as the case may be the highest) estimate so recorded.”; and

(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 and by the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1).

(b) S.I. 1994/1443, last amended by S.S.I. 2007/450.

(c) Rule 6.2 was amended by S.I. 1998/890.

(b) after paragraph (7) insert–

“(7A) Any estimate included or recorded by a party under paragraph (2A), (2B), (5) or (6) shall be certified in Form 6.2 by any counsel or other person having a right of audience instructed by that party to represent him at the Procedure Roll hearing, proof, or jury trial, as the case may be.

(7B) A certificate under paragraph (7A) shall be lodged–

- (a) where it relates to an estimate included under paragraph (2A) or (5), at the time of enrolling the motion mentioned in that paragraph;
- (b) where it relates to an estimate recorded under paragraph (2B) or (6), at the time of recording that estimate.

(7C) Where a party’s original estimate of the duration of any diet changes, that party shall lodge a further Form 6.2 no later than 14 days before the date of any Procedure Roll hearing, proof or jury trial.”.

(2) In rule 6.3 (allocation of diets in Inner House)(a), after paragraph (6) insert–

“(7) Any–

- (a) estimate included by a party under paragraph (2);
- (b) estimate recorded by a party under paragraph (3); or
- (c) re-assessment provided by a party under paragraph (6),

shall be certified in Form 6.3 by any counsel or other person having a right of audience instructed by that party to represent him at the summar roll hearing.

(8) A certificate under paragraph (7) shall be lodged–

- (a) where it relates to an estimate included under paragraph (2), at the time of enrolling the motion mentioned in that paragraph;
- (b) where it relates to an estimate recorded under paragraph (3), at the time of recording that estimate;
- (c) where it relates to a re-assessment provided under paragraph (6), not less than one day before the hearing on the By Order Roll under paragraph (5).”.

(3) In rule 43.6 (allocation of diets and timetables)(b), after paragraph (5) insert–

“(5A) The pursuer shall include in the enrolled motion under paragraph (5) his estimate of the likely duration of the preliminary proof, proof or jury trial, or any other hearing sought, and request that the diet be allocated accordingly.

(5B) If any party considers that the estimate included under paragraph (5A) is too low, he shall record upon the enrolled motion his own estimate.

(5C) Any estimate included or recorded by a party under paragraph (5A) or (5B) shall be certified in Form 43.6A by that party’s solicitor or by any counsel or other person having a right of audience instructed by that party to represent him at the preliminary proof, proof, jury trial or other hearing, as the case may be.

(5D) A certificate under paragraph (5C) shall be lodged–

- (a) where it relates to an estimate included under paragraph (5A) at the time of enrolling the motion under paragraph (5);
- (b) where it relates to an estimate recorded under paragraph (5B) at the time of recording that estimate.”.

(4) After Form 5.2 (form of caveat) insert the forms set out in Part 1 of the Schedule to this Act of Sederunt.

(5) After Form 43.6 (form of timetable order)(c) insert the form set out in Part 2 of the Schedule to this Act of Sederunt.

(a) Rule 6.3 was substituted by S.I. 1998/890.

(b) Rule 43.6 was substituted by S.S.I. 2002/570 and amended by S.S.I. 2007/282.

(c) Form 43.6 was inserted by S.S.I. 2002/570.

Late appearance in family actions

4. For “and” appearing immediately after paragraph (1)(a) of rule 49.34 (late appearance by defenders) substitute “or”.

First order in judicial review

5. —(1) For rule 58.7 (first order) substitute—

“First Order

58.7.—(1) On being lodged, the petition shall, without appearing on the Motion Roll, be presented forthwith to the Lord Ordinary in court or in chambers for—

- (a) an order specifying—
 - (i) such intimation, service and advertisement as may be necessary;
 - (ii) any documents to be served with the petition;
 - (iii) any date for the first hearing, being a date not earlier than 7 days after the expiry of the period specified for intimation and service; or
- (b) any interim order.

(2) The Lord Ordinary may grant, but may not refuse to grant, any order specified in paragraph (1) without having heard counsel or other person having a right of audience instructed by the petitioner.”.

(2) In the appendix—

- (a) in Form 58.6 (form of petition in application for judicial review), after “interested parties on whom service is sought by advertisement.” insert—

“PERIOD OF NOTICE

The Petitioner submits that a period of notice of [*specify*] would be appropriate.

[*Where the period of notice specified above is less than 21 days: A period of less than 21 days notice is appropriate for the following reason(s):— [specify reasons].*”.

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

Edinburgh
4th December 2007

SCHEDULE

Paragraph 3(4) and (5)

PART 1

Form 6.2

Rule 6.2(7A)

Form of certificate of likely duration of diet

I, (*name and designation*), hereby certify that the likely duration of the (*insert name of diet*) is (*state estimated duration*).

(*Signed*)

Counsel [*or Solicitor Advocate*] for
the Pursuer [*or Defender*]

(*Print name*)

Form 6.3

Rule 6.3(7)

Form of certificate of likely duration of summar roll hearing

I, (*name and designation*), hereby certify that the likely duration of the summar roll hearing is (*state estimated duration*).

(*Signed*)

Counsel [*or Solicitor Advocate*] for
the Appellant [*or Respondent*].

(*Print name*)

PART 2

Form 43.6A

Rule 43.6(5C)

Form of certificate of likely duration of diet

I, (*name and designation*), hereby certify that the likely duration of the (*insert name of diet*) is (*state estimated duration*).

(Signed)

Solicitor [*or* Counsel] [*or* Solicitor Advocate] for the Pursuer [*or* Defender].”

(Print name)

EXPLANATORY NOTE

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

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994.

Paragraph 3 makes provision about the allocation of diets.

Rule 6.2 (fixing and allocation of diets in Outer House) is amended to extend the requirement on parties to provide a written estimate of the likely duration of a hearing to motions for a procedure roll hearing. Where another party considers that estimate to be too low, he must record his own estimate on the enrolled motion. Provision is also made requiring such estimates, and estimates of the duration of proof or jury trial, to be certified by counsel or other person having right of audience instructed by that party.

Where the estimate of the length of a diet of a Procedure Roll hearing, proof or jury trial changes, the party must lodge a further estimate no later than 14 days before the date of the procedure roll hearing, proof or jury trial.

Rule 6.3 is amended to include a requirement for estimates of diets in the Inner House to be certified by counsel or other person with rights of audience instructed to appear at the diet in question.

Rule 43.6 is amended to include a requirement to provide a written estimate of the duration of a diet of preliminary proof, proof or jury trial in personal injuries actions and to have such estimate certified by the party's solicitor, counsel or other person having a right of audience who is instructed by the party to represent him at that diet.

The appendix to the Rules is amended to insert forms for the certification of such estimates.

Paragraph 4 makes a minor correction to rule 49.34(1), replacing "and" with "or" where it appears between subparagraphs (a) and (b).

Paragraph 5 replaces rule 58.7 with a new rule, which is similar to the previous rule, but which provides that a first order can be granted, but may not be refused, without hearing counsel or other person having right of audience who is instructed by the petitioner. It also inserts a provision into Form 58.6 requiring the petitioner to specify the appropriate period of notice and to give reasons where the period of notice is less than 21 days.

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