
EXPLANATORY NOTE

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

This Act of Sederunt amends the rules of procedure in the sheriff court to make additional provision in Chapter 36 of the Sheriff Court Ordinary Cause Rules 1993 (the Rules) setting out a special procedure for actions for, or arising out of, personal injuries. The special procedure is referred to as personal injuries procedure, and will be applicable to actions of damages for, or arising from, personal injuries or death of a person from personal injuries raised from 2nd November 2009. Personal injuries actions raised prior to that date will continue to be dealt with under the existing rules in Chapter 36 of the Rules.

Paragraph 2 amends the Rules in consequence of the introduction of personal injuries procedure.

Paragraph 2(2) amends rule 3.1 of the Rules to refer to a new form of initial writ to be used under personal injuries procedure.

Paragraph 2(3) amends rule 13.1 of the Rules to make provision on the applicable procedure for entering process as a defender in circumstances where an action has been raised under personal injuries procedure.

Paragraph 2(4) disapplies rule 13.2 of the Rules, which relates to the procedure applicable once leave to enter the process has been granted, where an action is subject to personal injuries procedure. Where an action proceeds under this procedure, provision is made for the sheriff to grant such further order as he sees fit.

Paragraph 2(5) amends rule 21.1 of the Rules to provide that where an action is raised under personal injuries procedure, any documents to be founded upon or adopted require to be lodged when the initial writ is first presented for warranting.

Paragraph 2(6) inserts a new Part AI into Chapter 36 of the Rules, setting out the special procedure for actions relating to personal injuries.

Inserted rule 36.A1 sets out the application and interpretation of the provisions in Part AI of Chapter 36 of the Rules.

Inserted rule 36.B1 and Forms PI1 and PI2 in Schedule 1 make provision as to the form of initial writ and any specification of documents where a personal injuries action is raised.

Inserted rule 36.C1 provides for an exception to following personal injuries procedure in circumstances where an action is based on alleged clinical negligence. In those circumstances, rule 36.C1 allows the sheriff to grant authority for the cause to proceed as an ordinary cause, and makes provision for further procedure.

Inserted rule 36.D1 provides that where an initial writ in a personal injuries action contains a specification of documents, an order granting commission and diligence for the production and recovery of documents shall be deemed to be granted upon a warrant for citation being granted. It also provides for further procedure thereafter.

Inserted rule 36.E1 provides for the application (with or without modification) or non-application of various rules in relation to a defended personal injuries action.

Inserted rule 36.F1 makes provision for any party to a personal injuries action to apply to the sheriff to have the action withdrawn from the personal injuries procedure and to be appointed to proceed instead as an ordinary cause. The rule makes provision as to the factors upon which the sheriff must be satisfied in order to grant such an application and makes provision regarding further procedure where the application is granted.

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

Inserted rule 36.G1, Form PI5 in Schedule 1 and Schedule 2 all make provision in relation to the allocation of diets and the issuing of timetables under personal injuries procedure.

Inserted rule 36.H1 makes provision regarding applications to the sheriff for sist or for variation of the timetable by any party to an action which is subject to personal injuries procedure.

Inserted rule 36.J1 and Form PI6 in Schedule 1 make provision requiring each party to a personal injuries action to lodge a statement of valuation of claim in process. Rule 36.J1 also makes further related provision.

Inserted rule 36.K1 requires the parties to a personal injuries action to hold a pre-proof conference not later than 4 weeks before the date assigned for proof, to discuss settlement of the action and to agree, so far as is possible, the matters which are not in dispute between them. The rule also requires the parties to lodge a joint minute of the pre-proof conference, in Form PI7 in Schedule 1, in process not later than 3 weeks before the date assigned for proof. The timescale for lodging the joint minute is subject to any variation of the timetable in terms of rule 36.H1.

Inserted rule 36.L1 makes provision for the procedure applicable in relation to the fixing of incidental hearings under rules 36.G1 or 36.K1 by the sheriff clerk.

Paragraph 2(7) inserts a new Part VI into Chapter 36 of the Rules, including rule 36.19. This new Part and new rule make special provision in relation to actions raised where liability to a relative of a pursuer may arise under section 1(2A) and (2B) of the Damages (Scotland) Act 1976 where death of a person has occurred due to mesothelioma.

Paragraph 2(8) amends rule 36.17A, which relates to the lodging of productions in certain actions of damages, so as to make provision for the new routes by which a personal injuries action can proceed as an ordinary action under rules 36.C1 or 36.F1.

Paragraph 2(9) amends Appendix 1 to the Rules by inserting into that Appendix the forms PI1 to PI7, set out in Schedule 1 to this instrument.

Paragraph 2(10) inserts a new Appendix 3 into the Rules, as set out at Schedule 2 to this instrument. This is the Schedule of the timetable under the personal injuries procedure.