

**2013 No. 120**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session Amendment  
No. 3) (Miscellaneous) 2013**

<i>Made</i> - - - -	<i>2nd April 2013</i>
<i>Laid before Parliament</i>	<i>4th April 2013</i>
<i>Coming into force</i> - -	<i>1st May 2013</i>

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

**Citation, commencement etc.**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2013.

(2) It comes into force on 1st May 2013.

(3) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(4) The Rules of the Court of Session(b) are amended in accordance with the following paragraphs.

**Case management of certain personal injuries actions**

2. After Chapter 42 (taxation of accounts and fees of solicitors)(c) and the heading “special provisions in relation to particular proceedings”, insert—

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(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 9; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); the Judiciary and Courts (Scotland) Act 2008, (asp 6), section 46(3); and the Legal Services (Scotland) Act 2010 (asp 16), section 126(a).

(b) S.I. 1994/1443, last amended by S.S.I. 2013/111.

(c) Chapter 42, last amended by S.S.I. 2012/270.

## “CHAPTER 42A

### Case management of certain personal injuries actions

#### **Application and interpretation of this Chapter**

**42A.1.**—(1) Subject to paragraph (3), this Chapter applies to actions—

- (a) proceeding as ordinary actions by virtue of rule 43.1A (actions based on clinical negligence)(a) or rule 43.5 (motions to dispense with timetable)(b);
- (b) appointed to the procedure in this Chapter under paragraph (2).

(2) The Lord Ordinary may, after considering the likely complexity of an action and being satisfied that the speedy and efficient determination of the action would be served by doing so, appoint an action to which Chapter 43 applies (including actions relating to catastrophic injuries) to the procedure in this Chapter.

(3) Any party to an action may apply by motion to have the action withdrawn from the procedure in this Chapter.

(4) No motion under paragraph (3) shall be granted unless the court is satisfied that there are exceptional reasons for not following the procedure in this Chapter.

(5) In this Chapter—

“personal injuries” and “personal injuries action” have the meanings assigned to them in Rule 43.1(2)(c);

“proof” includes jury trial.

(6) Rule 22.3 (closing record)(d) does not apply to an action to which this Chapter relates.

#### **Appointment of action to the By Order (Adjustment) Roll**

**42A.2.** The court shall, no later than 7 days after the date on which the record is closed, appoint the action to the By Order (Adjustment) Roll.

#### **Lodging of closed record etc.**

**42A.3.**—(1) The pursuer shall, no later than 7 days before the hearing on the By Order (Adjustment) Roll—

- (a) send a copy of the closed record to the defender and to every other party; and
- (b) lodge three copies of the closed record in process.

(2) A closed record shall consist of the pleadings of the parties and the interlocutors pronounced in the action.

(3) At the same time as lodging the record each party shall lodge in process and send to every other party a written statement of his proposals for further procedure which shall state—

- (a) whether he is seeking to have the action appointed to debate or to have the action sent to proof;
- (b) where it is sought to have the action appointed to debate—
  - (i) the legal argument on which any preliminary plea should be sustained or repelled; and

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(a) Rule 43.1A was inserted by S.S.I. 2007/282 and amended by S.S.I. 2012/126.

(b) Rule 43.5 was inserted by S.S.I. 2002/570 and amended by 2008/349.

(c) Rule 43.1, last amended by S.S.I. 2011/288.

(d) Rule 22.3, last amended by S.S.I. 2007/7.

- (ii) the principal authorities (including statutory provisions) on which the argument is founded upon;
- (c) where it is sought to have the action appointed to proof—
  - (i) the issues for proof;
  - (ii) the names of the witnesses who are intended to be called to give evidence, including the matters to which each witness is expected to speak and the time estimated for each witness;
  - (iii) the progress made in preparing and exchanging the reports of any skilled persons;
  - (iv) the progress made in obtaining and exchanging records, in particular, medical records;
  - (v) the progress made in taking and exchanging witness statements;
  - (vi) the time estimated for proof and how that estimate was arrived at;
  - (vii) any other progress that has been made, is to be made, or could be made in advance of the proof;
  - (viii) whether an application has been or is to be made under rule 37.1 (applications for jury trial).

### **Hearing on the By Order (Adjustment) Roll**

**42A.4.**—(1) Subject to paragraphs (2) and (5), at the hearing on the By Order (Adjustment) Roll the Lord Ordinary shall, after considering the written statements lodged by the parties under rule 42A.3(3) and hearing from the parties, determine whether the action should be appointed to debate or sent to proof on the whole or any part of the action.

(2) Before determining whether the action should be appointed to debate the Lord Ordinary shall hear from the parties with a view to ascertaining whether agreement can be reached on the points of law in contention.

(3) Where the action is appointed to debate, the Lord Ordinary may order that written arguments on any question of law should be submitted.

(4) Where the action is sent to proof the Lord Ordinary shall—

- (a) fix a date for the hearing of the proof;
- (b) fix a pre-proof timetable in accordance with rule 42A.5.

(5) The Lord Ordinary may, before appointing the action to debate or sending it to proof, fix a further hearing on the By Order (Adjustment) Roll.

(6) Where the Lord Ordinary fixes a hearing under paragraph (5) he may make such orders as he thinks necessary to secure the speedy and efficient determination of the action, in particular, to resolve any matters arising or outstanding from the written statements lodged by the parties under rule 42A.3.

### **Pre-proof timetable**

**42A.5.**—(1) Subject to paragraph (4) the pre-proof timetable mentioned in rule 42A.4(4)(b) shall contain provision for the following—

- (a) no later than 6 months before the proof—
  - (i) a date for a procedural hearing;
  - (ii) the last date for the lodging of a draft valuation and vouchings by the pursuer;
- (b) no later than 5 months before the proof, the last date for the lodging of a draft valuation and vouchings by the defender;

- (c) no later than 4 months before the proof, the last date for the lodging of witness lists and productions, including a paginated joint bundle of medical records, by the parties;
  - (d) no later than 3 months before the proof, the last date for the pre-trial meeting;
  - (e) no later than 2 months before the proof, a date for a further procedural hearing.
- (2) For the purposes of this rule, a pre-trial meeting is a meeting between the parties to—
- (a) discuss settlement of the action; and
  - (b) agree, so far as is possible, the matters which are not in dispute between them.
- (3) Prior to the procedural hearing mentioned in subparagraph (1)(e)—
- (a) the pursuer shall lodge in process a joint minute of the pre-trial meeting in Form 43.10;
  - (b) the parties shall lodge in process any other joint minutes.
- (4) At any time the Lord Ordinary may, at his own instance or on the motion of a party—
- (a) fix a procedural hearing;
  - (b) vary the pre-proof timetable,
- where he considers that the speedy and efficient determination of the action would be served by doing so.”.

#### **Causes relating to intellectual property**

**3.**—(1) In rule 55.2D(5) pleadings in intellectual property causes)(a) for “notice” substitute “motion”.

(2) Rule 55.5B (hearings for further procedure) and rule 55.5C (failure to comply with rule or order of intellectual property judge)(b) are renumbered as rule 55.5A and rule 55.5B respectively.

#### **Protective Expenses Orders in Environmental Appeals and Judicial Reviews**

**4.** In rule 58A.1(1) (application and interpretation of this chapter)(c), for paragraph (c) substitute—

“(c) Directive 2011/92/EU of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment(d); or”

#### **Transitional provisions**

**5.**—(1) Subject to subparagraph (2), paragraph (2) of this Act of Sederunt shall apply only to actions raised after the date on which this Act of Sederunt comes into force.

(2) The Lord Ordinary may direct that paragraph (2) apply to an action raised before the date on which this Act of Sederunt comes into force but only after giving all of the parties an opportunity to be heard.

*BRIAN GILL*  
Lord President  
I.P.D.

Edinburgh  
2nd April 2013

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(a) Rule 55.2D(5) was inserted by S.S.I. 2012/275.  
 (b) Rules 55.5B and 55.5C were inserted by S.S.I. 2012/275.  
 (c) Rule 58A.1 was inserted by S.S.I. 2013/81.  
 (d) O.J. L26, 28.1.2012, p.1, which codified Council Directive 85/337/EEC (as amended), O.J. L175, 5.7.1985, p.40.

## **EXPLANATORY NOTE**

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

This Act of Sederunt amends the Rules of the Court of Session.

Paragraph 2 inserts new Chapter 42A to provide for the case management of certain personal injuries actions.

Paragraph 3 amends rule 55.2D(5) and renumbers rules 55.5B and 55.5C as rules 55.5A and 55.5B respectively.

Paragraph 4 amends rule 58A.1(1) to update the reference to a European Directive.

Paragraph 5 makes transitional provision in respect of paragraph 2.

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