



Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

IV.—RECORD, MOTIONS, AND PROBATION **U.K.**

25 **Revisal of pleadings not to be allowed as matter of course. **U.K.****

Neither party shall be entitled as matter of right to ask for a revisal of his pleadings; but it shall be competent for the Lord Ordinary to allow or to order a revisal of the pleadings, upon just cause shown.

Modifications etc. (not altering text)

C1 [Ss. 15–44](#) repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in [Sch. 2 Pt. II](#) of that Act)

26 **Procedure after pleadings completed, and adjustment of pleadings. **U.K.****

If no motion for revisal is made as above provided, or if such motion is refused, or after the lapse of the period within which the revised pleadings fall to be lodged where a revisal has been allowed or ordered, the pursuer shall cause the pleadings which are to form the record to be printed, and shall within eight days from the lodging of the defences or revised pleadings as the case may be, deliver two printer's proofs thereof to the agent or to each of the agents of the other parties, and also to the clerk to the process, who shall transmit the same to the Lord Ordinary, and the Lord Ordinary shall direct the cause to be put to the roll for a day not less than four and not more than six days thereafter; and upon such day the Lord Ordinary shall require the parties then to adjust their pleadings, and shall close the record: Provided, that if the pursuer shall fail to deliver the printer's proofs as aforesaid the defender may enrol the cause, and move for decree of absolvitor by default, which decree the Lord Ordinary shall grant unless the pursuer shall show good cause to the contrary: Provided also, that it shall not be competent of consent of parties to prorogate the time for complying with any statutory enactment or order of the Court, whether with reference to the making up and closing of the record or otherwise.

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, IV.—Record, Motions, and Probation. (See end of Document for details)

Modifications etc. (not altering text)

- C2** Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

27 ^{F1} **U.K.**

Textual Amendments

- F1** Ss. 27, 31 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

- C3** Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

28 **Review of certain interlocutors of the Lord Ordinary.** **U.K.**

Any interlocutor pronounced by the Lord Ordinary as provided for in the preceding section, . . . ^{F2} shall be final, unless within six days from its date the parties, or either of them, shall present a reclaiming note against it to one of the divisions of the Court, by whom the cause shall be heard summarily; and when the reclaiming note is advised, the division shall dispose of the expenses of the reclaiming note, and of the discussion, and shall remit the cause to the Lord Ordinary to proceed as accords: Provided always, that it shall be lawful to either party within the said period, without presenting a reclaiming note, to move the said division to vary the terms of any issue that may have been approved of by an interlocutor of the Lord Ordinary, specifying in the notice of motion the variation that is desired: Provided also, that nothing herein contained shall be held to prevent the Lord Ordinary or the Court from dismissing the action at any stage upon any ground upon which such action might at present be dismissed according to the existing law and practice.

Textual Amendments

- F2** Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

- C4** Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)
- C5** S. 28 amended by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), s. 14(2)

29 **Amendment of records in defended actions.** **U.K.**

The Court or the Lord Ordinary may at any time amend any error or defect in the record or issues in any action or proceeding in the Court of Session, upon such terms as to expenses and otherwise as to the Court or Lord Ordinary shall seem proper and all such amendments as may be necessary for the purpose of determining in the existing action or proceeding the real question in controversy between the parties shall be so made: Provided always, that it shall not be competent, by amendment of the record or issues

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under this Act, to subject to the adjudication of the Court any larger sum or any other fund or property than such as are specified in the summons or other original pleading, unless all the parties interested shall consent to such amendment: And provided also, that no such amendment shall have the effect of validating diligence used on the dependence of the action so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but shall be operative to the effect of obviating any objection to such diligence when stated by the defender himself, or by any person representing him by a title, or in right of a debt contracted by him, subsequent to the execution of such diligence.

Modifications etc. (not altering text)

- C6 Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

30 Pleadings in actions of multiplepinding. U.K.

In actions of multiplepinding it shall not be necessary to lodge answers to the original condescendences and claims, unless it is made to appear to the satisfaction of the Lord Ordinary that the claimants are at issue on matters of fact material to the action, and that answers are necessary; and in such actions it shall be competent for parties having opposing interests (where they are agreed upon the facts) to make their averments in the form of a joint case, appending thereto their respective claims and pleas in law: Provided always that where the competition involves the construction of written documents, such documents shall not be set out at length on the record, but shall be printed separately, and referred to in the pleadings as set forth in such separate print.

Modifications etc. (not altering text)

- C7 Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

31^{F3} U.K.

Textual Amendments

- F3 Ss. 27, 31 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

- C8 Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

32 Regulations as to time of addressing the Court in proofs under the Conjugal Rights and Evidence Acts. U.K.

In all proofs before the Lord Ordinary under the ^{M1}Conjugal Rights (Scotland) Amendment Act 1861 and the ^{M2}Evidence (Scotland) Act 1866, no adjournment shall be allowed, except on special cause stated in an interlocutor, and the evidence shall be summed up by one counsel on each side at the conclusion of the examination of

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the witnesses, as in the case of jury trials; and it shall not be necessary to print the evidence, unless for the purpose of bringing the judgment of the Lord Ordinary thereon under the review of the Inner House.

Modifications etc. (not altering text)

C9 Ss. 15–44 repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

Marginal Citations

M1 1861 c. 86.
M2 1866 c. 112.

33 ^{F4} **U.K.**

Textual Amendments

F4 S. 33 repealed by Administration of Justice (Scotland) Act 1933 (c. 41), **Sch.**

Modifications etc. (not altering text)

C10 Ss. 15–44 repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), **Sch. 2 Pt. I** (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

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