
 STATUTORY INSTRUMENTS

1976 No. 1994 (S. 164)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 11)
(Consistorial Actions) 1976

Made - - - - 25th November 1976

Coming into Operation 1st January 1977

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(a) sections 1(4), 5(6) and 11 of the Divorce (Scotland Act) 1976(b) and of all other powers competent to them in that behalf, do hereby enact and declare:—

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 11) (Consistorial Actions) 1976 and shall come into operation on 1st January 1977.

(2) The Interpretation Act 1889(c) shall apply to the interpretation of this Act of Sederunt as it applies to the interpretation of an Act of Parliament.

Amendment and consolidation of rules relating to consistorial actions

2. In the Rules of Court(d)

(1) In Chapter III, for section 3 substitute the following section:—

“SECTION 3—CONSISTORIAL ACTIONS

Preliminary.

154. *Application and interpretation* (1) Except in so far as otherwise expressly provided, the provisions of this section apply to all consistorial actions including actions of divorce, separation, declarator of nullity of marriage, declarator of marriage, declarator of legitimacy, declarator of bastardy, but not including actions of aliment between husband and wife which, for the purposes of these rules, shall be treated as ordinary actions.

(2) Subject to the provisions of this section, the provisions of these rules so far as applicable apply with any necessary modifications to the practice and procedure in consistorial actions.

(3) In this section, unless the context otherwise requires—

“The Act of 1938” means the Divorce (Scotland) Act 1938(e);

“The Act of 1958” means the Matrimonial Proceedings (Children) Act 1958(f);

“The Act of 1973” means the Domicile and Matrimonial Proceedings Act 1973(g);

(a) 1933 c. 41. (b) 1976 c. 39. (c) 1889 c. 63. (d) S.I. 1965/321 (1965 I, p. 803).
(e) 1938 c. 50. (f) 1958 c. 40. (g) 1973 c. 45.

“The Act of 1976” means the Divorce (Scotland) Act 1976;

“improper association” means sodomy, incest or any homosexual relationship;

“mental disorder” means mental illness or mental deficiency however caused or manifested.

(4) Unless the context otherwise requires, a rule referred to by number, means the rule so numbered in this section, and a paragraph, sub-paragraph or head referred to by number or letter means a paragraph so numbered or lettered in that rule, a sub-paragraph so numbered or lettered in that paragraph and head so numbered or lettered in that sub-paragraph respectively.

(5) In this section, a form referred to by number means the form so numbered in the Appendix to these rules or a form substantially to the like effect, with such variations as the circumstances of the particular case may require.

Summons.

155. *Warrants for intimation* (1) Subject to paragraph 2, in an action where the pursuer alleges that the defender has committed adultery with another person, warrant for intimation to that person shall be endorsed on the summons in the following terms: —

“Warrant to intimate to (name and address) as a person with whom the defender is alleged to have committed adultery”, unless that person is not named in the summons and, if the adultery is relied on for the purposes of section 1(2)(a) of the Act of 1976, the summons contains an averment that his or her identity is not known to the pursuer.

(2) In an action where the pursuer alleges that the defender has been guilty of rape upon or incest with a named person, paragraph (1) shall not apply.

(3) In an action where—

(a) the defender’s address is unknown; or

(b) the defender is a person who is suffering from a mental disorder,

warrant for intimation to—

(i) every child of the marriage between the parties who has reached the age of 12 years in the case of a girl and 14 years in the case of a boy; and

(ii) one of the defender’s next-of-kin who has reached the above age; and

(iii) the defender’s *curator bonis*, if any,

shall, subject to paragraph (4), be endorsed on the summons in the following terms: —

“Warrant to intimate to (name and address) as the child of the marriage and (name and address) the (relationship to defender) and one of the next-of-kin of the defender and (name and address) *curator bonis* of the defender.”

(4) Warrant for intimation to a person such as is mentioned in heads (i) to (iii) of paragraph (3), shall not be required under that paragraph if—

- (a) the address of that person is unknown to the pursuer; and
- (b) there is an averment to that effect in the summons.

(5) In any action relating to a marriage which was entered into under a law which permits polygamy in which one of the decrees specified in section 2(2) of the Matrimonial Proceedings (Polygamous Marriages) Act 1972(a) is sought, and either party to the marriage in question has any spouse additional to the other party, warrant for intimation to any such additional spouse shall be endorsed on the summons in the following terms:—

“Warrant to intimate to (name and address) as an additional spouse of the (pursuer) *or* (defender).”

156. *Conclusions* The form of the conclusions of the summons shall be in accordance with the appropriate form set out in Form 2.

157. *Averments* (1) Where—

- (a) the address of the defender is unknown, or
- (b) the identity or address of any person mentioned in rule 155 as a person in respect of whom a warrant for intimation requires to be endorsed on the summons is unknown,

there shall be included in the condescence of the summons an averment of that fact, together with averments setting out the steps, if any, taken by the pursuer to ascertain that person's address, or as the case may be, that person's identity.

(2) In any action of divorce or separation where the facts set out in section 1(2)(d) or (e) of the Act of 1976 are relied upon or in which the pursuer has reason to believe that the defender is undergoing treatment for mental disorder in a hospital, averments setting out the financial position of the parties and any child of the marriage who is dependent upon them and the financial arrangements proposed or sought on divorce or separation shall be included in the condescence of the summons.

(3) (a) In every action of divorce, separation, declarator of marriage, or declarator of nullity of marriage, the condescence of the summons shall include a statement of whether to the knowledge of the pursuer any proceedings are continuing in any country outside Scotland, which are in respect of the marriage to which the summons relates or are capable of affecting its validity or subsistence.

(b) Where such proceedings outside Scotland are continuing, the statement shall include the following particulars:—

- (i) the Court, Tribunal or authority before which they have been commenced;
- (ii) the date of their commencement;
- (iii) the names of the parties;
- (iv) the date, or expected date of any proof in the proceedings; and

(a) 1972 c. 38.

(v) such other facts as may be relevant to the question of whether the proposed action in the Court of Session should be sisted under Schedule 3 of the Act of 1973.

(c) Where such proceedings outside Scotland are continuing and the Court of Session action is defended and either—

(i) the summons does not contain the statement; or

(ii) the particulars mentioned in sub-paragraph (b) are incomplete or erroneous,

the defences or minute lodged by any party to that action shall include the statement and, where appropriate, those particulars.

(d) The proceedings mentioned in paragraph (a) are continuing for the purposes of this paragraph at any time after they are commenced and before they are finally disposed of.

Service.

158. *Induciae* (1) In any action the *induciae* for the citation of a defender and for the citation of any person in respect of whom a warrant for intimation requires to be endorsed on the summons, are—

(a) in a case where the defender or any such person is resident at a known address in a country outside Europe, 3 weeks if the citation is personal and 6 weeks if the citation is postal;

(b) in any other case, 14 days.

(2) In any case where the citation is postal, the *induciae* are reckoned from 24 hours after the date of posting.

159. *Citation* (1) Subject to paragraph (2), citation in any action shall be executed either—

(a) personally; or

(b) by post.

(2) Citation shall be executed edictally in any case when the defender's address is unknown.

(3) Citation executed by post shall, subject to the provision of paragraph (5) be by means of—

(a) a messenger-at-arms; or

(b) a solicitor entitled to practise in the Court of Session,

posting by registered or recorded delivery letter addressed to the defender and having on the face of the letter the notice set out in paragraph (4), a copy of the summons with citation in the terms set out in Form 3, and in an action to which rule 161 applies, the notices referred to in that rule in relation to that action.

(4) The notice mentioned in paragraph (3) shall be in the following terms:—

“This letter contains a citation to or intimation from the Court of Session, Scotland. If delivery of the letter cannot be made it is to be returned immediately to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh.”

(5) In any action where the defender suffers or appears to suffer from mental disorder and is resident in a hospital or other similar institution, citation shall be executed by addressing the registered or recorded delivery letter to the medical officer in charge of that hospital or institution enclosing a certificate in the terms set out in Form 21 with a request in the terms set out in Form 20 that he either —

(a) deliver the copy of the summons personally to the defender together with any notice sent therewith in accordance with the provisions of rule 161 and explain the contents to him; or

(b) certify on soul and conscience that such delivery or explanation would be dangerous to the health or mental condition of the defender, and complete the certificate accordingly and return it to the pursuer's solicitor to be attached to the summons lodged for calling.

(6) Where the certificate returned under paragraph (5) bears that no delivery of the summons was made to the defender, it shall be competent for the Court at any stage in the proceedings before decree to order such further medical enquiry and such further service as it may think fit.

(7) On the citation being executed by post, the messenger-at-arms or solicitor who executed it shall return the execution in terms of Form 3, together with the Post Office receipt for the letter.

(8) Citation executed by post is a valid citation unless and until the defender proves that the letter was not tendered or left at his address.

160. *Intimation* (1) A warrant for intimation to any person mentioned in rule 155 or 170B(6)(a) may be executed at the same time as or after, the citation of the defender, and rule 159 (apart from paragraph (5)) shall apply to the execution of the warrant as it applies to the execution of a citation with the substitution for the reference to citation of a reference to intimation and for the reference to Form 3 of a reference to Form 16, 17, 18, 18A or 18B, as the case may be.

(2) Execution of a warrant for intimation shall be certified by attaching to the summons a copy of the intimation and a certificate of execution.

161. *Notice in divorces and separations* (1) Where the facts set out in section 1(2)(d) of the Act of 1976 (2 years non-cohabitation and the defender's consent to decree) are relied on in an action of divorce, a notice in the terms set out in Form 15A shall be sent with the copy of the summons served on the defender, together with a notice in the terms set out in Form 15E.

(2) Where the facts set out in section 1(2)(d) of the Act of 1976 (2 years non-cohabitation and the defender's consent to decree) are relied on in an action of separation, a notice in the terms set out in Form 15B shall be sent with the copy of the summons served on the defender, together with a notice in the terms set out in Form 15E.

(3) Where the facts set out in section 1(2)(e) of the Act of 1976 (5 years non-cohabitation) are relied upon in an action of divorce, a notice in the terms set out in Form 15C shall be sent with the copy of the summons served on the defender.

(4) Where the facts set out in section 1(2)(e) of the Act of 1976 (5 years non-cohabitation) are relied upon in an action of separation, a notice in the terms set out in Form 15D shall be sent with the copy of the summons served on the defender.

162. *Intimation where improper association* (1) In an action where the pursuer alleges an improper association (other than adultery) between the defender and another named person, the pursuer shall immediately after the calling of the summons, enrol a motion for intimation to that person, and the Court at the hearing of the motion may make an order for intimation or an order dispensing with intimation to that person, as it thinks fit.

(2) Where the Court makes an order for intimation under paragraph (1), rule 160 shall apply to intimation to that person as it applies to intimation to a person mentioned in rule 155, with the substitution for the reference to Forms 16, 17, 18, 18A and 18B of a reference to Form 19.

(3) Where the Court makes an order dispensing with intimation to that person under paragraph (1) it may also make an order that the name of that person be deleted from the condescendence of the summons.

163. *Petition for dissolution of marriage* A petition for dissolution of marriage under section 5 of the Act of 1938 shall be served—

(a) edictally upon the spouse to be presumed dead; and

(b) in common form upon—

(i) every child of the marriage who has reached the age of 12 years in the case of a girl and 14 years in the case of a boy; and

(ii) one or more of the defender's next-of-kin who has reached the above age,

whose address is known.

Procedure before proof allowed.

164. *Power to order intimation* The Court may in any action order intimation to be made to such person as it thinks fit.

165. *Third parties entering the process* Any person upon whom intimation of an action has been made under this section may apply for leave to lodge defences or answers or minute, as the case may be, and the Court may grant that application.

166. *Consent to grant of decree* (1) Where, in an action of divorce or separation in which the facts set out in section 1(2)(d) of the Act of 1976 (2 years non-cohabitation and the defender's consent to decree) are relied on, the defender wishes to indicate to the Court that he consents to the grant of a decree, he shall do so by giving notice in writing to that effect to the Deputy Principal Clerk of Session.

(2) For the purposes of paragraph (1) a notice of consent in the terms set out in Form 15E containing a statement that the defender consents to the grant of a decree shall be treated as notice under that paragraph if it is signed by the defender, and the evidence of one witness shall be sufficient for the purposes of establishing that the signature on the notice of consent bearing to be that of the defender is in fact that of the defender.

(3) A defender in an action of divorce or separation where the summons includes, for the purposes of the said section 1(2)(d), an averment that he consents to the grant of a decree may give notice in writing to the Court that he has not consented to a decree being granted or that he withdraws any consent which he has already given.

(4) In a case where the defender gives notice under paragraph (3), the Deputy Principal Clerk of Session shall intimate its terms to the solicitor representing the pursuer.

(5) On receiving intimation under paragraph (4) of a notice given under paragraph (3), the pursuer shall, if none of the other facts mentioned in section 1(2) of the Act of 1976 are averred in the summons, enrol a motion for the action to be sisted, and the Court may grant that motion.

(6) If such a motion is granted and the sist is not recalled or renewed within a period of 6 months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action.

167. *Special applications* (1) For appointment of curator *ad litem*:

(a) In an action of divorce or separation where it appears to the Court that the defender is a person who is suffering from mental disorder, the Court shall, on the expiry of the period for lodging defences—

(i) appoint a curator *ad litem* to the defender; and

(ii) in the case of a divorce or separation under section 1(2)(d) of the Act of 1976, make an order informing the Mental Welfare Commission for Scotland of the ground of the action and requesting them to provide a report indicating whether in their opinion the defender is capable of deciding whether or not to give consent to the granting of decree.

(b) The solicitor representing the pursuer shall as soon as reasonably practicable after the making of an order under head (i) of paragraph (a) appointing a curator *ad litem* to the defender, send to the curator the certified copy summons (which may be borrowed from process for this purpose) and defences, if any.

(c) The curator *ad litem* may, within 14 days of the Commission providing the report requested under head (ii) of paragraph (a), or in any case where no such report is requested, within 14 days of his appointment under head (i) of that paragraph lodge—

(i) defences to the action; or

(ii) a minute adopting defences already lodged; or

(iii) a minute stating that he does not intend to lodge defences

and may appear in the action at any time to protect the interests of the defender.

(2) *Under the Act of 1973* Any application for a sist, or the recall of a sist under Schedule 3 to the Act of 1973, shall be by way of motion.

168. *No appearance entered* (1) Where no defences are lodged the Court may allow a proof before answer.

(2) On a proof before answer being allowed the solicitor for the pursuer shall complete a form in the terms set out in Form 15F by specifying the information indicated therein as being required, and shall send the completed form to the Assistant Keeper of the Rolls, Parliament House, Edinburgh.

(3) The Assistant Keeper of the Rolls shall, on receipt of the completed form, allocate a date for the proof, not being a date earlier than the last day for lodging defences if appearance had been entered, and enter that date on the form and shall thereafter return the form to the solicitor.

(4) A solicitor to whom a form is returned under paragraph (3) shall, as soon as practicable after receiving it, present it to the Process Department for completion of the interlocutor allowing a proof before answer.

Procedure after proof allowed.

169. *Late appearance by defender* (1) The Court may make an order with or without conditions, allowing a defender in any action—

- (a) to appear and be heard at the diet of proof although he may not have lodged defences, but he shall not be allowed to lead evidence without the pursuer's consent;
- (b) to lodge defences and to lead evidence at any time before decree has been pronounced;
- (c) to reclaim within the reclaiming days although he was not present, or represented, at the proof.

(2) In a case where the Court makes an order under paragraph (1)(b), the pursuer may lead further evidence by recalling witnesses already examined or otherwise, whether or not he closed his proof before the order was made.

170A. *Suspension incompetent in undefended action* It shall not be competent for the defender to bring a suspension of any decree of divorce pronounced in an undefended action.

Custody, aliment, care and supervision etc. of children.

170B. *Interpretation* (1) In this rule—

- (a) any reference to custody of a child includes a reference to access to and the maintenance and education of that child;
- (b) any reference to an action is a reference to an action for divorce, nullity of marriage or separation;
- (c) any reference to a child is, unless the context otherwise requires, a reference to—
 - (i) a child of the marriage between the parties to the action;
 - (ii) a child of one party to the marriage (including an illegitimate or an adopted child) who has been accepted as one of the family by the other party, being a child of under 16 years of age.

(2) *Conclusion* Any conclusion for custody of a child in an action shall include a request for a direction reserving leave to apply to the Court in the action until the date when the child reaches 16 years of age.

(3) *Claim by defender* The defender in an action may claim custody of a child by lodging defences containing, in addition to averments and pleas-in-law, a conclusion for custody of that child.

(4) *Opposition by defender* In an action where the pursuer claims custody of a child and the defender does not want to claim custody himself, but wishes to oppose the pursuer's claim, he may do so by lodging defences.

(5) *Joint minute* The parties to an action may enter into a joint minute agreeing the custody of a child, and the Court may interpose authority to that minute.

(6) *Intimation to third parties (a)* In an action where the Court may make an order—

- (i) in respect of the custody of a child who is in the care of a local authority;
- (ii) in respect of the custody of a child mentioned in head (ii) of paragraph (1)(c) who is liable to be maintained by a third party;
- (iii) in respect of the custody of a child in the *de facto* custody of a third party;

intimation of the action shall be made to the local authority or third party concerned by endorsing on the summons a warrant for intimation in the following terms: “Warrant to intimate to (name and address) as (the local authority having care of (name and address of child)) *or* (a person who is liable to maintain (name and address of child)) *or* (the person who in fact has custody of (name and address of child))”, and rule 160 shall apply to the execution of that warrant.

(b) In an action where the Court—

- (i) proposes to commit the care of a child to an individual other than one of the parties to the marriage or to a local authority under section 10 of the Act of 1958;
- (ii) has made an order placing a child under the supervision of a local authority under section 12 of the Act of 1958,

the Court shall order intimation to be made to the individual, or the local authority concerned of the matters specified in the order, and for the purposes of any such intimation rule 160 shall apply to the order for intimation under this sub-paragraph as it applies to a warrant for intimation mentioned in that rule with the omission of any reference to a Form.

(7) *Sisting of third parties (a)* a person to whom intimation has been made under paragraph (6) may apply to be heard in the action by way of minute—

- (i) in the case of a local authority or of a third party mentioned in paragraph (6)(a), craving leave to be sisted as a party to the action and making any relevant averments in relation to the care and maintenance of the child, or the maintenance of the child, as the case may be;
- (ii) in the case of an individual or a local authority mentioned in head (i) of paragraph (6)(b), making any relevant averments in relation to the care, maintenance or education of the child.

(b) On the lodging of a minute under paragraph (a), either party to the marriage may lodge answers thereto within such period as the Court may allow.

(8) *Reservation of leave to apply (a)* In every defended action there shall be included in the interlocutor disposing of the action, the direction mentioned in paragraph (2).

(b) An order made by the Court under Part II of the Act of 1958 shall include a direction granting leave for any person claiming an

interest to apply to the Court for the variation or revocation of the order until the date when the child reaches 16 years of age.

(9) *Effect of reservation* An interlocutor shall not by reason only that it includes a direction under paragraph (8), be other than a final decree for the purposes of reclaiming, but in so far as it relates to custody any action in which such an interlocutor has been pronounced shall continue to be in dependence until the date mentioned in the direction, and any party to the action or other party claiming an interest may apply to the Court in that action until that date; and accordingly final decree in any such action shall be capable only of interim extract.

170C. *Interdict prohibiting removal of child* An application under section 13 of the Act of 1958 for interim interdict prohibiting the removal of a child furth of Scotland or out of the control of the person in whose custody the child is, shall, if made prior to the calling of the summons in the action to which the application relates, be made by letter addressed to the Deputy Principal Clerk of Session, who shall lay it before a Lord Ordinary in chambers or, in vacation or recess, before the Vacation Judge, and where application is so made on behalf of the pursuer, his solicitor shall produce to the Lord Ordinary or the Vacation Judge the principal summons, and where it is so made by the defender, his solicitor shall so produce the service copy summons.

Financial provision on divorce.

170D. (1) *Application by pursuer for periodical allowance, capital sum or variation of settlement* An application to the Court under section 5(1) of the Act of 1976 by the pursuer in an action of divorce for an order—

- (a) for payment by the other party to the marriage or out of his estate of a periodical allowance;
- (b) for payment by the other party to the marriage or out of his estate of a capital sum; or
- (c) varying the terms of a settlement,

shall be made by including conclusions in the terms set out in Form 2 and supporting averments in the summons specifying the nature of the order the pursuer seeks.

(2) *Applications by defender for periodical allowance, capital sum or variation of settlement* An application to the Court by the defender in an action for divorce for an order mentioned in paragraph (1) shall be made in defences including in addition to supporting averments and pleas-in-law, a conclusion in the terms set out in Form 2 specifying the nature of the order the defender seeks.

(3) *Subsequent applications for and variation of periodical allowance* An application to the Court by either party in an action of divorce for an order under sections 5(3) and (4) of the Act of 1976—

- (a) for payment by the other party to the marriage of a periodical allowance;
- (b) for an order for payment of periodical allowance to be varied or recalled,

may be made by minute in the process containing supporting averments, and pleas-in-law specifying the nature of the order sought, and in the case

of an application for an order under sub-paragraph (a), a conclusion in the terms set out in Form 2.

(4) *Applications reducing or varying, or interdicting the making of settlements*

(a) Paragraph (3) shall apply to an application to the Court by either party in an action of divorce, separation and aliment, and adherence and aliment, and by the party who has brought an application for variation of an award of aliment in such an action, for an order under section 6(1) of the Act of 1976—

(i) reducing or varying any settlement or disposition made by the other party;

(ii) interdicting the making of any such settlement or disposition as it applies to an order under sub-paragraph (a) of that paragraph.

(b) the applicant in an application for an order under the said section 6(1) shall intimate the minute or summons by means of which he makes that application to any third party in whose favour the settlement or disposition was made and to any other person having an interest in the settlement or disposition, and any such third party or other person may lodge answers thereto or a minute in the process as the case may be, within such period as the Court may allow.

(5) *Applications by defender for aliment* Paragraph (2) shall apply to opposition by a defender to the amount of aliment claimed by the pursuer in an action of divorce, nullity of marriage or separation as it applies to an application under that paragraph with the omission of any reference to a conclusion.

(6) *Warrant for execution on decree of interim aliment pending disposal of action*

(a) The Principal Clerk or the Deputy Principal Clerk or anyone authorised by either of them in that behalf may append to an official certified copy of an interlocutor granting decree for interim aliment a warrant for execution in the following terms:— “and the Lords of Council and Session grant warrant for all lawful execution upon the aforementioned decree for interim aliment.”

(b) Rule 65 applies to that warrant as it applies to the warrant in an extract of a decree.”.

Amendment of Appendix to Rules of Court

(2) In the Appendix—

(a) In Form 2 (forms of conclusion)—

(i) for paragraphs (15) to (17), substitute the following paragraphs—

“(15) Action of separation. For separation of the defender from the pursuer on the ground (of the defender’s behaviour *or* of the defender’s adultery *or* of the defender’s desertion for a period of two years or more *or* of non-cohabitation for a period of two years or more and the defender’s consent to the granting of decree of separation *or* of non-cohabitation for a period of five years or more.) (Add conclusion for aliment if appropriate.)

(16) Action of divorce. For divorce of the defender from the pursuer in respect that the marriage has broken down irretrievably by reason of (the defender's adultery *or* the defender's behaviour *or* the defender's desertion of the pursuer for a period of two years or more *or* non-cohabitation for two years or more and the defender's consent to decree of divorce *or* non-cohabitation for five years or more).

(17) Conclusion for periodical allowance and capital sum. For payment by the defender to the pursuer of (1) a capital sum of £ with interest thereon at the rate of per centum per annum from the date of decree to follow hereon until payment; and (2) a periodical allowance of £ per week (month) payable until the remarriage or death of the pursuer";

(ii) In paragraph (20), for the words "either party" substitute the words "any party claiming an interest";

(b) after Form 15, insert the following forms—

"15A Form of Notice to defender where it is stated he consents to the granting of decree of divorce (Rule 161(1)).

TAKE NOTICE that the copy summons served on you together with this Notice states that you consent to the grant of decree of divorce.

1. If you do so consent the consequences to you are that—

(a) provided the pursuer establishes the fact that there has been no cohabitation between the parties to the marriage at any time during a continuous period of two years after the date of the marriage and immediately preceding the bringing of this action and that you consent, a decree will be granted;

(b) on the grant of a decree of divorce you may lose your rights of succession to the pursuer's estate;

(c) decree of divorce will end the marriage thereby affecting any right to such pension as may depend upon the marriage continuing or upon your being left a widow; the State widow's pension will not be payable to you when the pursuer dies;

(d) apart from these consequences there may be others applicable to you depending upon your particular circumstances.

2. If you do consent to the grant of decree you are still entitled to apply to the Court in this action—

(a) to make financial provision for you under the Divorce (Scotland) Act 1976 by making an order—

(i) for the payment by the pursuer to you of a periodical allowance;

(ii) for the payment by the pursuer to you of a capital sum;

(iii) varying the terms of any marriage settlement.

(b) to make an order providing for the custody, maintenance and education of any child of the marriage, or any child accepted as such, who is under 16 years of age.

3. In order to make such an application to the Court you require to lodge defences in this action. If you wish to make such an application you should consult a solicitor.

4. If after considering the foregoing you wish to consent to decree you should complete and sign the attached Form of Notice of Consent, and send it to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh, within 14 days of the receipt of this Notice.

5. If after consenting you wish to withdraw your consent you must immediately inform the Deputy Principal Clerk of Session at the above address in writing that you withdraw your consent to decree being granted against you in the action at the instance of (insert name and address of your husband or wife as the case may be).

15B Form of Notice to defender where it is stated he consents to the granting of decree of separation (Rule 161(2)).

TAKE NOTICE that the copy summons served on you together with this Notice states that you consent to the grant of decree of separation—

1. If you do so consent the consequences to you are that—

(a) provided the pursuer establishes the fact that there has been no cohabitation between the parties to the marriage at any time during a continuous period of two years after the date of the marriage and immediately preceding the bringing of this action and that you consent, a decree of separation will be granted;

(b) on the grant of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist. A husband will continue to have a legal obligation to support his wife and children;

(c) apart from these consequences there may be others applicable to you depending upon your particular circumstances.

2. If you do consent to the grant of decree you are still entitled to apply to the Court in this action—

(a) if you are the wife, for payment by the pursuer to you of aliment; and

(b) for an order providing for the custody, maintenance and education of any child of the marriage, or any child accepted as such, who is under 16 years of age.

3. In order to make such an application to the Court you require to lodge defences to this action. If you wish to make such an application you should consult a solicitor.

4. If after considering the foregoing you wish to consent to decree you should complete and sign the attached Form of Notice of Consent and send it to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh, within 14 days of the receipt of this Notice.

5. If after consenting you wish to withdraw your consent you must immediately inform the Deputy Principal Clerk of Session at the above address, in writing, that you withdraw your consent to decree being granted against you in the action at the instance of (insert name and address of your husband or wife as the case may be).

15C Form of Notice to defender in an action of divorce where it is stated there has been 5 years non-cohabitation. (Rule 161(3)).

1. TAKE NOTICE that the copy summons served on you together with this Notice states that there has been no cohabitation between you and the pursuer at any time during a continuous period of 5 years after the date of the marriage and immediately preceding the commencement of this action and that if the pursuer establishes this as a fact and the Court is satisfied that the marriage has broken down irretrievably a decree will be granted, unless in the opinion of the Court the grant of decree would result in grave financial hardship to you.

2. Decree of divorce will end the marriage thereby affecting any right to such pension as may depend upon the marriage continuing or upon your being left a widow; the State widow's pension will not be payable to you when the pursuer dies. You may also lose your rights of succession to the pursuer's estate.

3. You are entitled, whether or not you dispute that there has been no such cohabitation during such a period, to apply to the Court in this action—

(a) to make financial provision for you under the Divorce (Scotland) Act 1976 by making an order—

(i) for the payment by the pursuer to you of a periodical allowance;

(ii) for the payment by the pursuer to you of a capital sum;

(iii) varying the terms of any marriage settlement;

(b) to make an order providing for the custody, maintenance and education of any child of the marriage or of any child accepted as such, who is under 16 years of age.

4. In order to make such an application to the Court you require to lodge defences to this action.

5. If you wish to make any such application to the Court in this action you should consult a solicitor.

15D Form of Notice to defender in an action of separation where it is stated there has been 5 years non-cohabitation (Rule 161(4)).

1. TAKE NOTICE that the copy summons served on you together with this Notice states that there has been no cohabitation between you and the pursuer at any time during a continuous period of 5 years after the date of the marriage and immediately preceding the commencement of this action and that if the pursuer establishes this as a fact and the Court is satisfied that there are grounds justifying decree of separation a decree will be granted, unless in the opinion of the Court the grant of decree would result in grave financial hardship to you.

2. On the grant of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist. A husband will continue to have a legal obligation to support his wife and children.

3. You are entitled, whether or not you dispute that there has been no such cohabitation during such a period, to apply to the Court in this action—

(a) if you are the wife, for payment by the pursuer to you of aliment; and

(b) for an order providing for the custody, maintenance and education of any child of the marriage, or any child accepted as such, who is under 16 years of age.

4. In order to make such an application to the Court you require to lodge defences to this action.

5. If you wish to make any such application to the Court in this action you should consult a solicitor.

15E Form of Notice of Consent in actions of divorce and separation under section 1(2)(d) of the Divorce (Scotland) Act 1976.

I (full name and address of the defender to be inserted by the pursuer's solicitor before sending Notice) have received a copy of the summons in the action against me at the instance of (full name and address of pursuer to be inserted by pursuer's solicitor before sending Notice).

I understand that it states that I consent to the grant of decree in this action.

I have considered the consequences to me mentioned in the Notice sent together with this Notice.

I consent to the grant of decree in this action.

Dated

Signed
defender

15F Form of Request for proof before answer in undefended actions

1. Ground of Action
2. Full name of pursuer
3. Full name of defender
4. Name of Counsel
5. Name of Solicitor(s) (If pursuer is an Assisted Person, please give individual partner's name)
6. Date of Calling
7. Date when proof before answer allowed
8. Is there a cross-action and if so what stage has it reached?
9. Date of last interlocutor if any, subsequent to date of allowance of proof before answer

10. Estimated duration of proof (if likely to exceed normal time for an undefended proof)
11. If requesting accelerated diet state reason and also state date of diet of proof if already fixed
Date allocated for proof
- (c) In Form 16, in the title, the words “not being a co-defender” shall be omitted;
- (d) In Form 17, in the title, for the words “(other than insanity)” substitute the words “where the defender’s address is unknown.”;
- (e) In Form 18, in the title, for the words “on ground of insanity” substitute the words “where defender suffers from mental disorder.”;
- (f) After Form 18, insert the following new forms;—

“ Form 18A

Form of Intimation to additional spouse of either party in proceedings relating to polygamous marriage

To (name and address as in warrant).

TAKE NOTICE that an action, a copy of the summons in which is prefixed hereto, has been raised by (name and designation) against (name and designation) the said (name of party concerned) being your spouse, and that you may if you so desire apply to the Court for leave to appear as a party to the action within fourteen days after the calling of the Summons in Court which will not be earlier than days from the date of service hereof.

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (insert date of posting)

(Address)

(Signed) A.B.
(Solicitor for Pursuer)

Form 18B

Form of Intimation to local authority or third party who may be liable to maintain child.

To (name and address as in warrant).

TAKE NOTICE that an action, a copy of the summons in which is prefixed hereto, has been raised by (name and designation) against (name and designation) in which the Court may make an order in respect of the custody of (name and designation), a child (in your

care) or (liable to be maintained by you), and that you may if you so desire apply to the Court for leave to appear as a party to the action within fourteen days after the calling of the summons in Court which will not be earlier than days from the date of service hereof.

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (insert date of posting)

(Address)

(Signed) A.B.

(Solicitor for Pursuer)";

(g) In Form 19,—

(i) in the title for the words after "whom" substitute the words "an improper association is alleged to have occurred.";

(ii) in the notice, for the words "committed sodomy with you on the occasions therein specified" substitute the words "had an improper association with you";

(h) in Forms 20 and 21, in the respective titles, for the words "Asylum, Institution or Home" substitute the words "hospital or similar institution.".

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

Edinburgh,

25th November 1976.

G. C. Emslie,

I.P.D.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt makes new provision in the rules of the Court of Session in accordance with sections 1(4), 5(6) and 11 of the Divorce (Scotland) Act 1976, and otherwise amends and consolidates the existing rules relating to consistorial actions.

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