

1977 No. 1621 (S.115)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 5)
(Miscellaneous Amendments) 1977

Made - - - - 6th October 1977
Coming into Operation 29th October 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), 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. 5) (Miscellaneous Amendments) 1977 and shall come into operation on 29th October 1977.

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

Miscellaneous amendments

2. In the Rules of Court(c)—

(a) in rule 160, for paragraph (1) substitute the following paragraph—

“(1) A warrant for intimation to any person mentioned in rule 155, 170B(6)(a), and 170D(4)(c) 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, 18B or 18C, as the case may be.”;

(b) in rule 170B (Custody, aliment etc), at the end add the following paragraph—

“(10) *Variation of aliment and access (a)* An application to the Court for the variation or recall of an order for aliment or interim aliment or access shall, subject to sub-paragraph (d), be made by motion.

(b) A motion under this paragraph shall—

(i) include a brief statement of the reason for the variation or revocation sought; and

(ii) be intimated, subject to sub-paragraph (c), to the other party or to a solicitor known to be acting on his behalf on an *induciae* of 14 days.

(a) 1933 c. 41.

(b) 1889 c. 63.

(c) S.I. 1965/321 (1965 I. p. 803).

(c) In the case of a motion relating to the variation or recall of an order for aliment, intimation shall be made by means of recorded delivery.

(d) On intimation of a motion relating to the variation or recall of an order for aliment under this paragraph, the party making intimation shall lodge in process—

- (i) a copy of the letter of intimation,
- (ii) the Post Office receipt in respect of the posting of the letter of intimation, and
- (iii) written evidence of that party's earnings, or if he or she is not employed, written evidence to that effect,

(e) At the hearing of a motion relating to the variation or recall of an order for aliment or access under this paragraph, the Court may, if the motion is opposed, and if in the opinion of the Court it is desirable to do so, order that the application be made by way of minute; and on the making of such an order the Court may make such order as to the lodging of answers as it thinks fit.

(f) Where an application is made by minute under sub-paragraph (e), the minute shall contain supporting conclusions, averments and pleas-in-law.”;

(c) In rule 170D (Financial provision on divorce), for paragraphs (3) and (4) substitute the following paragraphs:—

“(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 Section 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,

shall be made by motion; and rule 170B(10) shall apply to a motion under this paragraph for an order for payment of, or variation or recall of a periodical allowance, as it applies to a motion for variation or revocation of an order for aliment.

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

(a) An application to the Court by either party in an action of divorce, separation and aliment, and adherence and aliment 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, shall be made by including supporting conclusions, averments and pleas-in-law in the summons, defences, or minute, as the case may be.

(b) The applicant in an application for an order under the said section 6(1) shall, subject to the following provisions of this paragraph, intimate the summons, defences or minute by means of which he makes that application to any third party in whose favour

the settlement or disposition is to be or 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 within such period as the Court may allow.

(c) Intimation of any summons to any person under sub-paragraph (b) shall be made by endorsing on the summons a warrant in the following terms: "Warrant to intimate to (name and address) as (the person in whose favour the settlement (*or* the disposition) referred to in the condescence of this summons was made (*or* is to be made)) *or* (a person having an interest in the settlement (*or* the disposition) referred to in the condescence of this summons)"; and rule 160 shall apply to the execution of that warrant.

(d) Intimation of any defences or minute to any person under sub-paragraph (b) shall be made in accordance with an order of the Court, being such order for intimation as the Court thinks proper to make on the motion of the defender or minuter, as the case may be.";

(d) in rule 190 (Inner House petitions), omit head (vii), (Petitions under the Adoption Act, 1958) and renumber the following heads; and in rule 189 (Outer House petitions) after head (xxiii) of paragraph (a) insert the following head—

"(xxiv) Petitions under the Adoption Acts 1958 to 1964 and the Children Act 1975,";

(e) in rule 202(c) (caveats), for the last sentence substitute the following sentence "Any such caveat shall endure for 12 months on the expiry of which period a fresh caveat may be lodged.";

(f) in rule 208(g) (meetings of creditors), after the word "oaths" insert the words "or claims";

(g) in rule 264(b) (reclaiming days), for the words "refusing interim interdict" and "refusing a sist" substitute the words "refusing or recalling interim interdict" and "refusing or recalling a sist" respectively;

(h) in the Appendix, in Form 2, for sub-paragraph (a) of paragraph (23) substitute the following sub-paragraph

"(a) For adjudication of the heritable property of the defender, that is to say, All and Whole (describe subjects by reference or otherwise) from the defender to the pursuer; and that for payment to the pursuer of the principal sum, interest and expenses of process and of extract (or as the case may be) contained in a decree (detail particulars of decree in pursuer's favour); According as the same shall extend when accumulated at the date of decree to follow hereon and of the interest of the said accumulated sum at the rate of *per centum per annum* during the non-redemption of the said heritable property, and the expenses of the infetment to follow on the said decree of adjudication with interest thereon at the rate of *per centum per annum* from the date of disbursing the same during the non-redemption,"; and

(i) in the Appendix, after Form 18B insert, the following new form:—

Form 18C

Form of Intimation to third party or other person having an interest in a settlement.

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 (reducing or varying a settlement (or disposition)) made by the said (name) in your favour (in which you have an interest) *or* (interdicting the making of a settlement (or disposition)) by the said (name) in your favour (in which you will have an interest), 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) ”.

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

G. C. Emslie,
I.P.D.

Edinburgh.
6th October 1977.

EXPLANATORY NOTE

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

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

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