
 STATUTORY INSTRUMENTS

1980 No.1144 (S.82)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of Court Amendment No.7)
(Miscellaneous Amendments) 1980**

Made - - - - - 31st July 1980
Coming into Operation 25st August 1980

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 enabling them in that behalf, do hereby enact and declare—

Citation and commencement

1.—(1) This Act of Sederunt shall be cited as the Act of Sederunt (Rules of Court Amendment No.7) (Miscellaneous Amendments) 1980 and shall come into operation on 25th August 1980.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

2. The Rules of Court(b) shall be amended as hereinafter provided.

Amendments relating to adjustment period in ordinary actions

3. In Rule 85 (Third party notices)—

(a) after the heading “Third party notices”, insert “(1)”;

(b) for the words “within such period after service as the Court shall appoint” substitute the words “within 28 days after service or such other period as the Court may on cause shown appoint”; and

(c) at the end of the rule, add the following paragraph—

“(2) This rule shall apply to a pursuer making a claim of the nature specified in paragraph (1) in respect of a counter-claim by a defender against any person who is not already a party to the action, as it applies to a defender.”

4. In Rule 90 (Making up record), renumber paragraphs (a) and (b), (1) and (2) respectively, and for paragraph (c) substitute the following paragraphs

“(3) The parties shall adjust the pleadings.

(4) The case shall be put out in the Adjustment Roll as soon as may be.

(5) On the case first appearing before the Court in the Adjustment Roll, the Court shall pronounce an interlocutor continuing the case in the Roll for a period of twelve weeks.

(6) That period shall not run during any Court vacation.

(7) Where a case has been sisted any period of adjustment prior to the sist will be reckoned as part of the period of adjustment.

5. After Rule 90, insert the following rule—

“90A Variation of adjustment period

(1) The Court may vary an interlocutor pronounced under rule 90 by restricting or extending the period of 12 weeks in accordance with the provisions of this rule.

(2) At any time after the expiry of a period of at least 4 weeks from the date of that interlocutor the Court may pronounce an interlocutor closing the record if, but only if, —

(a) any party—

(i) enrolls a motion in that behalf; and

(ii) lodges in process a copy of the open record adjusted to the date of enrolment of the motion; and

(iii) shows cause; or

(b) before the expiry of a period of 10 weeks from that date, the parties of consent enrol a motion in that behalf.

(3) The Court may pronounce an interlocutor continuing the case in the Adjustment Roll for such period or periods additional to the period of 12 weeks as it thinks fit if any party —

(a) enrolls a motion in that behalf; and

(b) lodges in process a copy of the open record adjusted to the date of enrolment; and

(c) shows special cause.”

6. For Rule 91 (Closing record) substitute the following rule —

“91 Closing record

(1) Subject to the provisions of this rule and without prejudice to Rule 114 (issues), the Court shall, on the date on which the period allowed for adjustment expires, pronounce an interlocutor closing the record and appointing the case to the By Order (Adjustment) Roll for hearing—

(a) on the fifth Wednesday after that date, or

(b) where that fifth Wednesday falls on a date in vacation or recess, on the first Wednesday of the ensuing session.

(2) The Court may—

(a) if prior to 12.30 p.m. on the Monday prior to that date the parties of consent enrol a motion to either allow issues or a proof, pronounce an interlocutor granting that motion;

(b) if prior to 12.30 p.m. on the Wednesday of the third week after that date the parties of consent enrol a motion to either allow issues or a proof or appoint the case to the Procedure Roll, pronounce an interlocutor granting that motion.

(3) Any offer of a proof before answer shall, not later than 48 hours prior to the hearing in the By Order (Adjustment) Roll, be intimated in writing by the solicitor making the offer to the other party or parties.

(4) At the hearing of any case in the By Order (Adjustment) Roll the Court may, after hearing submissions by each party in respect of further procedure in the case, pronounce an interlocutor either—

- (a) allowing issues; or
- (b) allowing a proof; or
- (c) appointing the case to the Procedure Roll; or
- (d) on special cause shown, continuing the case in the By Order (Adjustment) Roll for such period as it thinks fit; or
- (e) making such other order as to further procedure as it thinks fit.

(5) The pursuer shall, within 14 days from the date of the interlocutor closing the record—

- (a) deliver not less than 6 copies of the Closed Record to the other party or each of the other parties, as the case may be; and
- (b) lodge 3 copies thereof in the General Department, one of which shall be the process copy.

(6) If the pursuer fails to comply with any requirement of paragraph (5), the Court may, on the motion of the defenders, dismiss the action.

(7) The Court may, on or after pronouncing an interlocutor closing the record, in any action which is one of several actions arising from the same cause of action, appoint that action to be the leading action and sist the other actions pending the determination of that action.”

Amendment relating to intimation of motions

7. In Rule 93 (Motions)—

- (a) for the words “one o’clock” wherever they occur substitute “12.30 p.m.”;
- (b) omit the words “(on Saturday before twelve o’clock)” wherever they occur
- (c) in paragraph (c), for the words “day of enrolment” substitute the words “day before enrolment except by consent.”

Amendment relating to averments in certain consistorial actions

8. In rule 157 (2) (amendments relating to financial arrangements), for the words “the financial position of the parties” substitute the words “the financial position of the pursuer and, so far as known to the pursuer after appropriate enquiry, the financial position of the defender.”

9. In Rule 159 (Citation), in paragraph (1), for sub-paragraph (b) substitute the following sub-paragraphs—

- “(b) if the person executing the citation after due enquiry has reasonable grounds for believing that the defender is residing at a particular dwelling place, by leaving the citation in the hands of a resident at, or depositing it in the dwelling place; or
- (c) by post.”

Amendment extending affidavit evidence

10. In Rule 168 (Undefended actions) in paragraph (1), in sub-paragraph (b), after the words “disorder” insert the words “except in an action where the curator *ad litem* for the defender has lodged a minute intimating that he does not intend to defend the action.”

Amendments relating to defended consistorial actions

11. After Rule 168, insert the following rule—

“168A Defended actions

- (1) Subject to the provisions of this rule, where defences are lodged, the parties may adjust their respective pleadings for a period of 6 weeks from the date on which they are lodged.
- (2) No Open Record shall be made up except with the leave of the Court on special cause shown.
- (3) The Court may, on a motion in that behalf and on special cause shown, extend the 6 week adjustment period for such additional period or periods as it thinks fit.
- (4) The adjustment period shall not run during any Court vacation.
- (5) Within 14 days of the expiry of the adjustment period the pursuer shall—
 - (a) make up a copy of the adjusted pleadings in the form of a Closed Record; and
 - (b) lodge 3 copies thereof in process; and
 - (c) deliver one copy thereof to the other party or parties; and
 - (d) enrol a motion for the case to be sent to either—
 - (i) the Procedure Roll; or
 - (ii) if proof is likely to be of short duration, Roll 1; or
 - (iii) if any other case, Roll 2.
- (6) Where the requirements of sub-paragraphs (a) to (c) of paragraph (5) have been complied with, the Court may send the case to the Procedure Roll or to Roll 1 or Roll 2, as it thinks fit.

Amendment relating to Inner and Outer House petitions

12.—(1) In Rule 189 (Outer House petitions), in paragraph (a), after sub-paragraph (xxiii), add the following sub-paragraph—

“(xxv) Petitions and complaints in respect of breach of interdict.”

(2) In Rule 190—

- (a) in paragraph (i), add at the end the words “other than in cases of breach of interdict.”;
- (b) at the end add the following paragraph—

“(xii) Petitions under section 75(2) of the Local Government (Scotland) Act 1973.”

13. In Rule 264 (Reclaiming days, and leave to reclaim)—

- (i) in paragraph (b), after the words “granting or refusing or recalling” where they first occur, insert the words “or refusing to recall”;

(ii) in paragraph (h) after the words “certificate of no caution or consignation; and” insert the word “accordingly”.

14. In Rule 284 (Special cases under the Representation of the People Act)—

for the words “1918, section 14(2)” where they occur substitute the words “1948, section 70”.

15. In the Appendix, in Form 15E (Form of Notice of Consent),—

(a) after the word “decree” wherever it occurs insert the words “of divorce/separation*”;

(b) at the end, add the words “*delete whichever does not apply”.

Emslie
Lord President
I.P.D.

Edinburgh
31st July 1980

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of Court by making provision—

1. in Rule 85, for the time within which a third party should appear and lodge answers; and for a pursuer bringing in a third party to a counterclaim by a defender;
2. in Rules 90 and 91, for the making up and closing of the record in ordinary actions, in accordance with the present practice as incorporated in the Practice Note of the Court dated December 16th 1968;
3. in Rule 93, for intimation of any motion to be made 24 hours before enrolment;
4. in Rule 152(2) making it clear that the pursuer in a consistorial action only requires to make averments about the financial position of the defender in so far as known to him after appropriate inquiry;
5. in Rule 159, for citation at the dwelling house in addition to the other methods of service;
6. in Rule 168, for allowing affidavit evidence in the case of a defender in a consistorial action who is suffering from mental disorder if his curator *ad litem* lodges a minute intimating that he does not intend to defend the action;
7. for inserting a new rule incorporating the present practice in relation to adjusting pleadings in defended consistorial actions incorporated in the Practice Note of the Court dated 4th January 1973;
8. in Rules 189 and 190, for petitions and complaints in respect of breach of interdict to be brought before the Outer House and not the Inner House as formerly; and petitions under section 75 (2) of the Local Government (Scotland) Act 1973 which relate to the common good to be brought before the Inner House;
9. in Rule 264, to enable a party to reclaim without leave against an interlocutor refusing to recall an interim interdict; and to clarify paragraph (h).
10. in Rule 284, to substitute the Representation of the People Act 1948 for the Act of 1918.
11. in Form 15E of the Appendix, clarifying that the decree mentioned in the Form of Notice of Consent means decree of divorce or separation.