

1982 No. 1825 (S. 198)**COURT OF SESSION, SCOTLAND****Act of Sederunt (Rules of Court Amendment No. 9)
(Miscellaneous Amendments) 1982***Made* - - - - - 17th December 1982*Coming into Operation* 11th January 1983

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 and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 9) (Miscellaneous Amendments) 1982 and shall come into operation on 11th January 1983.

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

Amendments to Rules of Court

2. In the Rules of Court(b):—

(1) In paragraph (b) of rule 32A (Transmission of Records), for the figure “16” substitute the figure “5”.

(2) In paragraph (d) of rule 75 (Edictal citation) omit the words “and co-defenders”.

(3) For rule 91 substitute the following rule:—

“91. Closing Record

(1) The Court shall, on the date on which the period allowed for adjustment expires, pronounce an interlocutor closing the Record.

(2) The pursuer shall, not later than the fifth Wednesday after 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.

(3) The pursuer shall, on lodging copies of the Closed Record in accordance with paragraph (2), enrol a motion craving the Court either:—

(a) of consent:—

(i) to appoint the cause to the Procedure Roll for consideration of all the preliminary pleas of parties or certain of them as specified, as the case may be;

(ii) to allow Issues for the trial of the cause by jury;

(iii) to allow trial of the cause by jury without Issues;

(iv) to allow a proof;

(v) to allow to parties a proof before answer of their respective averments under reservation of such preliminary plea or pleas as may be specified;

(vi) to allow to parties a preliminary proof upon specified matters or in respect of specified pleas;

(vii) to make some other specified order; or

(b) if parties have been unable to agree on further procedure, to appoint parties to be heard on the By Order (Adjustment) Roll.

(4) A motion of consent under paragraph (3)(a) shall not require the attendance of counsel.

(5) If the pursuer fails to comply with any of the requirements of paragraph (2) the Court may on the motion of any other party, dismiss the action.

(6) The Court may, on or after pronouncing an interlocutor ordering further procedure in terms of paragraph (3) in any action which is one of several actions arising from the same cause of action, on the motion of any party to any such cause after hearing parties to all such actions, appoint that action or any other of those actions to be the leading action and to sist the other actions pending the determination of that action.”

(4) For rule 114 substitute the following rule:—

“114. Application for trial of the cause by jury on Issues.

(1) In a cause, being a cause appropriate for jury trial, where the Court allows Issues on a motion of consent of parties or after hearing parties on the By Order (Adjustment) Roll or the Procedure Roll, the pursuer shall within 14 days of the date of the interlocutor allowing Issues, lodge a proposed Issue for the trial of the cause by jury, with a copy for the Court, and shall at the same time deliver a copy to the solicitor acting for the other party or parties.

(2) Notwithstanding that an interlocutor has been pronounced allowing Issues, where a pursuer fails to lodge a proposed Issue for the trial and to deliver a copy thereof in accordance with paragraph (1), he shall, unless on special cause shown the Court otherwise determines, be held to have passed from his application for trial of the cause by jury and any inquiry into the facts of the cause shall be taken by a proof unless a proposed Issue is lodged by some other party under paragraph (3).

(3) In the event of the pursuer failing to lodge a proposed Issue in terms of paragraph (1) the defender or any other party to the action may, if he or they maintain that the cause should be tried by jury with Issues, within 7 days after the expiry of the period of 14 days provided for in paragraph (1) lodge a proposed Issue with a copy for the Court and at the same time deliver a copy to the solicitor acting for the other party or parties.

(4) Where a proposed Issue has been lodged in pursuance either of paragraph (1) or (3) the other party or parties to the cause may, within 7 days after the day on which such proposed Issue has been lodged, lodge a proposed Counter-Issue with a copy for the Court and at the same time deliver a copy to the solicitor acting for the other party or parties.

(5) A proposed Counter-Issue lodged by a party or parties to the cause in pursuance of paragraph (4) may include any question of fact which is made the subject of specific averment on Record or is relevant to his or their pleas, notwithstanding that it does not in terms meet the proposed Issue or Issues.

(6) The party lodging a proposed Issue in pursuance of paragraph (1) or (3) shall, not later than 7 days after the day on which any such proposed Counter-Issue or Counter-Issues have been lodged and intimated or, if no proposed Counter-Issue has been lodged, on the expiry of the period allowed for lodging a proposed Counter-Issue in paragraph (4), enrol a motion for approval of the proposed Issue; and on intimation being made to him of that motion, any party who has lodged a proposed Counter-Issue under paragraph (4) shall, within 7 days of such intimation, enrol a motion for approval of the proposed Counter-Issue, and any such motion may be marked as opposed in accordance with rule 93.

(7) The Lord Ordinary may, either without hearing parties or after hearing parties in the Motion Roll, grant the motion or motions for approval of the proposed Issue and any proposed Counter-Issue and authenticate by his signature the proposed Issue or any proposed Counter-Issue either as lodged or as the same may have been adjusted, or in his discretion appoint the cause to Procedure Roll for the hearing of parties.”

(5) For rule 115 substitute the following rule:—

“115. Application for trial of the cause by jury without Issues.

(1) If, on the lodging of the Closed Record, a motion is made in terms of rule 91(3) to allow trial of the cause by jury without Issues, or if any party at the hearing of the cause in the By Order (Adjustment) Roll or the Procedure Roll moves the Court for such an order, the Lord Ordinary may, in his discretion, either order the cause to be tried without Issues or allow Issues for the trial of the cause.

(2) If the Lord Ordinary allows Issues rule 114 shall apply to those issues as it applies to issues allowed under paragraph (1) of that rule.”

(6) In rule 102A, for sub-paragraph (d) of paragraph (2) substitute the following sub-paragraph:—

“(d) signed:—

- (i) in the case of a court or tribunal in the United Kingdom which exercises jurisdiction outside Scotland, by a duly authorised officer of that court or tribunal;
- (ii) in the case of a court or tribunal outside the United Kingdom, a duly authorised diplomatic or consular representative of the country or territory within which the court or tribunal exercises jurisdiction.”

(7) In rule 155 (Warrants for intimation), after paragraph (5), add the following paragraphs:—

“(6) In an action where the Court may make an order mentioned in sub-paragraph (a) of paragraph (6) of rule 170B, intimation shall be made in accordance with the provisions of that sub-paragraph.

(7) In an action where an application is made under sub-paragraph (a) of paragraph (4) of rule 170D, intimation shall be made in accordance with the provisions of sub-paragraph (c).”;

(8) In paragraph (5) of rule 170D:—

(a) for the heading substitute the following heading:—

“*Opposition by defender to claim for capital sum, periodical allowance or aliment.*”; and

(b) for the word “aliment” in the second line, substitute the words—
“capital sum, periodical allowance or aliment, as the case may be.”.

(9) In rule 218A (Receivers):—

(a) re-number paragraphs “(a)” and “(b)” as paragraphs “(1)” and “(2)” respectively;

(b) in paragraph (2) after the heading “*Applications under sections 21(1), 23(1) and 27(1) of the Act*” insert “(a)” before the words following;

(c) in sub-paragraph (a) of paragraph (2) after the word “Act” insert the words “by a receiver appointed under paragraph (1) of this rule”; and

(d) in paragraph (2) after sub-paragraph (a) add the following sub-paragraph:—

“(b) Applications under sections 21(1), 23(1) and 27(1) of the Act by a receiver appointed by the holder of a floating charge shall be made by petition.”

(10) In rule 264(a) (Reclaiming), add at the end of the paragraph the following words:—

“In the case of a final interlocutor containing an award of custody, access or aliment, the marking of a reclaiming motion shall not excuse obedience to or implement of the award of custody, access or aliment unless by order of the Lord Ordinary or one of the Divisions of the Inner House or of the Vacation Judge.”

(11) For rule 275 substitute the following rule:—

“275. Procedure on remit.

(1) Within fourteen days of receipt by the Deputy Principal Clerk of a process transmitted under rule 274, the parties, or the Edinburgh solicitors for the parties, shall cause to be written on the interlocutor sheet, minute of Court, or other written record of the remitted cause or on a separate sheet, their names and addresses, and (in the case of parties' solicitors) shall specify the parties for whom they respectively act.

(2) Within twenty eight days of receipt by the Deputy Principal Clerk of the process in the remitted cause:—

(a) the party on whose motion the remit is made, or

(b) in a cause remitted by the Sheriff of his own accord, the pursuer or first pursuer,

shall (whether in session or in vacation) make up and lodge in the General Department a process as prescribed in rule 20, which shall include the Sheriff Court process (detailed in the inventory and duplicate inventory of the Court of Session process) and shall also lodge therewith a process copy of the initial writ and defences or record or other pleadings as the case may be and 3 further copies thereof including any amendments allowed, interlocutors or other orders, and deliver at least 6 copies to the solicitor for the other party or to each of the solicitors of the other parties (if more than one).

(3) In a remitted cause:—

(a) the party on whose motion the remit was made, or

(b) in a cause remitted by the sheriff of his own accord, the pursuer or first pursuer,

shall, at the time of lodging the documents required under paragraph (2), apply in the Single Bills for further procedure and intimate the application to the other party or parties.

(4) Within 14 days after receipt by the Deputy Principal Clerk of the process in a remitted cause, a party in the cause may apply in the Single Bills for a sist of process and if, on cause shown, the Court grants the sist the running of the 28 day period in paragraph (2) shall be postponed until the sist is recalled.

(5) If—

(a) the party on whose motion the remit was made, or

(b) in a cause remitted by the sheriff of his own accord, the pursuer or first pursuer

fails to comply with any requirement of this rule:—

(i) he may nevertheless, within the period of 7 days following the period of 28 days in paragraph (2) apply in the Single Bills to be reponed on cause shown, in the same manner and subject to the same conditions as apply under rule 271 to an appeal;

(ii) any other party to the action may, within the said period of 7 days, proceed with the action in accordance with the provisions of rule 272.

(6) If, in a case to which paragraph (5) applies, the period of 7 days expires without any such action as is mentioned under heads (i) and (ii) of that paragraph being taken, the remit shall be treated as abandoned, and the Deputy Principal Clerk shall cause:—

- (a) the words “Re-transmitted in respect that the remit has been abandoned” to be entered on the interlocutor sheet; and
- (b) the process to be transmitted back to the sheriff clerk.

(7) The Vacation Judge may deal by way of motion, with the following matters:—

- (a) an application under paragraph (4) or (5); and
- (b) an unopposed application for the recall of a sist granted under paragraph (4).”

(12) In paragraph (a) of rule 277 after the words “the issue of the decision of the tribunal” where they second occur, add the words, “or, in a case where a statement of the reasons for a decision was given later than the issue of the decision, on the issue of such a statement,”.

(13) In rule 290 after paragraph (h) add the following paragraph:—

- “(i) Where intimation of a statement of the reasons for a decision was given later than the decision, the period of 21 days within which an appeal must be presented under paragraph (a) shall be calculated from the date of intimation of the statement of reasons.”

(14) In rule 347(a) in Part IIA of chapter III of that rule:—

(a) in Table A:—

- (i) in column 2 for the figure “£28” substitute “£30”;
- (ii) in column 3 for the figure “£43” substitute “£45”;

(b) in Table B:—

- (i) in column 2 for the figure “£28” substitute “£30”;
- (ii) in column 3 for the figure “£43” substitute “£45”;
- (iii) in column 2 for the figure “£195” substitute “£200”.

Edinburgh,
17 December, 1982.

Emslie,
Lord President.
I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of Court of the Court of Session by:—

- (a) reducing from 16 years to 5 years the period after which processes are transmitted to the Keeper of the Records;
- (b) making minor amendments in relation to consistorial actions in rules 75, 155 and 170D;
- (c) substituting new rules for rules 91, 114 and 115 to take account of changes in the By Order (Adjustment) Roll;
- (d) making a minor amendment to rule 102A(2) in relation to letters of request;
- (e) providing in rule 218A for applications under the Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c. 67) by a receiver appointed by the holder of a floating charge;
- (f) substituting a new rule for rule 275 in relation to remitted causes;
- (g) providing in rule 264(a) that the marking of a reclaiming motion shall not excuse obedience to or implement of a final interlocutor containing an award of custody, access or aliment unless by order of the Court;
- (h) making minor amendments to rules 277 and 290 in relation to statutory appeals;
- (i) correcting certain figures in Tables A and B in Part IIA of Chapter III of rule 347 in order that for item 4 of column 1 the figures in column 2 and 3 of each Table are the totals of items 1, 2 and 3.

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