

---

 STATUTORY INSTRUMENTS
 

---

1984 No. 921 (S. 92)

## SHERIFF COURT, SCOTLAND

## Act of Sederunt (Damages) 1984

Made - - - - 28th June 1984

Coming into Operation 1st September 1984

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers competent to them in that behalf and after consultation with the Sheriff Court Rules Council do hereby enact and declare:—

*Citation, commencement and revocation*

1.— (1) This Act of Sederunt may be cited as the Act of Sederunt (Damages) 1984 and shall come into operation on 1st September 1984.

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

(3) The Act of Sederunt (Damages (Scotland) Act 1976) 1976(b) is revoked.

*Interpretation*

2. In this Act of Sederunt—

“Ordinary Cause Rules” means the Schedule of the Sheriff Courts (Scotland) Act 1907(c);

“rule” means one of the numbered paragraphs of that Schedule.

3. In the Ordinary Cause Rules, after rule 143, there shall be inserted the following rules—

“ **DAMAGES**

**DAMAGES (SCOTLAND) ACT 1976**

*Action for Damages under the Damages (Scotland) Act 1976*

144.— (1) This rule and rules 145 and 146 apply to any action in which, following the death of any person from personal injuries, damages are claimed either by the executor of the deceased in respect of the relevant

---

(a) 1971 c.58.  
 (b) S.I. 1976/2181.  
 (c) 1907 c.51.

injuries, or by any relative of the deceased in respect of the death of the deceased.

(2) The term “relative” shall have the meaning assigned to it by section 10 of and Schedule 1 to the Damages (Scotland) Act 1976(a).

*Intimation to persons having title to sue under Schedule 1 to the Damages (Scotland) Act 1976*

**145.—** (1) In an action to which rule 144 applies the pursuer shall specify in the initial writ—

- (a) that he is the only person with a title to sue the defender in respect of the injuries or death, or
- (b) that there are other persons having a title to sue the defender in respect of the injuries or death and shall name and design such persons, or
- (c) that there are other persons having a title to sue the defender but whose names or whereabouts are to the pursuer unknown and cannot reasonably be ascertained.

(2) The sheriff shall grant warrant for intimation of the action to any person named and designed in the initial writ in terms of sub-paragraph (b) of paragraph (1) hereof and the pursuer shall intimate the action to every such person as nearly as may be in accordance with Form CC as set out in the Appendix to this Schedule.

(3) The sheriff may, on the motion of a party to the action, or *ex proprio motu* order such advertisement of the action or intimation of it to be made to such persons as he deems appropriate.

*Applications to sist as additional pursuer*

**146.—** (1) A person to whom intimation has been made in accordance with rule 145 may apply to the sheriff to be sisted as an additional pursuer in the action and such person shall give notice of his application to all parties to the action.

(2) Where a person to whom intimation has been made in accordance with rule 145 does not apply to be sisted as an additional pursuer in the existing action but subsequently raises a further action against the same defender in respect of the same injuries or death, that person shall not, except on cause shown, be awarded the expenses of the subsequent action.

## INTERIM PAYMENT OF DAMAGES

*Applications for interim payment of damages*

**147.—** (1) In any action of damages for personal injuries, the pursuer may at any time after the lodging of defences apply to the sheriff for an order that

---

(a) 1976 c.13.

the defender or, where there are two or more defenders, any one or more of the defenders, make an *interim* payment of damages.

(2) An application in terms of paragraph (1) shall be made by motion which shall be served on the defender or defenders on a period of notice of 14 days.

(3) If after hearing the parties on the motion the sheriff is satisfied either—

(a) that the defender or defenders have admitted liability in the pursuer's action, or

(b) that, if the action proceeded to proof, the pursuer would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part or on the part of any person in respect of whose injury or death the pursuer's claim arises, and would obtain decree for damages against the defender or, where there are two or more defenders, against any one or more of them,

the sheriff may, if he thinks fit, order the defender or, where there are two or more defenders, any one or more of them, to make an *interim* payment to the pursuer of such amount, not exceeding such reasonable proportion of the damages which in the opinion of the sheriff is likely to be recovered by the pursuer, as he deems appropriate.

(4) A payment ordered to be made in terms of paragraph (3) may be ordered to be made in a lump sum or otherwise as the sheriff may deem appropriate.

(5) The sheriff shall not make an order under this rule unless he is satisfied that the defender concerned is either—

(a) a person who is insured in respect of the pursuer's claim, or

(b) a public authority, or

(c) a person whose means and resources are such as to enable him to make an *interim* payment.

(6) Notwithstanding the making or refusal of an order for *interim* payment, a second or subsequent application may be made upon cause shown by reason of a change of circumstances.

(7) Subject to the terms of rule 128 or otherwise as the sheriff in his discretion may determine, any *interim* payment shall be made to the pursuer.

(8) The provisions of this rule shall apply *mutatis mutandis* to a counter-claim for damages for personal injury made by a defender.

(9) For the purposes of this rule the term "personal injuries" shall include any disease or any impairment of a person's physical or mental condition.

*Final orders where interim payment made*

**148.** Where a defender has made an *interim* payment in terms of rule 147 the sheriff may, when granting final decree, make such order with respect

to the *interim* payment as he deems necessary to give effect to the defender's final liability to the pursuer, and in particular may order—

- (a) that the pursuer repay to the defender any sum by which the *interim* payment exceeds the amount which that defender is liable to pay to the pursuer, or
- (b) that any other defender or third party make payment of any part of the *interim* payment which the defender who made it is entitled to recover from that other defender or third party by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the pursuer's claim.

#### PROVISIONAL DAMAGES

##### *Applications for further awards of damages*

**149.** An application for a further award of damages in terms of section 12 of the Administration of Justice Act 1982(a) (award of provisional damages for personal injuries) shall be made by minute in the original process.”.

**4.—** (1) The terms of rules 144, 145 and 146 shall apply only in respect of actions raised after the coming into operation of this Act of Sederunt.

(2) The terms of rules 147, 148 and 149 shall apply to all actions whether raised before or after the coming into operation of this Act of Sederunt.

**5.** In the Appendix to the Ordinary Cause Rules, after Form C, there shall be inserted Form CC as set out in the Schedule to this Act of Sederunt.

*Emslie,*  
Lord President,  
I.P.D.

Edinburgh  
28th June 1984.

## SCHEDULE

Rule 145(2)

## FORM CC

## INTIMATION TO PERSONS HAVING A TITLE TO SUE

*(Place, date)*

TAKE NOTICE that an action has been raised in Sheriff Court (*address*) by (*name and design*) against (*name and design*). It is believed that you may have a title or interest to sue the said (*name*) in an action based upon [(the injuries from which the late (*name and design*) died) or (the death of the late (*name and design*))]. You may therefore be entitled to enter this action as an additional pursuer. If you wish to do so, you may apply to the Sheriff at the above-mentioned Sheriff Court to be sisted as an additional pursuer within 14 days after the expiry of    days from the date of service hereof. In the event of your making such an application you are required to serve notice of it on all of the parties to the action.

The date of service hereof is reckoned as commencing on the day of posting.

Solicitor for Pursuer

---

## EXPLANATORY NOTE

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

This Act of Sederunt makes provision for rules of procedure to regulate the manner in which persons may be sisted as additional pursuers in actions in which, following the death of any person from personal injuries, damages are claimed either by the executor or a relative of the deceased. This Act of Sederunt also makes provision for interim payments of damages and provisional awards of damages in actions for damages for personal injuries.

SI 1984/921  
ISBN 0-11-046921-6



780110469218