

1987 No. 1206 (S.88)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No.4)
(Miscellaneous) 1987

Made 10th July 1987

Coming into force 3rd August 1987

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933(a) and section 1(3) of the Administration of Justice (Scotland) Act 1972(b) and of all other powers enabling 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.4) (Miscellaneous) 1987 and shall come into force on 3rd August 1987.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court Session(c) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 1 (powers of vacation judge), for the words “the Vacation Judge” wherever they occur, substitute the words “a vacation judge”.

(3) In rule 70(1)(c) (averments in condescendence)(d):—

(a) omit head (i); and

(b) in head (iv), for the words “England, Wales, Northern Ireland or another Contracting State”, substitute the words “a country to which the Convention in Schedule 1 to the Civil Jurisdiction and Judgment Act 1982(e) applies, unless the court has exclusive jurisdiction”.

(4) In rule 75 (edictal citation and citation by advertisement)(f):—

(a) in paragraph (1), for the words “the domicile of the defender is unknwn”, substitute the words “the place where the defender resides cannot be ascertained or citation cannot be successfully effected in accordance with a method permitted under rule 74A(1) or 74B(1)”; and

(b) omit paragraph (9).

(a) 1933 c.41.

(b) 1972 c.59.

(c) S.I. 1965/321; relevant amending instruments are S.I. 1970/134, 1972/1530, 2021, 2022, 1976/283, 1977/1621, 1980/1144, 1982/1679, 1983/1210, 1984/472, 1986/1231, 1937, 1941, 1955 and 1987/12.

(d) As amended by S.I. 1986/1941.

(e) 1982 c.27.

(f) Substituted by S.I. 1986/1941.

(5) In rule 89(ac) (decree in absence)(a), after the word “court”, insert the words “and the domicile of the defender (as determined by sections 41 to 46 to the Civil Jurisdiction and Judgments Act 1982) in so far as it is known to the pursuer”.

(6) After rule 91B (report by judge)(b), insert the following rule:—

“91C. Fixing and allocation of diets

(1) As soon as convenient after the allowance of a proof (including a proof before answer) or the approval of issues, the Keeper of the Rolls shall publish in the rolls a list of causes in which diets are to be fixed or allocated.

(2) Within 28 days of the appearance of a cause in a list published under paragraph (1), each party shall ensure that Form 63 is completed and delivered to the Keeper of the Rolls.

(3) The Keeper of the Rolls may allocate a diet of proof or jury trial having regard to the information provided in Form 63.

(4) After 8 weeks, and not later than 6 weeks, before the diet of proof or jury trial, each party shall ensure that Form 64 is completed and delivered to the Keeper of the Rolls.

(5) Where a party fails to comply with paragraph (2) or (4), the Keeper of the Rolls may arrange for the cause to be put out by order before a Lord Ordinary.

(6) At a by order hearing under paragraph (5), the court shall—

(a) seek an explanation as to why Form 63 or 64 was not completed and delivered timeously;

(b) ascertain the information sought in Form 63 or 64; and

(c) make such order as to expenses as it may consider appropriate.

(7) Where Form 63 or 64 is completed and delivered to the Keeper of the Rolls before the hearing of the cause by order under paragraph (5), the Keeper of the Rolls may cancel the by order hearing.

(8) Where, at any time after Form 63 or 64 has been completed and delivered to the Keeper of the Rolls, a party’s estimate of the likely length of the proof or jury trial alters materially, that party shall inform the Keeper of the Rolls of the new estimated length.”.

(7) In rule 95A (application under section 1 of the Administration of Justice (Scotland) Act 1972)(c), for paragraph (d), insert the following paragraph:—

“(d) An application for an order under section 1(1A) of the Administration of Justice (Scotland) Act 1972(d)—

(i) in an existing process, shall be made by motion; and

(ii) in any other case, shall be made by petition presented to the Outer House, specifying the matters in respect of which information is sought of persons who might be witnesses or defenders.”.

(8) In rule 104B(1) (transmission to sheriff court)(e)—

(a) for the words “a motion to remit a cause”, substitute the words “a cause is remitted”; and

(b) omit the words “has been granted,”.

(9) In rule 159(2) (citation in consistorial causes)(f), for the words “in accordance with rule 75”, substitute the words “on an *induciae* of 21 days”.

(10) In rule 170D(3) (subsequent applications for and variation of periodical allowance)(g), at the end, insert the words “Where an application under this paragraph is ordered to proceed

(a) Inserted by S.I. 1986/1941.

(b) Inserted by S.I. 1984/472.

(c) Inserted by S.I. 1972/2021 and amended by S.I. 1986/1955.

(d) Section 1(1A) was inserted by section 19 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73).

(e) Inserted by S.I. 1986/1955.

(f) Substituted by S.I. 1986/1941.

(g) Substituted by S.I. 1977/1621 and amended by S.I. 1986/1231.

by minute under rule 170B(10), a party may apply to the court by motion for interim variation pending determination of the application.”.

- (11) In rule 170I (service in simplified divorce procedure)(a)–
- (a) in paragraph (2) (citation), omit sub-paragraph (a);
 - (b) in paragraph (3) (intimation), for the word “unknown”, substitute the words “not known and cannot reasonably be ascertained”; and
 - (c) in paragraph (4) (intimation), for the words “unknown to”, substitute the words “not known and cannot reasonably be ascertained by”.
- (12) In rule 170R (variation or termination of agreement on aliment)(b)–
- (a) before the word “An” where it first occurs, insert “(1)”; and
 - (b) after paragraph (1), insert the following paragraph:–
“(2) In an application under this rule a party may apply to the court by motion for interim variation pending determination of the action.”.
- (13) In rule 189(a) (Outer House petitions)(c)–
- (a) for head (iii), substitute the following head–
“(iii) Petitions, whether at common law, under statute or invoking the *nobile officium*, relating to the administration of trusts or the office of trustee, but excluding petitions for approval of a *cy près* scheme, variation of trust purposes under section 1 of the Trusts (Scotland) Act 1961(d) or in relation to endowments under sections 105, 106, 108 or 108A of the Education (Scotland) Act 1980(e);”;
 - (b) in head (iv), omit the words “in trusts not being charitable trusts”;
 - (c) for head (v), substitute the following head:–
“(v) Petitions under the Companies Acts or the Insolvency Act 1986(f) except those mentioned in rule 190(viii);”;
 - (d) after head (xxvii), insert the following heads:–
“(xxviii) Petitions under section 75(2) of the Local Government (Scotland) Act 1973(g);
(xxix) Applications under the Mortgaging of Aircraft Order 1972(h)”.
- (14) In rule 190 (Inner House Petitions)(i)–
- (a) in head (vi), omit the words “in the examples contained”;
 - (b) for head (viii), substitute the following head:–
“(viii) Petitions under sections 136 or 425 of the Companies Act 1985(j);”;
 - (c) for heads (ix) to (xiii), substitute the following heads–
“(ix) Petitions under section 1 of the Trusts (Scotland) Act 1961;
(x) Petitions under sections 105, 106, 108 or 108A of the Education (Scotland) Act 1980;”;
 - (d) omit the words from “and provided further” to the end of the rule.
- (15) In rule 191 (form of petition), after paragraph (a), insert the following paragraph:–
“(aa) The narrative of the petition shall include a paragraph stating–
- (i) the ground of jurisdiction of the court, unless jurisdiction would arise only if the respondent prorogated the jurisdiction of the court (without contesting jurisdiction);
 - (ii) where appropriate, whether there is reason to believe that there exists an agreement prorogating the jurisdiction of a court in a particular country; and

(a) Inserted by S.I. 1982/1679.

(b) Inserted by S.I. 1986/1231.

(c) As amended by S.I. 1970/134 and 1986/1941.

(d) 1961 c.57.

(e) 1980 c.44; sections 105, 106, 108 and 108A were amended by the Education (Scotland) Act 1981 (c.58), Schedule 6, paragraphs 4, 5 and 7.

(f) 1986 c.45.

(g) 1973 c.65.

(h) S.I. 1972/1268, as amended by S.I. 1981/611.

(i) As amended by S.I. 1970/134, 1972/1530, 1976/283, 1977/1621 and 1980/1144.

(j) 1985 c.6.

- (iii) whether proceedings involving the same cause or matter are in subsistence between the parties in a country to which the Convention in Schedule 1 to the Civil Jurisdiction and Judgments Act 1982 applies, unless the court has exclusive jurisdiction.”.

(16) In rule 197 (unopposed petitions)(a), after paragraph (d), insert the following paragraph:-

- “(e) A motion to grant the prayer of the petition shall state the ground of jurisdiction of the court and the domicile of the respondent (as determined by sections 41 to 46 of the Civil Jurisdiction and Judgments Act 1982) in so far as it is known to the petitioner.”.

(17) In rule 198A(1) (report by judge)(b), for the word “individual”, substitute the word “incidental”.

(18) After rule 294A (appendices)(c), insert the following sections and rules:-

“SECTION 6B

NOTICES OF GROUNDS OF APPEAL

294B. Grounds of appeal

(1) Where a reclaiming motion has been enrolled or an appeal from an inferior court has been lodged in the General Department, the cause shall appear in the Single Bills at the earliest convenient date for an order under paragraph (2) and, unless opposition has been marked, the attendance of counsel will not be required.

(2) On appearance in the Single Bills under paragraph (1), in the absence of any opposition, or where any opposition is unsuccessful, the court shall appoint-

- (a) the claimer or appellant; and
- (b) any respondent wishing to bring any interlocutor under review,

to lodge grounds of appeal within 28 days.

(3) Grounds of appeal shall consist of brief specific numbered propositions stating the grounds upon which it is proposed to submit that the reclaiming motion or appeal should be allowed or as the case may be.

(4) Where a claimer or appellant fails to lodge grounds of appeal, a respondent may enrol to have the reclaiming motion or appeal dismissed or refused.

- (5) A party lodging grounds of appeal shall-
- (a) intimate a copy to any other party; and
 - (b) enrol for an order for hearing.

(6) A party who has lodged grounds of appeal may, on cause shown, apply for leave to amend his grounds of appeal at any time.

SECTION 6C

ALLOCATION OF DIETS

294C. Fixing and allocation of diets

(1) Within 28 days of a cause depending before the Inner House being appointed to the summer roll for hearing, each party shall ensure that Form 63 is completed and delivered to the Keeper of the Rolls.

(2) The Keeper of the Rolls may fix or allocate a diet for the hearing, having regard to the information provided in Form 63.

(3) Where a party fails to comply with paragraph (1), the Keeper of the Rolls may arrange for the cause to be put out by order before a Division.

- (4) At a by order hearing under paragraph (3) the court shall-
- (a) seek an explanation as to why Form 63 was not completed and delivered timeously;

(a) As amended by S.I. 1986/1941.
(b) Inserted by S.I. 1986/1937.
(c) Inserted by S.I. 1972/2022.

- (b) ascertain the information sought in Form 63; and
- (c) make such order as to expenses as it considers appropriate.

(5) Where Form 63 is completed and delivered to the Keeper of the Rolls before the hearing of the cause by order under paragraph (3), the Keeper of the Rolls may cancel the by order hearing.

(6) Where, at any time after Form 63 has been completed and delivered to the Keeper of the Rolls, a party's estimate of the likely length of the hearing alters materially, that party shall inform the Keeper of the Rolls of the new estimated length.

(7) Not later than 5 weeks before the hearing of the cause on the summar roll, the Keeper of the Rolls shall arrange for the cause to be put out by order.

(8) At a by order hearing under paragraph (7), parties shall—

- (a) advise the Court whether or not the summar roll hearing is to proceed; and
- (b) where such hearing is to proceed, provide the Court with a re-assessment of the likely duration of the hearing.”.

(19) In the Appendix—

(a) in form 19B(a), in Part 1, section 3—

(i) after the words “not known” where they first occur, insert the words “and cannot reasonably be ascertained”; and

(ii) for the word “and”, substitute the following words:—

“; you must take all reasonable steps to find out where your husband/wife is living and state here what steps you have taken, and then”; and

(b) after form 62(b), insert the forms in the Schedule to this Act of Sederunt.

Edinburgh
10th July 1987

Emslie,
Lord President, I.P.D.

(a) Substituted by S.I. 1983/1210.
(b) Inserted by S.I. 1987/12.

SCHEDULE

Paragraph 2(19)

FORM 63

rules 91C2 and 294C(1)

Form for information for fixing and allocation of diet for hearing

Part I—Estimated length of hearing

(To be signed by counsel)

NAME OF CASEv

FOR PURSUER/DEFENDER/OTHER

NATURE OF HEARING (eg proof, reclaiming motion)

I estimate that the hearing will last (days)

Dated (signed)

..... (name)

Part II—Supplementary information

(To be completed by solicitor only if information is available and can be disclosed: such information will be treated IN CONFIDENCE BY COURT OFFICIALS)

A: PROOF OR JURY TRIAL

TOTAL NUMBER OF WITNESSES

EXPERT WITNESSES (State number and nature of evidence, eg medical).....

WITNESSES FROM ABROAD or having to travel long distances to court (provide appropriate details)

B: ALL CASES

ANY OTHER RELEVANT INFORMATION.....

Part III—Notice of allocation of diet

(To be completed by solicitor)

Allocation of a diet at short notice is/is not* acceptable. The minimum notice required is weeks.

*(Delete as necessary)

Dated (signed)

..... (name of firm)

NB There is an obligation on a party to intimate to the Keeper of the Rolls any alteration to the estimate in Part I of this Form (See R.C.S. rr.91C(8) and 294C(6)).

Form of confirmation of diet fixed or allocated for hearing

(To be signed by counsel)

NAME OF CASEv

FOR PURSUER/DEFENDER/OTHER

NATURE OF HEARING (eg proof, reclaiming motion)

DIET FIXED OR ALLOCATED

* I confirm the estimate of the length of the hearing given in Form 63 dated

OR

* I now estimate that the hearing will last (days)

Dated (signed)

..... (name)

(* Delect as necessary)

EXPLANATORY NOTE

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

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

- (a) making amendments to the rule for averments of jurisdiction in the condescence to a summons (para. 2(3));
- (b) inserting new rules for the fixing and allocation of diets (para. 2(6) and (18));
- (c) providing for an *induciae* of 21 days in consistorial causes where the address of a defender is not known and cannot reasonably be ascertained (para. 2(9) and (11));
- (d) providing for interim variation of periodical allowance (para. 2(10)) and agreements on aliment (para. 2(12));
- (e) providing for certain Inner House business to be transferred to the Outer House (para. 2(13) and (14));
- (f) inserting a provision for averments in petitions about jurisdiction (para. 2(15));
- (g) providing for notices of grounds of appeal to be lodged in reclaiming motions and appeals (para. 2(18));
- (h) inserting additional forms in the Appendix to the Rules in relation to the fixing and allocation of diets (para. 2(19)); and
- (i) making other minor amendments (para. 2(2), (4), (5), (7), (8), (16) and (17)).

£1.60 net

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