
EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause Rules 1993 by:–

- (a) amending the savings provisions in the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993 so that the Ordinary Cause Rules 1993 apply where an application is made to the court on or after the date of coming into force of this Act of Sederunt to vary a decree granted in a family action which was commenced prior to 1st January 1994 (paragraph 2);
- (b) amending rule 8.1 (reponing) so as to properly implement the provisions in Article 16 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated 15th November 1965 (paragraph 3(2));
- (c) amending rule 9.2 (fixing date for Options Hearing) so as to make it clear that where the only matters in dispute between the parties are orders in terms of section 11(2) of the Children (Scotland) Act 1995, there is no requirement to fix an Options hearing (paragraph 3(3));
- (d) amending rule 9.14 (exchange of lists of witnesses) so as to require parties to lodge a copy of the list of witnesses in process within 28 days after the date of the interlocutor allowing a proof or proof before answer (paragraph 3(4));
- (e) inserting rule 15.6 (motions to sist) so as to require parties to state a reason for seeking a sist to require the reason to be recorded in the interlocutor and making provision for the sheriff to recall a sist (paragraph 3(5));
- (f) amending rule 17.2 (applications for summary decree) by omitting paragraph (3) which contradicted the term of rule 15.1(2) (lodging of motions) (paragraph 3(6));
- (g) amending rule 18.3 (applications to amend) to amend the procedure for the adjustment of a minute of amendment and answers (paragraph 3(7));
- (h) amending rule 22.1 (note of basis of preliminary plea) so as to require agents to address the sheriff on whether matters not included in a rule 22.1 note should be admitted to debate (paragraph 3(8));
- (i) amending rule 24.1 (intimation of withdrawal to court) so as to require the sheriff clerk to lodge forthwith in process any letter received from a solicitor who has withdrawn from acting on behalf of a party and to make it clear that where a solicitor withdraws from acting in open court and in the presence of the other parties to the action or their representatives, there shall be no requirement for him to intimate his withdrawal to the sheriff clerk and to every other party (paragraph 3(9));
- (j) amending rule 24.2 (intimation to party whose solicitor has withdrawn) so as to provide that the diet fixed by the sheriff for the party whose solicitor has withdrawn from acting to appear to state whether or not he intends to proceed may take place within 14 days after the date of the interlocutor fixing such diet where an earlier diet has already been fixed or where the sheriff otherwise directs (paragraph 3(10));
- (k) omitting rule 29.3 (evidence generally) (paragraph 3(11));
- (l) amending rule 29.11 (lodging productions) to require affidavits which are to be referred to at a proof to be lodged not later than 14 days before the date of proof (paragraph 3(12));

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- (m) amending rules 29.12 (copy productions) and 29.14 (notices to admit and notices of non admission) and inserting a new Part IV A (productions in certain actions of damages) into Chapter 36 (actions of damages) so as to harmonise these rules with the provisions in the Rules of the Court of Session 1994 (paragraphs 3(13), (14) and (19));
- (n) amending rule 33.44 (applications after decree relating to a section 11 Order) so as to provide that an application for the enforcement of an Order under section 11 of the Children (Scotland) Act 1995 may be made by minute in the process of the action to which the application relates (paragraph 3(15));
- (o) amending rule 33.62 (defenders in action for a section 11 Order) so as to omit the requirement on the pursuer to call the Lord Advocate as a defender where there is no person falling within paragraphs (a) to (d) of that rule (paragraph 3(16));
- (p) amending rule 33.76 (citation and intimation) so as to allow the sheriff clerk to cite any person or intimate any document in connection with a simplified divorce application in accordance with rule 5.5 (service on persons furth of Scotland) as opposed to the sheriff clerk having to arrange for such citation or intimation to be done by a solicitor or a sheriff officer; and to provide that where the sheriff clerk does effect citation or intimation in this way, the translation into an official language required by rule 5.5(6) shall be provided by the party lodging the simplified divorce application (paragraph 3(17));
- (q) inserting rule 34.11 (service on unnamed occupiers), so as to include provision for service, time periods and applications to be sisted as a defender in actions against unnamed occupiers who are in possession of heritable property without right or title so as to harmonise these rules with the Rules of the Court of Session 1994 (paragraph 3(18));
- (r) amending rule 37.2 (parties to, and service and intimation of actions of declarator) so as to provide for service on the defender (missing person) to be made by newspaper advertisement and to prescribe as a period of notice the period of 21 days from the date of publication of the advertisement unless the sheriff directs otherwise (paragraph 3(20));
- (s) amending rule 38.1 (interpretation of this Chapter) so as to reflect the provisions in the Treaty signed at Amsterdam on 2 October 1997 (paragraph 3(21));
- (t) omitting rule 38.2 (applications for reference) (paragraph 3(22));
- (u) amending rule 38.3 (preparation of case for reference) so as to ensure that a reference is drafted having regard to the Notes for Guidance issued by the Court of Justice of the European Communities (paragraph 3(23));
- (v) inserting a new Chapter 39 which contains additional provisions in relation to the fees of curators *ad litem* appointed in respect of children (paragraph 3(24));
- (w) amending the Forms in Appendix 1 by–
 - (i) substituting Forms E1, F26, F41, G13, 04, 05 and 07;
 - (ii) inserting new Form H5; and
 - (iii) amending Form P1 (paragraph 25);
- (x) amending the forms for extract decrees in Appendix 2 by–
 - (i) substituting Forms 10, 11 and 12; and
 - (ii) omitting Form 13 (paragraph 26);
- (y) revoking the Act of Sederunt (Presumption of Death) 1978.