
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 275

**Act of Sederunt (Rules of the Court of Session
Amendment No. 5) (Miscellaneous) 2012**

Commercial actions

2.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) In rule 47.3 (election of procedure for commercial actions and form of summons)(1), in paragraph (3), after “summons”, where it appears for the second time, insert “, which should also be lodged as an inventory of productions”.

(3) In rule 47.4(3) (disapplication of certain rules), for “rule 25.2(2) (applications for warrants for diligence in counterclaims)” substitute “rule 25.2(1) (authority for diligence etc. on counterclaims)”.

(4) In rule 47.6 (defences), in paragraph (2), after “defences” where it appears for the second time, insert “, which should also be lodged as an inventory of productions”.

(5) In rule 47.7(2)(c) (counterclaims and third party notices), for “rule 13.6(c) (warrants for diligence in summons)” substitute “rule 14A.2 (application for interim diligence)”.

(6) In rule 47.10 (transfer of action to Commercial Roll), for paragraph (3) substitute—

“(3) Where an interlocutor is pronounced under paragraph (1) appointing an action to be a commercial action on the Commercial Roll, the action shall immediately proceed to a preliminary hearing.”.

(7) In rule 47.11 (preliminary hearing), for paragraph (4) substitute—

“(4) The date fixed under paragraph (3) for a procedural hearing may be extended on cause shown by application to the court, by motion, not less than two days prior to the date fixed for the procedural hearing.”.

(8) For rule 47.12 (procedural hearing) substitute—

“Procedural hearing

47.12.—(1) Not less than 3 days, or such other period as may be prescribed by the commercial judge at the preliminary hearing, before the date fixed under rule 47.11(3) for the procedural hearing, each party shall—

- (a) lodge a written statement of his proposals for further procedure which shall state—
 - (i) whether he seeks to have the commercial action appointed to debate or to have the action sent to proof on the whole or any part of it;
 - (ii) what the issues are which he considers should be sent to debate or proof; and
 - (iii) the estimated duration of any debate or proof;
- (b) where it is sought to have the action appointed to proof, lodge a list of the witnesses he proposes to cite or call to give evidence, identifying the matters to which each witness will speak;

- (c) where it is sought to have the action appointed to proof, lodge the reports of any skilled persons;
 - (d) where it is sought to have the action appointed to debate, lodge a note of argument consisting of concise numbered paragraphs stating the legal propositions on which it is proposed to submit that any preliminary plea should be sustained or repelled with reference to the principal authorities and statutory provisions to be founded on; and
 - (e) send a copy of any such written statement, lists, reports or note of argument, as the case may be, to every other party.
- (2) At the procedural hearing, the commercial judge—
- (a) shall determine whether the commercial action should be appointed to debate or sent to proof on the whole or any part of the action;
 - (b) where the action is appointed to debate or sent to proof, may order that written arguments on any question of law should be submitted;
 - (c) where the action is sent to proof, may determine whether evidence at the proof should be by oral evidence, the production of documents or affidavits on any issue;
 - (d) where the action is sent to proof, may direct that parties serve on one another and lodge in process signed witness statements or affidavits from each witness whose evidence they intend to adduce, setting out in full the evidence which it is intended to take from that witness, and fix a timetable for the service (whether by exchange or otherwise) and lodging of such statements or affidavits as may be thought necessary;
 - (e) may direct that such witness statements or affidavits shall stand as evidence in chief of the witness concerned, subject to such further questioning in chief as the court may allow;
 - (f) may determine, in the light of any witness statements, affidavits or reports produced, that proof is unnecessary on any issue;
 - (g) where the action is sent to proof, may appoint parties to be heard By Order at a date prior to the proof diet;
 - (h) may direct that skilled persons should meet with a view to reaching agreement and identifying areas of disagreement, and may order them thereafter to produce a joint note, to be lodged in process by one of the parties, identifying areas of agreement and disagreement, and the basis of any disagreement;
 - (i) without prejudice to Chapter 12 (assessors), may appoint an expert to examine, on behalf of the court, any reports of skilled persons or other evidence submitted and to report to the court within such period as the commercial judge may specify;
 - (j) where the action is sent to proof, may make an order fixing the time allowed for the examination and cross-examination of witnesses;
 - (k) may, on the motion of a party, direct the cause to be determined on the basis of written submissions, or such other material, without any oral hearing;
 - (l) may continue the procedural hearing to a date to be appointed by him;
 - (m) may make an order for parties to produce a joint bundle of productions arranged in chronological order or such other order as will assist in the efficient conduct of the proof;
 - (n) may order and fix a date for a further procedural hearing or fix a date for the hearing of any debate or proof; and
 - (o) may make such other order as he thinks fit.”.
- (9) After rule 47.13 (debates) insert—

“Pre-proof By Order

47.13A. Not less than 2 days prior to any hearing appointed under rule 47.12(2)(g) parties shall lodge in process an estimated timetable for the conduct of proof together with a note of any issues which are to be addressed prior to the proof.”

(10) In rule 47.14 (lodging of productions for proof), in paragraph (1), for “Any” where it first appears substitute “Unless an earlier date is specified by the court, any”.