
EXPLANATORY NOTE

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

This Act of Sederunt amends the Ordinary Cause Rules and Summary Cause Rules in respect of personal injury actions. It introduces a requirement on parties to certain actions of damages for personal injury to follow a Personal Injury Pre-Action Protocol (“the Protocol”) with a view to settling the action before proceedings are raised.

Paragraph 2 inserts a new Chapter 3A into the Ordinary Cause Rules which introduces the new Protocol (the Protocol itself is set out in schedule 1 of this instrument and is inserted as Appendix 4 of the Ordinary Cause Rules). Chapter 3A provides that where the Protocol applies, the court will normally expect parties to have complied with the Protocol requirements before commencing proceedings. The Protocol will not apply where the total liability value of the claim is reasonably estimated to be more than £25,000, the claimant is not represented by a solicitor, or the injuries for which damages are claimed arise from clinical negligence, professional negligence or take the form of a disease (paragraph 1 of the Protocol).

Where proceedings are commenced and the sheriff considers that a party has failed to comply with the Protocol, or has unreasonably failed to accept a settlement offer made under the Protocol and subsequently lodged as a tender following the commencement of proceedings, the sheriff can take steps to do justice between the parties (rule 3A.3 as inserted by paragraph 2 of this instrument). In doing so, the sheriff must take into account the conduct of the parties during the stages of the Protocol and the nature of any breach of Protocol requirements.

Paragraph 3 inserts a new Chapter 4A into the Summary Cause Rules which applies the new Protocol to relevant Summary Cause cases (the Protocol itself is set out in schedule 2 of this instrument and is inserted as Appendix 3 of the Summary Cause Rules). The provision made in the new Chapter 4A and Appendix 3 of the Summary Cause Rules is in identical terms to that made in the Ordinary Cause Rules.

Saving provision is included in paragraph 4 to preserve the existing law as regards actions where the accident or circumstance giving rise to the claim for damages occurred before 28th November 2016; there will accordingly be no requirement to follow the Protocol prior to commencing proceedings in such cases.