
 STATUTORY INSTRUMENTS

1984 No. 472 (S. 52)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 2)
(Miscellaneous) 1984

Made - - - - 29th March 1984
Coming into Operation 26th April 1984

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 of all other powers enabling them in that behalf 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. 2) (Miscellaneous) 1984 and shall come into operation on 26th April, 1984.

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

Amendment to Rules of Court

2. In the Rules of Court^(b),

(a) for rule 30 (interlocutors) substitute the following rule—

“30. Interlocutors

(1) Subject to rule 93A, an interlocutor may be written by the clerk of court and shall be signed by the judge, or by the presiding judge, of the court pronouncing it, and an extract of an interlocutor that is not so signed shall be void and of no effect.

(2) The judge who signs an interlocutor may on cause shown correct or alter it at any time before extract.”;

(b) in rule 70 (form of summons), add the following paragraph—

“(2) A summons may include—

(a) a warrant of inhibition which shall have the same effect as letters of inhibition;

(b) if the summons concludes for payment of money, a

^(a) 1933 c. 41.
^(b) S.I. 1965/321.

warrant to arrest the moveable property belonging to or owing to the defender.”;

- (c) in rule 74(e), for the words “the warrant referred to in section 18 of the Court of Session Act 1868” substitute the words “letters of inhibition”; and for the words “in accordance with the terms of said section” substitute the words “in the Register of Inhibitions and Adjudications”;
- (d) after rule 74 insert the following rule—

“74A. Citation and Service

(1) Subject to paragraph (2), citation in any action shall be executed either—

- (a) personally; or
- (b) if the person executing the citation after due inquiry has reasonable grounds for believing that the defender—
- (i) is residing at a particular dwelling place but is unavailable, by leaving the citation in the hands of a resident at, or depositing it in, the dwelling place; or
 - (ii) carries on business at a particular place, by leaving the citation in the hands of a responsible employee of the defender at that place; or
- (c) by post.

(2) Citation shall be executed edictally in accordance with rule 75 if the defender’s address is unknown.

(3) All citations or other writs or orders of the court served on any person shall be signed and dated by the person executing service and the service so executed shall be certified by means of a form of execution signed and dated by that person stating the manner of service.

(4) Any citation that is executed personally under sub-paragraph (a) or by leaving the citation under sub-paragraph (b) of paragraph (1) shall—

- (a) be served on the defender or at his dwelling place or place of business by a messenger-at-arms who shall explain its purpose to the defender, or other person with whom he leaves it;
- (b) be witnessed by one witness signing the citation and certificate of execution which shall state his occupation and address.

(5) A citation executed by post shall be effected by means of—

- (a) a messenger-at-arms; or
- (b) a solicitor entitled to practice in the Court of Session,

posting a copy of the summons with citation in the terms set out in Form 3 by registered or recorded delivery letter addressed to the defender and having on the face of the envelope the notice set out in paragraph (6).

(6) The notice mentioned in paragraph (5) shall be in the following terms:—

“This letter contains a citation to or intimation from the Court of Session, Scotland. If delivery of the letter cannot be made it is to be returned immediately to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh.”

(7) On a citation being executed by post, the solicitor who executed it shall complete and return the execution in the terms set out in Form 3.

(8) Any citation executed by post is a valid citation unless and until the defender proves that the letter was not tendered or left at his address.”;

(e) in rule 89 (decree in absence)—

(i) in paragraph (a), omit the last sentence;

(ii) after paragraph (a), insert the following paragraphs—

“(aa) Subject to the following provisions of this rule, where any action appears in the roll as an undefended cause, the court shall without the attendance of counsel or solicitor, grant decree in absence in terms of the conclusions of the summons, or subject to such restrictions as may be set out in a minute written on the summons by the solicitor for the pursuer; and the decree may be extracted on the expiry of 10 days from the date on which it was granted, but not before.

(ab) No reclaiming motion may be brought to recall a decree in absence granted under this rule.”;

(iii) after paragraph (f), add the following paragraphs—

“(g) Where decree in absence is granted under this rule, an account of expenses shall be lodged in process and taxed by the Auditor; and the Auditor shall make a report on the account specifying the amount of the expenses so taxed; and the Extractor shall, subject to paragraph (h), enter that amount in the extracted decree.

(h) The report on the account by the Auditor may be submitted to the court—

(i) if it so requires; or

(ii) on the direction of the Auditor; or

(iii) on the motion of any person having an interest,

and the court may vary the amount of the expenses to be entered in the extracted decree.

(i) Where, after personal service of a summons on a defender or after the entering of appearance for the defender, a decree in absence upon which a charge is competent has been granted, and—

(i) it has not been recalled,

(ii) it has been extracted,

(iii) a charge upon it has not been brought under review by suspension, and

(iv) 60 days have elapsed since the expiry of that charge,

then the decree shall have effect as a decree *in foro*.”;

(f) after rule 91 (closing record) insert the following rules—

“91A. Abandonment

(1) In any action the pursuer may, at any time before the proof or trial has begun, abandon the action on paying full expenses to the defender; and may, if otherwise competent, bring a new action.

(2) In any action the pursuer may, at any time after the proof or trial has begun and before avizandum is made or the charge begun, move the Lord Ordinary for leave to abandon the action; and the Lord Ordinary may on being satisfied that it is just and proper in the circumstances to do so, grant leave subject to payment by the pursuer of the defender’s expenses within such time as he may specify; and in the event of those expenses not being paid within that time, the defender shall be entitled to be assoilized from the conclusions of the action with expenses.

91B. Report by Judge

The Lord Ordinary may at any stage of an action, on intimation to the parties, report the action or any incidental matter which may arise in the course of the action, to the Inner House for a ruling; and on such a ruling being given shall give effect to it.”;

(g) in rule 93A (powers of depute clerks of session) omit the words—

“Notwithstanding the provisions of the Interlocutors Acts 1686 and 1693”;

(h) after rule 104 (warrant for transmission of process) insert the following rule—

“104A. Transmission on contingency

(1) An application for transmission to the Court of a cause depending before the sheriff on the ground of contingency with a Court of Session cause may be made—

(a) by motion at the instance of a party to the cause depending before the Court;

(b) by minute at the instance of any other person having an interest (including a party to the cause depending before the sheriff).

(2) A copy of the process of the cause depending before the sheriff, certified by the sheriff clerk shall be lodged with any motion enrolled or any minute lodged under paragraph (1).

(3) A decision made on an application under paragraph (1) shall not be appealable, but an application that has been refused may, in the event of any change of circumstances, be renewed.”;

(i) after rule 106 (minute of transference) insert the following rule—

“106A. Warrant for citing witnesses

A certified copy of the interlocutor approving issues or allowing

proof in any action shall be a sufficient warrant to any messenger-at-arms to cite witnesses and havers to the trial or proof in question, at the instance of any party to the action.”;

- (j) in rule 111 (rules as to witnesses), insert the following paragraph—
- “(f) In all actions (whether the hearing is by proof or jury trial) witnesses shall be examined in the presence of parties or their counsel.”;
- (k) after rule 122 (admissions by parties) insert the following rule—
- “122A. Oaths and affirmations**
- (1)(a) The clerk of court shall administer the oath collectively to the jury in accordance with the forms set out in part 1 of the Table below.
- (b) In the case of any juror who elects to affirm the clerk shall administer the affirmation in accordance with the form set out in part 2 of the Table;
- (2)(a) Where the judge administers the oath to a witness, he shall do so in accordance with the form set out in part 3 of the Table;
- (b) In the case of a witness who elects to affirm the judge shall administer the affirmation in accordance with the form set out in part 4 of the Table.

TABLE

PART 1

FORM OF OATH FOR JURORS

The jurors to raise their right hands and the clerk of court to ask them: “Do you swear by Almighty God that you will well and truly try the issue and give a true verdict according to the evidence?” The jurors to reply: “I do”.

PART 2

FORM OF AFFIRMATION FOR JURORS

The jurors to repeat after the clerk of court: “I, [name], do solemnly, sincerely and truly declare and affirm that I will well and truly try the issue and give a true verdict according to the evidence”.

PART 3

FORM OF OATH FOR WITNESSES

The witness to raise his right hand and repeat after the judge: “I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth”.

PART 4

FORM OF AFFIRMATION FOR WITNESSES

The witness to repeat after the judge: “I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth”.”;

(l) in rule 125 (applying the verdict), at the end add the following paragraph—

“(c) Where in the course of a trial the presiding judge has directed the jury on any matter of law subject to the opinion of the Inner House on that direction, and the party against whom the verdict is returned applies to the Inner House to enter the verdict for him, it shall not be necessary for the purposes of that application to print the notes of evidence, but the notes of the presiding judge may be produced at any time if required.”.

3. In the Rules of Court, in Chapter III (special actions), after Section 2 (commercial causes), insert the following section—

“SECTION 2A—EXCHEQUER CAUSES

153A. Commencement

(1) An exchequer cause may be commenced by summons and when so commenced shall proceed as nearly as may be as an ordinary action.

(2) Subject to rule 153D, all proceedings in exchequer causes shall be brought in the first instance before the Lord Ordinary in exchequer causes.

153B. Suspension

An application for the suspension of any decree, charge, threatened charge or diligence in an exchequer cause may be made to the Lord Ordinary in exchequer causes by the Crown, or any subject, in the same manner and to the same extent and effect as such an application is made in an ordinary action.

153C. Review

An interlocutor pronounced by the Lord Ordinary in exchequer causes shall, for the purposes of review of that interlocutor, have effect as an interlocutor pronounced in an ordinary action.

153D. Appeal

Any appeal by way of stated cases in an exchequer cause shall be brought before the Inner House.

153E. Extracts

The Extractor shall give priority over all other business to extracts in exchequer causes.”.

4. In the Rules of Court, in Chapter V (Inner House), in rule 265 (special causes), add the following paragraph—

“(c)The special case may be amended by consent of the parties.”

Edinburgh,
29th March 1984.

Emslie,
Lord President,
I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session to make new provision in relation to miscellaneous procedural matters in respect of which provision is already made in statutes relating to Court of Session procedure. The statutory provisions specified in Column 2 of the Table below are incorporated in whole or in part by this Act of Sederunt in the rules of Court specified in Column 1 of the Table.

TABLE

<i>Column 1</i>	<i>Column 2</i>
rule 30	The Interlocutors Act 1686 c. 4
	The Interlocutors Act 1693 c. 31
rule 70(2)	The Court of Session Act 1868 (31 & 32 Vict. c. 100) s. 18
	The Debtors (Scotland) Act 1838 (1 & 2 Vict. c. 114) s. 16
rule 74(e)	The Court of Session Act 1868 (31 & 32 Vict. c. 100) s. 18
rule 74A	The Citation Act 1540 c. 10
	The Citation Act 1592 c. 59
	The Citation Act 1686 c. 5
	The Citation Act 1693 c. 21
rule 89(aa), (ab)	The 1868 Act
rule 89(i)	s. 23
	s. 24
rule 89(g), (h)	The Court of Session Act 1821 (1 & 2 Geo. 4 c. 38) s. 33
rule 91A	The Court of Session Act 1825 (6 Geo. 4 c. 120) s. 10; The 1868 Act s. 3
rule 91B	The Court of Session Act 1850 (13 & 14 Vict. c. 36) s. 14
	The 1825 Act s. 13
	The 1825 Act s. 19
	The 1850 Act s. 51
rule 104A	The 1868 Act ss. 74, 75
rule 106A	The 1850 Act s. 43
rule 111	The Evidence Act 1686 c. 30

TABLE *cont.*

<i>Column 1</i>	<i>Column 2</i>
rule 122A	Jury Trials (Scotland) Act 1815 (55 Geo. 3 c. 42) ss. 31, 32
rule 125(c)	The 1868 Act s. 36
rule 153A(1)	The Exchequer Court (Scotland) Act 1856 (19 & 20 Vict. c. 56) s. 10
rule 153A(2)	s. 2
rule 153B	s. 21
rule 153C	s. 20
rule 153D	The Administration of Justice (Scotland) Act 1933 (23 & 24 Geo. 5 c. 41) s. 7
rule 153E	The 1856 Act s. 28
rule 265C	The 1868 Act s. 63

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