
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 66

COURT OF SESSION

**Act of Sederunt (Rules of the Court of
Session Amendment) (Miscellaneous) 2000**

Made - - - - - *7th March 2000*

Coming into force - - - - - *7th April 2000*

The Lords of Council and Session, in exercise of the powers conferred upon them by section 5 of the Court of Session Act 1988(1), paragraph 37 of Schedule 6 to the Scotland Act 1998(2), paragraph 38 of Schedule 10 to the Northern Ireland Act 1998(3) and paragraph 36 of Schedule 8 to the Government of Wales Act 1998(4) 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 the Court of Session Amendment)(Miscellaneous)2000 and shall come into force on 7th April 2000.

(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 of Session 1994(5) are amended in accordance with the following paragraphs.

(2) The rule added after rule 1.3 as rule 1.4 (direction relating to Advocate General) by paragraph 2(2)(b) of the Act of Sederunt (Rules of the Court of Session Amendment No.5) (Miscellaneous) 1999(6) is renumbered as rule 1.5 and shall follow rule 1.4.

(3) In rule 25A.6 after paragraph (1) there is inserted—

“(1A) Where a relevant authority does not take part as a party in the proceedings at first instance the court may allow him to take part as a party in any subsequent appeal, reclaiming motion or reference to a higher court.”.

(1) 1988 c. 36.

(2) 1998 c. 46.

(3) 1998 c. 47.

(4) 1998 c. 38.

(5) S.I.1994/1443 as amended. The relevant amendments are S.I. 1999/1345 which inserted Chapter 25A, S.I. 1996/2168 which inserted rule 43.31, and S.I. 1994/2310 which inserted a new Chapter 47 and amended rule 73.2(2).

(6) S.I. 1999/1386.

(4) In rule 38.3 (reclaiming days) after paragraph (2) there is inserted–

“(2A) Where an interlocutor which reserves or does not dispose of the question of expenses is the subject of a reclaiming motion under paragraph (2)(b), any party to the cause who seeks an order for expenses before the disposal of the reclaiming motion shall apply by motion to the Lord Ordinary for such an order within 14 days of the date of enrolment of that reclaiming motion.”.

(5) In rule 38.8(1) after “Lord Ordinary” there is inserted “or any interlocutor of the Lord Ordinary in a motion under rule 38.3(2A)”.

(6) In rule 43.31(1) (lodging of medical reports) for “In an action” there is substituted “At any time up to and including the calling of a summons in an action” and “, with the summons when it is lodged for signeting under rule 13.5,” is omitted.

(7) In rule 47.9 (withdrawal of action from Commercial Roll) after paragraph (1) there is inserted–

“(1A) At any time before or at the preliminary hearing, the commercial judge may–

(a) on the motion of a party; or

(b) *ex proprio motu*, after hearing the parties to the action,

if he is satisfied that the action is not a commercial action, withdraw it from the procedure in this Chapter and appoint it to proceed as an ordinary action.”.

(8) In rule 73.2(2) (form of application for rectification of document) in paragraph (a), after second “summons” and in paragraph (b), after “summons” there is inserted “or in a counterclaim.”.

Edinburgh
7th March 2000

Rodger of Earlsferry
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 as follows:

- (a) paragraph 2(2) corrects the number of the rule added after rule 1.3 as rule 1.4 and places it in its correct position in Chapter 1 after the existing rule 1.4;
- (b) paragraph 2(3) amends rule 25A.6 to the effect that a relevant authority even if he has not taken part as a party in proceedings in response to service on him of a devolution issues notice, may still be allowed by the court to take part as a party in any subsequent appeal, reclaiming motion or reference to a higher court.
- (c) paragraph 2(4) amends rule 38.3 to the effect that if an interlocutor which does not deal with, or which reserves, the question of expenses is appealed against, a party who wishes the question of expenses to be dealt with at the time the appeal is lodged rather than at a later date may apply by motion to the Lord Ordinary to that effect within 14 days of the lodging of the appeal;
- (d) paragraph 2(5) amends rule 38.8(1), in consequence of the amendment made by paragraph 2(4), to make it clear that an interlocutor of the Lord Ordinary disposing of a motion under rule 38.3(2A) may be reviewed at the same time as the main reclaiming motion is heard;
- (e) paragraph 2(6) amends rule 43.31 so that the medical records which require to be lodged no longer have to be lodged at the time of signeting; they may now be lodged at any time up to the calling of the summons;
- (f) paragraph 2(7) amends rule 47.9 to enable the commercial judge to withdraw a case from the commercial roll and appoint it to proceed as an ordinary action if he is satisfied that it is not really a commercial action;
- (g) paragraph 2(8) amends rule 73.2 to make it clear that an application for rectification of documents can be made in a counterclaim.