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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 215**

**Act of Sederunt (Sheriff Court Rules Amendment)  
(Personal Injury Pre-Action Protocol) 2016**

**Citation and commencement, etc.**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016.

(2) It comes into force on 28th November 2016.

(3) A certified copy is to be inserted in the Books of Sederunt.

**Amendment of the Ordinary Cause Rules 1993**

2.—(1) The Ordinary Cause Rules 1993<sup>(1)</sup> are amended in accordance with this paragraph.

(2) After Chapter 3 (commencement of causes) insert—

**“CHAPTER 3A**

**PERSONAL INJURY PRE-ACTION PROTOCOL**

**Application and interpretation**

3A.1.—(1) This Chapter applies to an action of damages for, or arising from, personal injuries.

(2) In this Chapter “the Protocol” means the Personal Injury Pre-Action Protocol set out in Appendix 4, and references to the “aims of the Protocol”, “requirements of the Protocol” and “stages of the Protocol” are to be construed accordingly.

**Requirement to comply with the Protocol**

3A.2. In any case where the Protocol applies, the court will normally expect parties to have complied with the requirements of the Protocol before proceedings are commenced.

**Consequences of failing to comply with the Protocol**

3A.3.—(1) This rule applies where the sheriff considers that a party (“party A”)—

(a) failed, without just cause, to comply with the requirements of the Protocol; or

(b) unreasonably failed to accept an offer in settlement which was—

(i) made in accordance with the Protocol; and

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<sup>(1)</sup> The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c.51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2016/194.

(ii) lodged as a tender during the period beginning with the commencement of proceedings and ending with the lodging of defences.

(2) The sheriff may, on the sheriff's own motion, or on the motion of any party, take any steps the sheriff considers necessary to do justice between the parties, and may in particular—

- (a) sist the action to allow any party to comply with the requirements of the Protocol;
- (b) make an award of expenses against party A;
- (c) modify an award of expenses; or
- (d) make an award regarding the interest payable on any award of damages.

(3) A motion made by a party under paragraph (2) must include a summary of—

- (a) the steps taken by parties under the Protocol with a view to settling the action; and
- (b) that party's assessment of the extent to which parties have complied with the requirements of the Protocol.

(4) In considering what steps (if any) to take under paragraph (2), the sheriff must take into account—

- (a) the nature of any breach of the requirements of the Protocol; and
- (b) the conduct of the parties during the stages of the Protocol.

(5) In assessing the conduct of the parties, the sheriff must have regard to the extent to which that conduct is consistent with the aims of the Protocol.

(6) This rule does not affect any other enactment or rule of law allowing the sheriff to make or modify awards regarding expenses and interest.”

(3) After Appendix 3 (schedule of timetable under personal injuries procedure) insert Appendix 4 as set out in schedule 1 of this Act of Sederunt.

### **Amendment of the Summary Cause Rules 2002**

3.—(1) The Summary Cause Rules 2002(2) are amended in accordance with this paragraph.

(2) After Chapter 4 (commencement of action), insert—

## **“CHAPTER 4A**

### **PERSONAL INJURY PRE-ACTION PROTOCOL**

#### **Application and interpretation**

**4A.1.**—(1) This Chapter applies to an action of damages for, or arising from, personal injuries.

(2) In this Chapter “the Protocol” means the Personal Injury Pre-Action Protocol set out in Appendix 3, and references to the “aims of the Protocol”, “requirements of the Protocol” and “stages of the Protocol” are to be construed accordingly.

#### **Requirement to comply with the Protocol**

**4A.2.** In any case where the Protocol applies, the court will normally expect parties to have complied with the requirements of the Protocol before proceedings are commenced.

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(2) The Summary Cause Rules 2002 are in schedule 1 of the Act of Sederunt (Summary Cause Rules) 2002 ([SSI 2002/132](#)), last amended by [S.S.I. 2015/419](#).

### **Consequences of failing to comply with the Protocol**

- 4A.3.**—(1) This rule applies where the sheriff considers that a party (“party A”)—
- (a) failed, without just cause, to comply with the requirements of the Protocol; or
  - (b) unreasonably failed to accept an offer in settlement which was—
    - (i) made in accordance with the Protocol; and
    - (ii) lodged as a tender during the period beginning with the commencement of proceedings and ending with the lodging of defences.
- (2) The sheriff may, on the sheriff’s own motion, or on the motion of any party, take any steps the sheriff considers necessary to do justice between the parties, and may in particular—
- (a) sist the action to allow any party to comply with the requirements of the Protocol;
  - (b) make an award of expenses against party A;
  - (c) modify an award of expenses; or
  - (d) make an award regarding the interest payable on any award of damages.
- (3) A motion made by a party under paragraph (2) must include a summary of—
- (a) the steps taken by parties under the Protocol with a view to settling the action; and
  - (b) that party’s assessment of the extent to which parties have complied with the requirements of the Protocol.
- (4) In considering what steps (if any) to take under paragraph (2), the sheriff must take into account—
- (a) the nature of any breach of the requirements of the Protocol; and
  - (b) the conduct of the parties during the stages of the Protocol.
- (5) In assessing the conduct of the parties, the sheriff must have regard to the extent to which that conduct is consistent with the aims of the Protocol.
- (6) This rule does not affect any other enactment or rule of law allowing the sheriff to make or modify awards regarding expenses and interest.”
- (3) After Appendix 1 (forms) insert Appendix 1A as set out in schedule 2 of this Act of Sederunt.

### **Saving**

**4.** Paragraphs 2 and 3 do not apply to an action where the accident or other circumstance giving rise to the liability to which the action relates occurred before 28th November 2016.

Edinburgh  
20th July 2016

*CJM SUTHERLAND*  
Lord President  
I.P.D.