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SCHEDULES

^{F1}FIRST SCHEDULE

ORDINARY CAUSE RULES 1993

Textual Amendments

- F1** Sch. 1 (with appendices 1 and 2) substituted (1.1.1994) for Sch. 1 (with appendix) by [S.I. 1993/1956](#), para. 2, [Sch.1](#).
Sch. 1 (except rule 29.10) excluded (1.4.1997) by [S.I. 1997/291](#), [rule 3.24](#), Sch. 3
Sch. 1 extended (14.2.2000) by [S.I. 2000/124](#), [reg. 30\(5\)](#)

[^{F1}SPECIAL PROVISIONS IN RELATION TO PARTICULAR CAUSES]

CHAPTER 36

ACTIONS OF DAMAGES

PART I

INTIMATION TO CONNECTED PERSONS IN CERTAIN ACTIONS OF DAMAGES

Application and interpretation of this Part

- 36.1. (1) This Part applies to an action of damages in which, following the death of any person from personal injuries, damages are claimed—
- (a) by the executor of the deceased, in respect of the injuries from which the deceased died; or
 - (b) by any relative of the deceased, in respect of the death of the deceased.
- (2) In this Part—
- “connected person” means a person, not being a party to the action, who has title to sue the defender in respect of the personal injuries from which the deceased died or in respect of his death;
- “relative” has the meaning assigned to it in Schedule 1 to the ^{M1}Damages (Scotland) Act 1976.

Marginal Citations

- M1** 1976 c.13; [Schedule 1](#) was amended by the [Administration of Justice Act 1982 \(c.53\)](#), [section 14\(4\)](#).

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Averments

- 36.2. In an action to which this Part applies, the pursuer shall aver in the condescence, as the case may be—
- (a) that there are no connected persons;
 - (b) that there are connected persons, being the persons specified in the crave for intimation;
 - (c) that there are connected persons in respect of whom intimation should be dispensed with on the ground that—
 - (i) the names or whereabouts of such persons are not known to, and cannot reasonably be ascertained by, the pursuer; or
 - (ii) such persons are unlikely to be awarded more than £200 each.

Warrants for intimation

- 36.3. (1) Where the pursuer makes averments under rule 36.2(b) (existence of connected persons), he shall include a crave in the initial writ for intimation to any person who is believed to have title to sue the defender in an action in respect of the death of the deceased or the personal injuries from which the deceased died.
- (2) A notice of intimation in Form D1 shall be attached to the copy of the initial writ where intimation is given on a warrant under paragraph (1).

Applications to dispense with intimation

- 36.4. (1) Where the pursuer makes averments under rule 36.2(c) (dispensing with intimation to connected persons), he shall apply by crave in the initial writ for an order to dispense with intimation.
- (2) In determining an application under paragraph (1), the sheriff shall have regard to—
- (a) the desirability of avoiding a multiplicity of actions; and
 - (b) the expense, inconvenience or difficulty likely to be involved in taking steps to ascertain the name or whereabouts of the connected person.
- (3) Where the sheriff is not satisfied that intimation to a connected person should be dispensed with, he may—
- (a) order intimation to a connected person whose name and whereabouts are known;
 - (b) order the pursuer to take such further steps as he may specify in the interlocutor to ascertain the name or whereabouts of any connected person; and
 - (c) order advertisement in such manner, place and at such times as he may specify in the interlocutor.

Subsequent disclosure of connected persons

- 36.5. Where the name or whereabouts of a person, in respect of whom the sheriff has dispensed with intimation on a ground specified in rule 36.2(c) (dispensing with intimation to connected persons), subsequently becomes known to the pursuer, the pursuer shall apply to the sheriff by motion for a warrant for intimation to such a person; and such intimation shall be made in accordance with rule 36.3(2).

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Connected persons entering process

- 36.6. (1) A connected person may apply by minute craving leave to be sisted as an additional pursuer to the action.
- (2) Such a minute shall also crave leave of the sheriff to adopt the existing grounds of action, and to amend the craves, condescendence and pleas-in-law.
- (3) The period within which answers to a minute under this rule may be lodged shall be 14 days from the date of intimation of the minute.
- (4) [F1Rule 14.13 (procedure following grant of minute)] shall not apply to a minute to which this rule applies.

Textual Amendments

F1 Words in sch. 1 rule 36.6(4) substituted (1.11.1996) by [S.I. 1996/2445, para. 3\(62\)](#)

Failure to enter process

- 36.7. Where a connected person to whom intimation is made in accordance with this Part—
- (a) does not apply to be sisted as an additional pursuer to the action,
- (b) subsequently raises a separate action against the same defender in respect of the same personal injuries or death, and
- (c) would, apart from this rule, be awarded the expenses or part of the expenses of that action,
- he shall not be awarded those expenses except on cause shown.

PART II

INTERIM PAYMENTS OF DAMAGES

Application and interpretation of this Part

- 36.8. (1) This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.
- (2) In this Part—
- “defender” includes a third party against whom the pursuer has a crave for damages;
- “personal injuries” includes any disease or impairment of a physical or mental condition.

Applications for interim payment of damages

- 36.9. (1) In an action to which this Part applies, a pursuer may, at any time after defences have been lodged, apply by motion for an order for interim payment of damages to him by the defender or, where there are two or more of them, by any one or more of them.
- (2) The pursuer shall intimate a motion under paragraph (1) to every other party on a period of notice of 14 days.

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- (3) On a motion under paragraph (1), the sheriff may, if satisfied that—
- (a) the defender has admitted liability to the pursuer in the action, or
 - (b) if the action proceeded to proof, the pursuer would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part, or on the part of any person in respect of whose injury or death the claim of the pursuer arises, and would obtain decree for damages against any defender,
- ordain that defender to make an interim payment to the pursuer of such amount as the sheriff thinks fit, not exceeding a reasonable proportion of the damages which, in the opinion of the sheriff, are likely to be recovered by the pursuer.
- (4) Any such payment may be ordered to be made in one lump sum or otherwise as the sheriff thinks fit.
- (5) No order shall be made against a defender under this rule unless it appears to the sheriff that the defender is—
- (a) a person who is insured in respect of the claim of the pursuer;
 - (b) a public authority; ^{F2} . . .
 - (c) a person whose means and resources are such as to enable him to make the interim payment. [^{F3}; or
 - (d) the person's liability will be met by—
 - (i) an insurer under section 151 of the Road Traffic Act 1988 ^{F4}; or
 - (ii) an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself.]
- (6) Notwithstanding the grant or refusal of a motion for an interim payment, a subsequent motion may be made where there has been a change of circumstances.
- (7) Subject to Part IV (management of damages payable to persons under legal disability), an interim payment shall be made to the pursuer unless the sheriff otherwise directs.
- (8) This rule shall, with the necessary modifications, apply to a counterclaim for damages for personal injuries made by a defender as it applies to an action in which the pursuer may apply for an order for interim payment of damages.

Textual Amendments

- F2** Word in sch. 1 rule 36.9(5)(b) omitted (21.5.2004) by virtue of [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2004 \(S.S.I. 2004/197\)](#), [art. 2\(13\)\(a\)](#)
- F3** Sch. 1 rule 36.9(5)(d) and word inserted (21.5.2004) by [Act of Sederunt \(Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules\) Amendment \(Miscellaneous\) 2004 \(S.S.I. 2004/197\)](#), [art. 2\(13\)\(b\)](#)
- F4** 1988 c. 52; [section 151](#) repealed in part by the [Road Traffic Act 1991 \(c. 40\)](#), [Schedule 8](#).

Adjustment on final decree

- 36.10. Where a defender has made an interim payment under rule 36.9, the sheriff may, when final decree is pronounced, make such order with respect to the interim

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payment as he thinks fit to give effect to the final liability of that defender to the pursuer; and in particular may order—

- (a) repayment by the pursuer of any sum by which the interim payment exceeds the amount which that defender is liable to pay to the pursuer; or
- (b) payment by any other defender or a third party, of any part of the interim payment which the defender who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to, or connected with, the claim of the pursuer.

PART III

PROVISIONAL DAMAGES FOR PERSONAL INJURIES

Application and interpretation of this Part

36.11. (1) This Part applies to an action of damages for personal injuries.

(2) In this Part—

“the Act of 1982” means the ^{M2}Administration of Justice Act 1982;

“further damages” means the damages referred to in section 12(4)(b) of the Act of 1982;

“provisional damages” means the damages referred to in section 12(4)(a) of the Act of 1982.

Marginal Citations

M2 1982 c.53.

Applications for provisional damages

36.12. An application under section 12(2)(a) of the Act of 1982 for provisional damages for personal injuries shall be made by including in the initial writ—

- (a) a crave for provisional damages;
- (b) averments in the condescendence supporting the crave, including averments—
 - (i) that there is a risk that, at some definite or indefinite time in the future, the pursuer will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration of his physical or mental condition; and
 - (ii) that the defender was, at the time of the act or omission which gave rise to the cause of action, a public authority, public corporation or insured or otherwise indemnified in respect of the claim; and
- (c) an appropriate plea-in-law.

Applications for further damages

36.13. (1) An application for further damages by a pursuer in respect of whom an order under section 12(2)(b) of the Act of 1982 has been made shall be made by minute in the process of the action to which it relates and shall include—

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- (a) a crave for further damages;
 - (b) averments in the statement of facts supporting that crave; and
 - (c) appropriate pleas-in-law.
- (2) On lodging such a minute in process, the pursuer shall apply by motion for warrant to serve the minute on—
- (a) every other party; and
 - (b) where such other party is insured or otherwise indemnified, his insurer or indemnifier, if known to the pursuer.
- (3) Any such party, insurer or indemnifier may lodge answers to such a minute in process within 28 days after the date of service on him.
- (4) Where answers have been lodged under paragraph (3), the sheriff may, on the motion of any party, make such further order as to procedure as he thinks fit.

PART IV

MANAGEMENT OF DAMAGES PAYABLE TO PERSONS UNDER LEGAL DISABILITY

Orders for payment and management of money

- 36.14. (1) In an action of damages in which a sum of money becomes payable, by virtue of a decree or an extra-judicial settlement, to or for the benefit of a person under legal disability [^{F5}(other than a person under the age of 18 years)], the sheriff shall make such order regarding the payment and management of that sum for the benefit of that person as he thinks fit.
- (2) An order under paragraph (1) shall be made on the granting of decree for payment or of absolvitor.

Textual Amendments

F5 Words in sch. 1 rule 36.14(1) inserted (1.11.1996) by *S.I. 1996/2167, para. 2, Sch. para. 34*

Methods of management

- 36.15. In making an order under rule 36.14(1), the sheriff may—
- (a) appoint a judicial factor to apply, invest or otherwise deal with the money for the benefit of the person under legal disability;
 - (b) order the money to be paid to—
 - (i) the Accountant of Court, or
 - (ii) the guardian of the person under legal disability,
 as trustee, to be applied, invested or otherwise dealt with and administered under the directions of the sheriff for the benefit of the person under legal disability;
 - (c) order the money to be paid to the sheriff clerk of the sheriff court district in which the person under legal disability resides, to be applied, invested or otherwise dealt with and administered, under the directions of the sheriff of that district, for the benefit of the person under legal disability; or
 - (d) order the money to be paid directly to the person under legal disability.

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Subsequent orders

- 36.16. (1) Where the sheriff has made an order under rule 36.14(1), any person having an interest may apply for an appointment or order under rule 36.15, or any other order for the payment or management of the money, by minute in the process of the cause to which the application relates.
- (2) An application for directions under rule 36.15(b) or (c) may be made by any person having an interest by minute in the process of the cause to which the application relates.

Management of money paid to sheriff clerk

- 36.17. (1) A receipt in Form D2 by the sheriff clerk shall be a sufficient discharge in respect of the amount paid to him under this Part.
- (2) The sheriff clerk shall, at the request of any competent court, accept custody of any sum of money in an action of damages ordered to be paid to, applied, invested or otherwise dealt with by him, for the benefit of a person under legal disability.
- (3) Any money paid to the sheriff clerk under this Part shall be paid out, applied, invested or otherwise dealt with by the sheriff clerk only after such intimation, service and enquiry as the sheriff may order.
- (4) Any sum of money invested by the sheriff clerk under this Part shall be invested in a manner in which trustees are authorised to invest by virtue of the ^{M3}Trustee Investments Act 1961.

Marginal Citations

M3 1961 c.62.

[^{F6}PART IVA

PRODUCTIONS IN CERTAIN ACTIONS OF DAMAGES

Textual Amendments

F6 Sch. 1 Ch. 36 Pt. 4A inserted (2.10.2000) by **S.S.I. 2000/239, para. 3(19)**

Application of this Part

- 36.17A. This Part applies to an action of damages for personal injuries or the death of a person in consequence of personal injuries.

Averments of medical treatment

- 36.17B. The condescence of the initial writ in an action to which this Part applies shall include averments naming—
- (a) every general medical practitioner or general medical practice from whom;
 - and
 - (b) every hospital or other institution in which,

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the pursuer or, in an action in respect of the death of a person, the deceased received treatment for the injuries sustained, or disease suffered, by him.

Lodging of medical reports

- 36.17Q(1) In an action to which this Part applies, the pursuer shall lodge as productions, with the initial writ when it is presented for warranting in accordance with rule 5.1, all medical reports on which he intends, or intends to reserve the right, to rely in the action.
- (2) Where no medical report is lodged as required by paragraph (1), the defender may apply by motion for an order specifying a period within which such a report shall be lodged in process.]

PART V

SEX DISCRIMINATION ACT 1975

Causes under section 66 of the Act of 1975

- 36.18. (1) In a cause in which a breach of statutory duty under section 66(1) of the ^{M4}Sex Discrimination Act 1975 (proceedings for act of discrimination) is averred, the sheriff may, of his own motion or on the motion of any party, appoint an assessor.
- (2) An assessor appointed under paragraph (1) shall be a person who the sheriff considers has special qualifications to be of assistance in determining [F7 a cause] referred to in that paragraph.
- (3) In a cause referred to in paragraph (1), the pursuer should send a copy of the initial writ by post by the first class recorded delivery service to the Equal Opportunities Commission.

Textual Amendments

F7 Words in rule 36.18(2) substituted (1.11.1996) by S.I. 1996/2445, para. 3(1)(63)

Marginal Citations

M4 1975 c.65.

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