
 STATUTORY INSTRUMENTS

1978 No. 1804 (S. 159)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of Court Amendment No. 10)
(Induciae) 1978**

Made - - - - 7th December 1978

Coming into Operation 28th December 1978

The Lords of Council and Session under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(a) and of all other powers competent to them in that behalf, do hereby enact and declare:

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 10) (Induciae) 1978 and shall come into operation on 28th December 1978.

(2) The Interpretation Act 1889(b) applies to this Act of Sederunt as it applies to an Act of Parliament.

Extended induciae in actions of declarator of death and minor amendments

2. In the Rules of Court(c)—

(a) in rule 72—

- (i) after the words “the *induciae* shall” where first occurring insert the words “, subject to the provisions of any other rule of court,”;
- (ii) omit paragraph (c);

(b) in rule 75A (added by Act of Sederunt (Rules of Court Amendment No. 9) 1971(d)), substitute for the words “Citation in actions founded on delict” and for paragraph (a) the words “*Service in certain actions founded on delict*—

(1) *Induciae*. In any action in which the Court of Session has jurisdiction over a defender furth of Scotland in proceedings founded on delict then, subject to provisos (a) and (b) in rule 72, the *induciae* in the summons, where the defender is resident in a country outside Europe, shall be 3 weeks after the date of the execution of service in the case of personal service, and 6 weeks after the execution of service in the case of postal service.

(2) *Citation*. In any action in which the Court of Session has jurisdiction over a defender or third party residing furth of Scotland in proceedings founded on delict, service of the summons or where appropriate of the record on the defender or of the third party

(a) 1933 c. 41.

(b) 1889 c. 63.

(c) S.I. 1965/321.

(d) S.I. 1971/1797.

notice on the third party may, without prejudice to any other competent form of service, be effected—

(a) personally; or

(b) by posting in Edinburgh a registered or a recorded delivery letter, and where the defender or third party is resident in a country outside the United Kingdom, by also posting such equivalent letter as is available within that country, addressed to the defender or third party, as the case may be, at his residence or place of business enclosing a full copy of the summons, or of the summons and defences, or of the record as the case may be.”;

and renumber paragraphs (b), (c) and (d), (3), (4) and (5) respectively.

(c) in rule 158 (added by Act of Sederunt (Rules of Court Amendment No. 11) (Consistorial Actions) 1976(a)—

(i) in paragraph (1), after the word “(1)” insert the words “Subject to provisos (a) and (b) in rule 72,”;

(ii) omit paragraph (2);

(d) in rule 188B (added by Act of Sederunt (Rules of Court Amendment No. 3) (Presumption of Death) 1978(b)), add at the end the following paragraph—

“(10) In an action under this rule, subject to provisos (a) and (b) in rule 72, the *induciae* in the summons shall be 28 days after the date of the execution of service.”

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

Edinburgh.
7th December 1978.

G. C. Emslie,
I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt makes provision in relation to actions of declarator of death for extending the period within which defences may be lodged from 14 days to 28 days to allow further time for any necessary investigations to be made. The Act of Sederunt amends the provisions relating to service in actions where jurisdiction is founded on delict by restricting the requirement in relation to postal citation of posting within the country in which the defender or third party is resident to actions in which the defender or third party is resident in a country outside the United Kingdom. The Act of Sederunt also makes certain minor drafting amendments which make no alteration in the existing law.

(a) S.I. 1976/1994.

(b) S.I. 1978/161.

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