
 STATUTORY INSTRUMENTS

1984 No. 920 (S.91)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Amendment of Rules of Court No. 5)
(Intimation in fatal accident cases) 1984**

Made - - - 28th June 1984

Coming into Operation 1st September 1984

The Lords of Council and Session, in exercise of the powers conferred upon them by section 16 of the Administration of Justice Act (Scotland) 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 (Amendment of Rules of Court No. 5) (Intimation in fatal accident cases) 1984 and shall come into operation on 1st September 1984.

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

2. In the Rules of Court(b), —

(a) for rule 75B there is substituted the following rule —

“75B.—(1) This rule applies to any action 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;

(b) in respect of the death of the deceased, by any relative of his.

(2) In this rule, “relative” has the same meaning as in the Damages (Scotland) Act 1976(c).

(3) In any action to which this rule applies, the pursuer shall aver in the summons as appropriate —

(a) that he is the only person with a title to sue the defender in respect of the injuries or death;

(b) that there are other persons having a title to sue the defender in respect of the injuries or death, being the persons specified in the warrant for intimation;

(c) that there are other such persons in respect of whom intimation should be dispensed with on the ground either —

(a) 1933 c.41.

(b) S.I. 1965/321, as amended by S.I. 1976/2020.

(c) 1976 c.13, as amended by 1982 c.53.

- (i) that the pursuer does not know their names or whereabouts and cannot reasonably ascertain them; or
- (ii) that they are not likely to be awarded more than the sum of £200.

(4) In a case where the pursuer makes averments under sub-paragraph (c) of paragraph (3), he shall apply to the Court by motion for an order dispensing with intimation in accordance with those averments.

(5) The Court may in respect of any person specified in a motion enrolled under paragraph (4) grant any such motion or may refuse it with or without conditions (including a condition that such advertisement be made in such manner and in such place and at such times as may be specified in the order), and in doing so shall have regard to —

- (a) the desirability of avoiding multiplicity of actions;
- (b) the expense likely to be incurred in ascertaining the name or the whereabouts of any such person;
- (c) the inconvenience or difficulty of taking steps to ascertain the name or the whereabouts of any such person.

(6) In a case where the pursuer makes averments under sub-paragraph (b) of paragraph (3), a warrant for intimation shall be endorsed on the official printed form of summons in the following terms —

“Warrant to intimate to (name and address) as a person who is believed to have a title to sue the defender in an action based on (the injuries from which the late (name and former address) died) or (the death of the late (name and former address))”

and intimation shall be made to the person specified in the warrant in the form set out in Form 5A or as nearly as may be in that form, together with a copy of the summons.

(7) In a case where at any stage of the proceedings, intimation on any person requires to be made by the pursuer in consequence of —

- (a) an order under paragraph (5);
- (b) an order of the Court made on being informed of the name and whereabouts of any person in respect of whom intimation has been dispensed with under paragraph (3)(c)(i), or on a motion in that behalf at the instance of a party to the action other than the pursuer,

the interlocutor shall include a warrant for intimation, and intimation shall be made by serving the interlocutor on the person or persons named in the warrant for intimation, together with a copy of the summons, or of the open or closed record as the case may be.

(8) Rule 76 shall apply to the execution of a warrant under this rule as it applies to the execution of a warrant under that rule with the substitution for the reference to Form 5 of a reference to Form 5A.

(9) Any person upon whom intimation is made in accordance with this rule may apply to the Court within 14 days after intimation or such longer period as the Court thinks fit to be sisted as an additional pursuer to the action, and on so doing shall lodge in process either —

- (a) a minute craving leave of the Court to be sisted to the action, to adopt the existing grounds of action, and to amend the conclusions, condescendence, and pleas-in-law; or
- (b) a minute craving leave of the Court to be sisted to the action and setting out a separate conclusion, averments and pleas in-law.

(10) On lodging a minute under paragraph (9), the minuter shall intimate the minute to all other parties to the action, who may lodge answers thereto within 14 days after such intimation or such longer period as the Court thinks fit; and the Court may grant, with or without conditions, or refuse, the crave of the minute after such further procedure, if any, as it thinks fit.

(11) If any person upon whom intimation is made in accordance with this rule does not apply to be sisted as an additional pursuer to the action, and subsequently raises a separate action against the same defender in respect of the same injuries or death, and 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.”;

(b) In the Appendix, for Form 5A there is substituted the following Form:—

“Form 5A

Form of intimation to executor or relative in an Action for Damages.

Take notice that an action has been raised at the instance of (name and address) against (name and address) being a person you are believed to have a title to sue in an action based on the injuries from which the late (name and former address) died or on his death; and that you are entitled to be added as an additional pursuer in this action and accordingly you may if you so desire apply to the Court to be so added within 14 days after the expiry of days from the date of service hereof (*or if the warrant is executed at the same time as the citation of the defender* within 14 days after the calling of the summons in Court which will not be earlier than days from the date of service hereof), and in the event of you making such an application you are required to serve notice thereof on all the parties to this action.

A copy of the summons (or open record or closed record) in the action is attached.

[It is proposed to apply to the Court for authority to dispense with intimation to the persons mentioned in paragraph 1 of the summons whose whereabouts are said to be unknown. If you know the whereabouts of any of those persons, you are requested to inform the Deputy Principal Clerk of Session, Court of Session, Edinburgh.]

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this day of (Solicitor for Pursuer)".

Revocation

3. The Act of Sederunt (Rules of Court Amendment No. 12) (Intimation under Damages (Scotland) Act 1976) 1976(a) is revoked.

Emslie,
Lord President,
I.P.D.

Edinburgh.
28th June 1984

EXPLANATORY NOTE

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

This Act of Sederunt makes new provisions for intimation to pursuers having a title to sue the defender in an action of damages arising out of a death by amending rule 75B of the Rules of Court and Form 5A in the Appendix to the Rules and revoking the Act of Sederunt (Rules of Court Amendment No. 12) (Intimation under Damages (Scotland) Act 1976) 1976.

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