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 STATUTORY INSTRUMENTS
 

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**1986 No. 1231 (S. 103)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of Court Amendment No. 7) (Consistorial Causes) 1986**

*Made* - - - - 11th July 1986

*Coming into Operation* 1st September 1986

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933(a), 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 Court Amendment No. 7) (Consistorial Causes) 1986 and shall come into operation on 1st September 1986.

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

*Amendments to the Rules of the Court of Session*

**2.—**(1) Section 3 of Chapter III of the Rules of the Court of Session (consistorial actions)(b) shall be amended as follows.—

(2) In rule 154 (application and interpretation) —

(a) in paragraph (1), for the words from “but not including” to “ordinary actions.”, substitute the words “actions for financial provision after overseas divorce and actions of aliment.”.

(b) in paragraph (3), after the definition of “The Act of 1976”, insert the following definition:—

“The Act of 1985” means the Family Law (Scotland) Act 1985’ (c).

(3) In rule 156 (conclusions)—

(a) after “156”, insert “—(1)”; and

(b) after paragraph (1), insert the following paragraph:—

“(2) It shall be competent in the conclusions to include a conclusion in the following terms:— ‘For such other order as the court may consider appropriate.’”.

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(a) 1933 c.41.

(b) S.I. 1965/321; relevant amending instruments are S.I. 1976/1994, 1977/1621, 1982/1381, 1679 and 1825.

(c) 1985 c.37.

- (4) In rule 160 (intimation), for the words “179 D(4)(c)”, substitute the words “170D(4)(c) and (9)”.
- (5) In rule 170D —
- (a) for the heading after “170D.” substitute the heading —  
*“Applications for financial provision”*;
- (b) in paragraph (1) —
- (i) after “(1)” insert the sub-heading “*Application by pursuer for financial provision.*”;
- (ii) for the words from “section 5(1) of the Act of 1976” to “varying the terms of a settlement,”, substitute the following:—  
 “section 8(1) of the Act of 1985 by the pursuer in an action of divorce for one or more of the following orders:—
- (a) an order for the payment of a capital sum or the transfer of property to him by the other party to the marriage;
- (b) an order for the making of a periodical allowance to him by the other party to the marriage;
- (c) an incidental order within the meaning of section 14(2) of the Act of 1985.”;
- (c) in paragraph (2), for the sub-heading, substitute the sub-heading “*Application by defender for financial provision.*”;
- (d) in paragraph (3), for the words “section 5(3) and (4) of the Act of 1976”, substitute the words “section 8(2), by virtue of section 13(1)(b) or (c), of the Act of 1985”;
- (e) in paragraph 4 —
- (i) for the heading, substitute the sub-heading “*Applications for orders relating to avoidance transactions.*”;
- (ii) in sub-paragraph (a) for the words from “, separation and aliment” to “such settlement or disposition”, substitute the words “under section 18 of the Act of 1985”;
- (iii) in sub-paragraph (b), for the words “the said section 6(1)”, substitute the words “section 18 of the Act of 1985”;
- (iv) in sub-paragraph (b), for the words “settlement or disposition” wherever they occur, substitute the words “transfer of, or transaction involving, property”;
- (v) in sub-paragraph (c), for the words “settlement (or the disposition)” wherever they occur, substitute the words “transfer of [or transaction involving] property”;
- (f) for paragraph (5), substitute the following paragraph:—  
 “(5) *Opposition by defender to claim for financial provision or aliment.* Opposition by a defender to financial provision sought by the pursuer in an action of divorce shall be made in defences.”;
- (g) after paragraph (6), insert the following paragraphs:—  
 “(7) *Subsequent applications for, or variation or recall of, certain orders for financial provision.* An application for an order —

- (a) for variation or recall under section 14(4), of an incidental order under section 8(2), of the Act of 1985;
- (b) setting aside or varying an agreement as to financial provision under section 16 of the Act of 1985; or
- (c) relating to avoidance transactions under section 18 of the Act of 1985 after decree of divorce,

shall be made by minute in the process of the action of divorce.

(8) *Variation of date or method of payment of capital sum or date of transfer of property.* An application under section 12(4) of the Act of 1985 shall be made by motion in the process of the action of divorce; and rule 170B(10) shall apply to a motion under this paragraph as it applies to a motion under rule 170B(10).

(9) *Intimation to creditor.* Where property, in respect of which there is an application for an order for transfer under section 8(2) of the Act of 1985, is subject to a security, there shall be intimation in Form 18E, together with a copy of the pleadings in the application, to the creditor on a warrant for intimation —

- (a) in the case of a summons, endorsed on the summons in the following terms:— “Warrant to intimate to (*name and address*) as a person who is believed to be a creditor of (*name of party*); or
- (b) in any other case, granted by the court.

(10) *Sisting of creditor.*

- (a) A creditor to whom intimation has been given under paragraph (9), may apply to be heard in the cause by way of minute craving leave to be sisted as a party to the cause and making any relevant averments.
- (b) Where a creditor has lodged a minute under sub-paragraph (a), either party to the marriage may lodge answers thereto within such period as the court may allow.

(11) *Actions of declarator of nullity of marriage.* This rule applies to an action of declarator of nullity of marriage as it applies to an action of divorce.”.

(6) After rule 170L (applications after decree in simplified divorce procedure), insert the following rules:—

“Financial provision after overseas divorce or annulment

**170M.** *Application for financial provision*

(1) An application under section 28 or 29A of the Matrimonial and Family Proceedings Act 1984(a) for financial provision after a divorce or annulment in an overseas country shall be made by summons.

- (2) An application for —
  - (a) variation or recall of an order for periodical allowance; or

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(a) 1984 c.42; section 29A was inserted by the Family Law (Scotland) Act 1985 (c.37), Schedule 1, paragraph 12.

- (b) variation of the date or method of payment of a capital sum or the date of transfer of property under section 12(4) of the Act of 1985,

shall be made by motion in the process of the action for financial provision under paragraph (1); and rule 170B(10) shall apply to a motion under this paragraph as it applies to a motion made under rule 170B(10).

- (3) An application for variation or recall of an incidental order within the meaning of section 14(2) of the Act of 1985 shall be made by minute in the process of the action for financial provision under paragraph (1).

Applications relating to aliment

**170N.** *Undefended action of aliment*

(1) In an action of aliment or an application under rule 170R, rule 168 shall not apply and, subject to paragraph (2), rule 89 (decree in absence) shall apply where the defender fails to enter appearance or fails to lodge defences.

(2) Where a motion for decree under paragraph (1) is enrolled, there shall be lodged all documentary evidence of the means of the parties available to the pursuer in support of the amount of aliment sought.

(3) Where the court requires an appearance, the cause shall be put out for hearing as a starred motion on the Motion Roll.

**170P.** *Variation or recall of decree of aliment*

An application to vary or recall a decree of aliment under section 5 of the Act of 1985 shall be made by motion in the process of the action for aliment; and rule 170B(10) shall apply to a motion made under this rule as it applies to a motion made under rule 170B(10).

**170R.** *Variation or termination of agreement on aliment*

An application for variation or termination of an agreement on aliment under section 7(2) of the Act of 1985 shall be made by summons.”.

*Forms*

3. In the Appendix to the Rules of the Court of Session, after Form 18D, insert Form 18E as set out in the Schedule to this Act of Sederunt.

*Emslie,*  
Lord President,  
I.P.D.

Edinburgh,  
11th July 1986.

## SCHEDULE

FORM 18E

rule 170D(9)

**Form of intimation to a person having an interest as a creditor in the transfer of property subject to a security**

IN THE COURT OF SESSION

*in causa*A B (*address*)*Pursuer*

against

C D (*address*)*Defender*To (*name and address*)

## TAKE NOTICE

1. That in an action in the Court of Session, Parliament Square, Edinburgh, of which a copy of the summons [*or defences or record as the case may be*] is attached to this notice of intimation, the pursuer [*or defender*] seeks an order for the transfer of certain property to him [*or her*] under section 8(2) of the Family Law (Scotland) Act 1985.
2. That you may have an interest, in the property for which an order for transfer is sought, as a person having a right in security over that property being (*state property subject to the security*).
3. That the court may not make an order under section 8(2) of the Family Law (Scotland) Act 1985 without the consent of the creditor having a security over the property unless he has been given an opportunity of being heard by the court. Paragraph 4 of this notice of intimation informs you how you may apply to be heard by the court.
4. That you may, if you so desire, apply to the court to be sisted as a party to the action under rule 170D(10)(a) of the Rules of the Court of Session in respect of your interest as a creditor, within            days after the calling of the summons which will not be earlier than            days [*or after the expiry of            days*] from the date of service of this notice of intimation. To do this you must lodge a minute in the process of the action in the Court of Session seeking leave to be sisted as a party and stating the grounds on which you wish to be heard.

Dated this            day of            19

(Signed)  
 [Solicitor for Pursuer *or*  
 Defender],  
 (*Address*).

**YOU ARE ADVISED TO CONSULT A SOLICITOR ABOUT THIS MATTER IMMEDIATELY.**

## EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session in consequence of the coming into force of the Matrimonial and Family Proceedings Act 1984 (paragraph 2(6)) and the Family Law (Scotland) Act 1985 (paragraph 2(2) to (7)).

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