
STATUTORY INSTRUMENTS

1992 No. 88 (S.8)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of the Court of Session
Amendment) (Optional Procedure and Miscellaneous) 1992**

Made - - - - *16th January 1992*

Coming into force - - *10th February 1992*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 5 of the Court of Session Act 1988(1) 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 the Court of Session Amendment) (Optional Procedure and Miscellaneous) 1992 and shall come into force on 10th February 1992.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session(2) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 74(g) (application for recall of diligence before calling)(3), for the words from “The solicitors for the parties” to the word “signet”, substitute the following words:—

“The clerk shall be accompanied by counsel, solicitor or both counsel and solicitor for each party. The solicitor or counsel for the pursuer shall produce to the Lord Ordinary the principal summons bearing the signet.”.

(3) In rule 95(a) (application for commission and diligence for recovery of documents), for the words from “The applicant’s solicitor” to the words “shall also appear”, substitute the following words:—

“The clerk shall be accompanied by counsel or solicitor or both counsel and solicitor for the applicant and for any party who wishes to oppose the application and for the Lord Advocate

(1) 1988 c. 36.

(2) S.I.1965/321; the relevant amending instrument is S.I. 1985/227.

(3) Rule 74(g) was amended by S.I. 1990/705.

if he wishes to oppose the application. The solicitor or counsel for the applicant shall produce to the Lord Ordinary the principal summons bearing the signet.”

(4) In rule 95A(a) (application for order under section 1 of the Administration of Justice (Scotland) Act 1972)(4), for the words from “The applicant’s solicitor” to the words “shall also appear”, substitute the following words:—

“The clerk shall be accompanied by counsel or solicitor or both counsel and solicitor for the applicant and for any party who wishes to oppose the application and for the Lord Advocate if he wishes to oppose the application. The solicitor or counsel for the applicant shall produce to the Lord Ordinary the principal summons bearing the signet.”

(5) In rule 188J (diet roll)(5)—

(a) in paragraph (4) after the word “motions”, insert the words “(other than an application for commission and diligence for the recovery of medical records heard before the first hearing on the Diet Roll)”;

(b) in sub-paragraph (6)(a)(ii) after the word “amendment”, insert the words “to the instance or conclusions of the summons”; and

(c) after sub-paragraph (6)(c), insert the following sub-paragraph:—

“(d) where the court appoints the action to a proof or a proof before answer on the question of liability and quantum of damages it may separate the proof on the question of liability from the proof on quantum of damages.”

(6) In rule 188K (inspection and recovery of documents)(6), for paragraph (1) substitute the following paragraph—

“(1) Without prejudice to rule 188M, within 14 days of the interlocutor pronouncing an order for a proof or proof before answer, each party to the action shall intimate to every other party and lodge in process—

(a) a list of the documents which are, or to the best of his knowledge have been, in his possession or control relating to the matters in issue between them;

(b) a note stating the whereabouts so far as known to him of any such documents which have been but are no longer in his possession.”

(7) In rule 188L (exchange of list of witnesses)(7), in paragraph (1) after the word “party” where it second occurs, insert the words “and lodge in process”.

(8) In the Appendix, in Form 27A(8) in the second article of Condescendence marked “[IV]” after the word “sustained”, insert the words “; and specify every medical practitioner from whom, and hospital or other institution in which, the pursuer or the deceased received treatment in respect of the injuries or disease to which the action relates”.

Revocation

3. In the Act of Sederunt (Rules of the Court of Session Amendment No. 10) (Miscellaneous) 1991(9), in paragraph 2—

(a) sub-paragraph (6),

(b) sub-paragraph (14),

(c) sub-paragraph (30)(c) and (e),

(4) Rule 95A was inserted by S.I. 1972/2021 and amended by S.I. 1986/1955 and 1987/1206.

(5) Rule 18J was inserted by S.I. 1985/227.

(6) Rule 188K was inserted by S.I. 1985/227.

(7) Rule 188L was inserted by S.I. 1985/227.

(8) Form 27A was inserted by S.I. 1985/227.

(9) S.I. 1991/2483.

are revoked.

Edinburgh,
16th January 1992

J.A.D. Hope
Lord President, IPD

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Rules of the Court of Session by making provision in the Optional Procedure in certain actions of reparation for—

- (a) applications for recovery of documents to be made prior to the Diet Roll;
- (b) restricts amendments of the pleadings at the Diet Roll to the instance or conclusions of the summons;
- (c) proof on liability to be dealt with separately from proof on quantum of damages; and
- (d) parties to lodge in process all relevant documents or a note stating their whereabouts if known.

This Act of Sederunt also amends the Rules of the Court of Session by clarifying the rules relating to certain motions by providing expressly that counsel may appear with or without a solicitor.