

2009 No. 387

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 8) (Motions Procedure) 2009**

Made - - - - *5th November 2009*

Coming into force in accordance with paragraph 1(1) and (2)

The Lords of Council and Session, under and by virtue of the powers conferred by section 5 of the Court of Session Act 1988(a), and by virtue 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 No. 8) (Motions Procedure) 2009 and, subject to paragraph (2), comes into force on 1st February 2010.

(2) For the purpose of enabling any direction to be made by the Lord President under Chapter 23 of the Rules of the Court of Session 1994(b), this Act of Sederunt comes into force on 1st December 2009.

(3) This Act of Sederunt is to be inserted in the Books of Sederunt.

Motions procedure in the Outer House

2.—(1) The Rules of the Court of Session 1994 are amended in accordance with the following subparagraphs.

(2) In rule 4.15 (Outer House interlocutors)—

- (a) in paragraph (2), for “paragraph (3)” insert “paragraphs (3) and (3A)”; and
- (b) after paragraph (3) insert—

“(3A) Subject to any direction he may be given by the Lord Ordinary, an assistant clerk of session may sign an interlocutor, other than a final interlocutor, in respect of a motion which is intimated and enrolled in accordance with Part 2 of Chapter 23 and which is not starred; and that interlocutor shall be treated for all purposes as if it had been signed by the Lord Ordinary.”

(3) Before rule 23.1 (interpretation of Chapter 23), insert the heading—

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3), the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45, the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1) and the Judiciary and Courts (Scotland) Act 2008 (asp 6), section 46(3).

(b) S.I. 1994/1443, last amended by S.S.I. 2009/323.

“PART 1
INTRODUCTION”.

(4) After rule 23.1, insert—

“Making of motions

23.1A.—(1) A motion by a party may be—

- (a) made orally at the bar with leave of the court during any hearing of a cause; or
- (b) enrolled in the cause in accordance with the relevant rules.

(2) In paragraph (1)(b), the “relevant rules” are—

- (a) where paragraph (3) applies, Parts 2 and 4 of this Chapter;
- (b) where paragraph (3) does not apply, Parts 3 and 4 of this Chapter.

(3) This paragraph applies—

- (a) where the cause was initiated by summons, is proceeding in the Outer House and is not a commercial action; and
- (b) each party has provided to the Deputy Principal Clerk an email address for the purpose of transacting motion business.

(4) Subject to paragraph (5), an agent representing a party in a cause of the sort mentioned in paragraph (3)(a) must provide to the Deputy Principal Clerk an email address for the purpose of transacting motion business.

(5) An agent who does not have suitable facilities for transacting motion business by email may make a declaration in writing to that effect, which must be—

- (a) sent to the Deputy Principal Clerk; and
- (b) intimated to each of the other parties to the cause.

(6) The Deputy Principal Clerk must maintain a list of the email addresses provided to him for the purpose of transacting motion business, which must be published in up-to-date form on the website of the Scottish Court Service.

(7) The Deputy Principal Clerk must also include on the list maintained under paragraph (6) an email address of the court for the purpose of enrolling motions.

(8) In this rule, “transacting motion business” means—

- (a) intimating and enrolling motions;
- (b) receiving intimation of motions;
- (c) intimating consent or opposition to motions;
- (d) receiving intimation of or opposition to motions.”.

(5) After rule 23.1A (inserted by paragraph (4)), insert—

“PART 2

MOTIONS ETC. INTIMATED AND ENROLLED BY EMAIL

Interpretation of this Part

23.1B.—(1) In this Part—

“court day” means a day on which the Office of Court is open;

“court day 1” means the court day on which a motion is treated as being intimated under rule 23.1C;

“court day 3” means the second court day after court day 1;

“court day 4” means the third court day after court day 1;

“enrolling party” means the party enrolling the motion; and

“receiving party” means a party receiving intimation of the motion from the enrolling party.

(2) In this Part, a reference to a party’s address is a reference to the email address listed for that party’s agent or, as the case may be, that party, in the list maintained under rule 23.1A(6); and a reference to the court’s email address is a reference to the email address included on that list by virtue of rule 23.1A(7).

Intimation of motions by email

23.1C.—(1) Subject to paragraph (2) and any other provision in these Rules, an enrolling party in a cause where—

- (a) appearance has been entered by a defender under rule 17.1(1),
- (b) defences, a minute or answers have been lodged by a party, or
- (c) provision is made for intimation of a motion to a party in accordance with this Part,

shall give intimation of his intention to make such enrolment, and of the terms of the motion, to every such party by sending an email in Form 23.1C to the addresses of every such party.

(2) The requirement under paragraph (1) to give intimation of a motion to a party by email shall not apply where that party—

- (a) having entered appearance, fails to lodge defences within the period for lodging those defences;
- (b) has not lodged answers within the period of notice for lodging those answers; or
- (c) has withdrawn or is deemed to have withdrawn his defences, minute, note or answers, as the case may be.

(3) Subject to rule 23.1J, a motion intimated under this rule shall be intimated not later than 5 p.m. on a court day.

Opposition to motions by email

23.1D.—(1) A receiving party shall intimate any opposition to a motion intimated under rule 23.1C by sending an email in Form 23.1D to the address of the enrolling party.

(2) Subject to paragraph (3) and rule 23.1J, any opposition to a motion under this rule shall be intimated to the enrolling party not later than 5 p.m. on court day 3.

(3) Late opposition to a motion under this rule should be sent to the email address of the court and may only be allowed with the leave of the court, on cause shown.

Consent to motions by email

23.1E. Where a receiving party seeks to consent to a motion intimated under rule 23.1C, the receiving party may intimate such consent by sending an email confirming the consent to the address of the enrolling party.

Enrolling unopposed motions by email

23.1F.—(1) This rule applies where a motion has been intimated under rule 23.1C and no opposition has been intimated under rule 23.1D.

(2) The motion shall be enrolled by the enrolling party not later than 12.30 p.m. on court day 4 by sending an email in Form 23.1C headed “Unopposed Motion” to the email address of the court.

(3) Subject to paragraph (4), a motion enrolled under paragraph (2) shall be determined by the court by 5 p.m. on court day 4.

(4) Where for any reason it is not possible for a motion enrolled under paragraph (2) to be determined by 5 p.m. on court day 4, the clerk of session shall advise the parties or their agents of that fact and shall give reasons.

(5) A motion enrolled under paragraph (2) shall appear in the rolls.

Enrolling opposed motions by email

23.1G.—(1) This rule applies where opposition to a motion has been intimated under rule 23.1D.

(2) The motion shall be enrolled by the enrolling party not later than 12.30 p.m. on court day 4 by sending an email in Form 23.1C headed “Opposed Motion”, together with an attached Form 23.1D to the email address of the court.

(3) Where a motion is enrolled under paragraph (2) the motion shall be heard on the first sederunt day after court day 4, or, if this is not possible, at another date and time convenient to the court and, where possible, to parties.

(4) Where a motion is opposed under this Part, the entry in the rolls in respect of that motion shall be starred.

Issuing of interlocutor by email

23.1H. Where the court pronounces an interlocutor in respect of a motion intimated and enrolled under this Part, the clerk of session shall forthwith email a copy of the interlocutor to the addresses of the enrolling party and every receiving party.

Other periods of intimation etc. under these Rules

23.1J.—(1) Where these Rules otherwise provide for a period of intimation of—

- (a) a motion;
- (b) opposition to a motion; or
- (c) consent to a motion,

that period shall apply, notwithstanding the intimation period referred to in this Part.

(2) Paragraph (1) applies whether or not the intimation period mentioned elsewhere in these Rules is referred to by a specific number of days.

(3) Where—

- (a) every receiving party in a cause consents to a shorter period of intimation; or
- (b) the court shortens the period of intimation,

the enrolling party, when intimating a motion by email under rule 23.1C, may indicate that the period within which opposition to the motion is to be intimated by a receiving party is shortened accordingly; and rule 23.1D(2) shall be read accordingly.

(4) Where paragraph (3) applies, notwithstanding the time periods referred to in rule 23.1F(2), (3) and (4) and rule 23.1G(2) and (3), the motion may be enrolled by the enrolling party, or heard or otherwise determined by the court at an earlier time and date than that which is specified in those rules.

(5) Subject to paragraphs (1) and (2), where a motion is intimated under this Part after the lapse of one year from the date of the last interlocutor in the cause—

- (a) in the application of rule 23.1D, the reference to court day 3 shall be read as a reference to the fourteenth court day after court day 1; and
- (b) in the application of rules 23.1F and 23.1G, references to court day 4 shall be read as references to the fifteenth court day after court day 1.”.

(6) After rule 23.1J (inserted by paragraph (5)), insert the heading—

“PART 3

MOTIONS ETC. INTIMATED AND ENROLLED BY OTHER MEANS”.

(7) In rule 23.2 (enrolment of motions), omit paragraphs (1) and (7).

(8) In rule 23.3 (intimation of motions)—

(a) for paragraph (1)(c) substitute—

“(c) provision is made for intimation of a motion to a party in accordance with this Part.”;

(b) in paragraph (4), after “enrolled” insert “under rule 23.2”; and

(c) in paragraph (5), after “given” insert “under this rule”.

(9) In rule 23.4 (opposition to motions)—

(a) in paragraph (4), after “motion” insert “under this rule”;

(b) in paragraph (5), after “given” where it first appears insert “under this rule”; and

(c) in paragraph (6), after “opposed” insert “under this rule”.

(10) In rule 23.5 (consent to motions), after “consent to a motion” insert “enrolled under rule 23.2”.

(11) In rule 23.6 (hearing of motions), in paragraph (1), after “enrolled” insert “under this Part”.

(12) After rule 23.6, insert the heading—

“PART 4

GENERAL PROVISION RELATING TO MOTIONS”.

(13) After rule 23.14 (appearance by solicitor for certain motions), insert—

“Starred motions

23.15. Where appearance for the party who enrolled the motion is required for a motion, the entry in the rolls in respect of that motion shall be starred.”.

(14) In the appendix, after Form 16.16, insert Form 23.1C and Form 23.1D, set out respectively in Schedules 1 and 2 to this Act of Sederunt.

Savings

3. The Rules of the Court of Session 1994, as they applied immediately before 1st February 2010, continue to have effect in respect of any motions intimated before that date.

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
5th November 2009

SCHEDULE 1

Paragraph 2(14)

Form 23.1C

Rules 23.1C(1), 23.1F(2) and 23.1G(2)

Form of motion by email

Unopposed motion/Opposed motion* (*Delete where not applicable)

To: *(court email address specified by Deputy Principal Clerk)*

1. Case name:-
2. Court case number:-
3. Is the case in court in the next 7 days?:-
4. Agents/party enrolling motion:-
Reference:-
Telephone number:-
Email address:-
5. Enrolling motion on behalf of:-
6. Motion (in brief terms):-
7. Submissions in support of motion (if required):-
8. Date of enrolment of motion:-
9. Intimation made to:
Provided email address(es):-
Additional email address(es) of fee-earner or other person(s) dealing with the case on behalf of a receiving party (if applicable):-
10. Date intimations sent:-
11. Opposition must be intimated to opponent not later than 5 p.m. on:- *(date)*
12. Is motion opposed/unopposed?:-
13. Has consent to the motion been provided?:-
14. Document(s) intimated and lodged with motion:-

SCHEDULE 2

Paragraph 2(14)

Form 23.1D

Rules 23.1D(1) and 23.1G(2)

Form of opposition to motion by email

TO BE INTIMATED TO THE ENROLLING PARTY

1. Case name:-
2. Court case number:-
3. Date of intimation of motion:-
4. Date of intimation of opposition to motion:-
5. Agents/party opposing motion:-
Reference:-
Telephone number:-
Email address:-
6. Opposing motion on behalf of:-
7. Grounds of opposition:-
8. Estimated duration of motion roll hearing:-

EXPLANATORY NOTE

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

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994. It restructures Chapter 23 of the Rules, which makes provision regarding motions procedure in the Court.

The Act of Sederunt inserts a new Part 1 of Chapter 23, setting out the methods for making a motion and the application of the various other Parts within the Chapter.

New rules are inserted as Part 2 of Chapter 23. These rules set out a procedure for (a) intimating and enrolling motions, (b) opposing or consenting to motions, and (c) receiving intimation of such a motion, opposition or consent, by email in certain Outer House causes. The email procedure does not extend to Outer House causes which are commenced by petition or commercial actions. Where each party to such a cause is represented by an agent, the new procedure will apply unless an agent declares to the Deputy Principal Clerk that they do not have suitable facilities for transacting motion business by email.

The Act of Sederunt also makes minor consequential amendments to the existing procedural rules in Chapter 23, which now form Parts 3 and 4 of the Chapter.

Paragraph 3 contains a savings provision in relation to motions intimated before the date on which the Act of Sederunt comes into force.

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