



Court of Session Act 1988

1988 CHAPTER 36

PART II

GENERAL POWERS OF THE COURT IN RELATION TO PROCEDURE

5 Power to regulate procedure etc. by act of sederunt.

The Court shall have power by act of sederunt—

- (a) to regulate and prescribe the procedure and practice to be followed in various categories of causes in the Court or in execution or diligence following on such causes, whether originating in the said Court or brought there by way of appeal, removal, remit, stated case, or other like process, and any matters incidental or relating to any such procedure or practice including (but without prejudice to the foregoing generality) the manner in which, the time within which, and the conditions on which any interlocutor of a Lord Ordinary may be submitted to the review of the Inner House, or any application to the Court, or any thing required or authorised to be done in relation to any such causes as aforesaid shall or may be made or done;
- (b) to prescribe the form of any summons, defence, petition, answer, writ, pleading, extract of a decree or other document whatsoever to be used in, or for the purposes of, any such causes as aforesaid, or in, or for the purposes of, execution or diligence following on such causes and the manner in which, and the person by whom, any such summons, petition, writ, pleading, extract of a decree or document shall be signed or authenticated;
- [^{F1}(ba) to make provision as to the quorum for a Division of the Inner House considering solely procedural matters, and, in the case of an extra Division, to make provision as to which judge is to preside and to sign any judgment or interlocutor pronounced by the extra Division;]
- (c) to prescribe the manner in which, the time within which, and the conditions on which any verdict of a jury may be submitted to the review of the Inner House on any ground set out in section 29 of this Act;
- (d) to regulate the production and recovery of documents;

Status: Point in time view as at 01/06/2009.

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- [^{F2}(da) to regulate the procedure to be followed in proceedings in the Court in connection with the making of orders under sections 12(1) and (6) and 13(2) of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) (“the 2004 Act”);
- (db) to regulate, so far as not regulated by the 2004 Act, the use in any proceedings in the Court of any special measures authorised by virtue of that Act to be used;]
- (e) to provide in any category of causes before the Court, for [^{F3}written statements (including affidavits) and reports, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988, to be received in evidence, on such conditions as may be prescribed, without being spoken to by a witness];
- [^{F4}(ee) to permit a person who is not an advocate or solicitor and is not represented by an advocate or solicitor to transmit, whether orally or in writing, the views of a child to the Court for the purposes of any enactment which makes provision (however expressed) for the Court to have regard to those views;]
- (f) to provide for the payment into Court and the investment or application of sums of money awarded in any action of damages in the Court to a pupil or a minor;
- (g) to regulate the fees of solicitors practising before the Court (other than such fees as the Secretary of State may regulate under or by virtue of section 33 of the ^{M1}Legal Aid (Scotland) Act 1986);
- (h) to regulate the expenses which may be awarded to parties in causes before the Court;
- (i) to regulate the summoning, remuneration, and duties of assessors;
- (j) to fix the ordinary sessions of the Court and to regulate the days on which and times at which the Court shall sit;
- (k) to prescribe the matters with which the vacation judge may deal;
- (l) to make such regulations as may be necessary to carry out the provisions of this Act or of any Act conferring powers or imposing duties on the Court or relating to proceedings therein; and
- (m) to modify, amend or repeal any provision of any enactment including this Act relating to matters with respect to which an act of sederunt may be made under this Act.

Subordinate Legislation Made

- P1** S. 5: power conferred by s. 5 exercised by [S.I. 1991/272](#) and [S.I. 1991/291](#).
s. 5 for other exercises of this power see Index to Government Orders.
- P2** s. 5: power exercised by [S.I. 1991/846](#)
s. 5 power exercised by [S.I. 1991/1157](#), [1991/1158](#)
s. 5 power exercised by [S.I. 1991/1183](#)
s. 5 power exercised by [S.I. 1991/1413](#)
- P3** s. 5 power exercised by [S.I. 1991/1621](#)
S. 5: power exercised by [S.I. 1991/2213](#)
S. 5: power exercised by [S.I. 1991/2483](#)
S. 5: power exercised by [S.I. 1991/2652](#)

Textual Amendments

- F1** S. 5(ba) inserted (1.6.2009) by [Judiciary and Courts \(Scotland\) Act 2008 \(asp. 6\)](#), **ss. 46(3)**, 76; [S.S.I. 2008/192](#), **art. 2**, Sch.

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- F2** S. 5(da)(db) inserted (1.4.2005 for specified purposes, 30.11.2005 for further specified purposes, 1.4.2006 for further specified purposes, otherwise 1.11.2007) by Vulnerable Witnesses (Scotland) Act 2004 (asp. 3), ss. 14(1), 25(1) (with s. 17(1)); S.S.I. 2005/168, art. 2, Sch. (with art. 4); S.S.I. 2005/590, art. 2, Sch. (with art. 4); S.S.I. 2006/59, art. 2, Sch. (with art. 4); S.S.I. 2007/447, art. 3, Sch. (with art. 4)
- F3** Words in s. 5(e) substituted by Civil Evidence (Scotland) Act 1988 (c. 32, SIF 47), ss. 2(2)(3), 10(3)
- F4** S. 5(ee) inserted (1.11.1995) by 1995 c. 36, s. 105(4), Sch. 4 para. 45 (with s. 103(1)); S.I. 1995/2787, art. 3 Sch.

Marginal Citations

- M1** 1986 c. 47.

6 Allocation of business etc. by act of sederunt.

With a view to securing that causes coming before the Court may be heard and determined with as little delay as is possible, and to the simplifying of procedure and the reduction of expense in causes before the Court, the Court shall, in the exercise of the powers conferred on it by section 5 of this Act, provide by act of sederunt—

- (i) for the classification of the causes brought into the Court according to the manner in which they are initiated, and for the institution of (a) an Ordinary Roll; (b) an Admiralty and Commercial Roll; and (c) a Consistorial Roll; and the assignment to the Consistorial Roll of all consistorial causes and to the Ordinary Roll or to the Admiralty and Commercial Roll of all other causes initiated by summons, according to the subject matter of such causes;
- (ii) for the allocation of the causes before the Inner House among the Divisions thereof and of the causes before the Outer House among the Lords Ordinary;
- (iii) for enabling the enforcement of a maritime lien over a ship by an action *in rem* directed against the ship and all persons interested therein without naming them and concluding for the sale of the ship and the application of the proceeds in extinction *pro tanto* of the lien, and for enabling arrestment of the ship on the dependence of such an action, and for the regulation of the procedure in any such action;
- (iv) for enabling the inclusion, in any such action as is mentioned in paragraph (iii) above, of conclusions *in personam* against the registered owners of the vessel, whether their names are or are not known to the pursuer, and the granting of decree in any such action containing such conclusions against any compearing defender;
- (v) for the inclusion in defences to any action of any counter claim arising out of the matters on which the action is based, to the effect of enabling such counter claim to be enforced without a separate action being raised;
- (vi) for enabling trustees under any trust deed to obtain the direction of the Court on questions relating to the investment, distribution, management or administration of the trust estate, or the exercise of any power vested in, or the performance of any duty imposed on, the trustees notwithstanding that such direction may affect contingent interests in the trust estate, whether of persons in existence at, or of persons who may be born after, the date of the direction;
- (vii) for enabling arrestment *ad fundandam jurisdictionem* to proceed on a warrant contained in the summons in like manner as arrestment on the dependence of the action.

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7 Fees on remit to accountants etc.

The Court shall have power to regulate from time to time the fees which shall be payable to any accountant or person of skill to whom any remit is made in the course of any judicial proceedings before the Court.

8 Rules Council.

- (1) The Rules Council established under section 18 of the ^{M2}Administration of Justice (Scotland) Act 1933 shall continue and shall consist of the Lord President *ex officio*, two other judges of the Court to be appointed by the Lord President, five members of the Faculty of Advocates to be appointed by the Faculty, and five solicitors, of whom not less than two shall be solicitors practising before the Court, to be appointed by the Council of the Law Society of Scotland.
- (2) The members of the Rules Council, other than the Lord President, shall, so long as they retain the respective qualifications set out in subsection (1) above, hold office for three years and be eligible for reappointment.
- (3) Any vacancy in the membership of the Rules Council occurring by death, resignation, or other cause prior to the expiry of three years from the date of appointment of the member whose office is so vacated shall be filled by the appointment by the person or body by whom that member was appointed of another person possessing the same qualification:

Provided that any person appointed in pursuance of this subsection to fill a vacancy shall remain a member of the council only until the expiry of three years from the date of the appointment of the member whose office is so vacated.

- (4) The Rules Council may from time to time frame rules regarding any of the matters relating to the Court, being matters which the court is empowered to regulate by act of sederunt, and shall submit any rules so framed to the Court, and the Court shall consider such rules and, if approved, embody them (with or without amendment) in an act of sederunt.
- (5) At any meeting of the Rules Council seven members shall form a quorum.

Marginal Citations

M2 1933 c. 41.

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