
STATUTORY INSTRUMENTS

1992 No. 249

**Act of Sederunt (Amendment of Ordinary Cause,
Summary Cause and Small Claim Rules) 1992**

Amendment of Ordinary Cause Rules

2.—(1) The Ordinary Cause Rules shall be amended in accordance with the following subparagraphs.

(2) After rule 9(2A) (citation where time to pay direction)(1), insert the following paragraph—

“(2B) In a summary application in which a time to pay direction under the Debtors (Scotland) Act 1987 may be applied for by the respondent, citation shall be given as nearly as may be in accordance with Form C3 set out in the Appendix to this Schedule and in any other summary application shall be given as nearly as may be in accordance with Form C4 set out in the Appendix to this Schedule.”.

(3) In rule 10(3) (service within Scotland by officer of court), for the word “If”, substitute the words “Except where rule 111 applies and has been complied with, if”

(4) In rule 15 (postal citation), substitute for paragraph (2) the following paragraph—

“(2) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882(2), where service is by post the period of notice shall run from the beginning of the day next following the date of posting.”.

(5) In rule 33 (notice of intention to defend), after the word “Schedule”, insert the words “and shall at the same time intimate the lodging of that notice to the pursuer”.

(6) After rule 50 (third party notice), insert the following rule—

“PARTY MINUTER PROCEDURE

Party minuter

50A.—(1) Any person who has not been called as a defender or third party may apply by minute to the sheriff for leave to enter a process as a party minuter and to lodge defences.

(2) An application under this rule shall specify—

- (a) the applicant’s title and interest to enter the process; and
- (b) the grounds of the defence which he proposes to state.

(3) On the lodging of a minute under this rule, the sheriff shall appoint a date for hearing the minute; and the applicant shall forthwith serve a copy of the minute and of the order for a hearing on the parties to the cause.

(4) After hearing the applicant and any party to the cause, the sheriff may, if he is satisfied that the applicant has shown title and interest to enter the process, grant the applicant leave to enter the process as a party minuter and to lodge defences and may make such order as to expenses or otherwise as he considers appropriate.

(1) Rule 9 (2A) was inserted by S.I.1988/1978.

(2) 45 & 46 Vict. c.77; rule 59 was amended by S.I. 1984/255 and 1986/1230.

- (5) Where an application under this rule is made after the closing of the record, the sheriff—
- (a) shall only grant leave under paragraph (4) if he is satisfied as to the reason why earlier application was not made; and
 - (b) may make such further order as to expenses or otherwise as he considers appropriate.”.
- (7) After rule 59 (decree by default)(2), insert the following rule—

“Summary decree

59A.—(1) This rule applies to any cause other than—

- (a) a consistorial action;
- (b) an action of multiplepinding; or
- (c) an action under the Presumption of Death (Scotland) Act 1977(3).

(2) A pursurer may, at any time after the defender has lodged defences, apply by written motion to the court—

- (a) to grant decree in terms of all or any of the craves of the initial writ;
- (b) to pronounce an interlocutor sustaining or repelling a plea-in-law; or
- (c) to dispose of the whole or part of the subject matter of the action,

on the ground that there is no defence to the action or a part of it disclosed in the defences.

(3) A motion under this rule shall be intimated to all other parties to the cause on a period of notice of 14 days.

(4) After hearing a motion under this rule, the sheriff may, if he is satisfied that there is no defence to the action or to any part of it to which the motion relates—

- (a) grant summary decree against the defender in terms of the motion in whole or in part; or
- (b) order any party or a partner, director, officer or office bearer of any party—
 - (i) to produce any document or article; or
 - (ii) to lodge an affidavit or affidavits in support of any averment of fact made in the pleadings or at the hearing of the motion.

(5) Notwithstanding the grant or refusal of a motion under this rule a further motion under this rule may be made by the pursuer on cause shown by reason of a change of circumstances.

(6) Where—

- (a) a defender has lodged a counter-claim; or
- (b) a defender or third party has made a claim against another defender or against a third party, who has lodged defences or answers,

he may apply by motion in accordance with this rule for summary decree on that counterclaim or claim or part of it, on the ground that the other party has no defence to it; and the terms of paragraphs (1) to (5) of this rule shall apply to a motion by a defender or third party as they apply to a motion by a pursuer.”.

(8) Renumber rule 59A (late appearance by defender in actions of divorce and of separation)(4) as rule 59B.

(2) 45 & 46 Vict. c.77; rule 59 was amended by S.I. 1984/255 and 1986/1230.

(3) 1977 c. 77.

(4) Rule 59A was substituted by S.I. 1986/1230.

(9) In rule 98(1) (objection to auditor’s report), between the word “expenses” and the word “is” where they occur on the first line insert the words “awarded in any cause”.

(10) In rule 138 (citation in simplified divorce procedure), for paragraph (5) substitute the following paragraph—

“(5) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882, where service is by post the period of notice shall run from the beginning of the day next following the date of posting.”.

(11) In the Appendix—

- (a) in Form B2, omit the words “, under certification of being held as confessed”;
- (b) after Form C2(5), insert Forms C3 and C4 set out in Schedule 1 to this Act of Sederunt; and
- (c) in Form E(6), below the word “Advertisement” insert the words “Notice to [C.D.]”.

(5) Form C2 was inserted by S.I. 1988/1978.
(6) Form E was amended by S.I. 1986/1230.