

SCHEDULE 2

THE RULES OF THE COURT OF SESSION 1994

Initiation and progress of proceedings

CHAPTER 24

AMENDMENT OF PLEADINGS

Powers of court

24.1.—(1) In any cause the court may, at any time before final judgment, allow an amendment mentioned in paragraph (2).

(2) Paragraph (1) applies to the following amendments:—

- (a) an amendment of a principal writ which may be necessary for the purpose of determining the real question in controversy between the parties, notwithstanding that in consequence of such amendment—
 - (i) the sum sued for in a summons is increased or restricted; or
 - (ii) a different remedy from that originally concluded for or craved is sought;
- (b) an amendment which may be necessary—
 - (i) to correct or supplement the designation of a party to the cause;
 - (ii) to enable a party who has sued or has been sued in his own right to sue or be sued in a representative capacity;
 - (iii) to enable a party who has sued or has been sued in a representative capacity to sue or be sued in his own right or in a different representative capacity;
 - (iv) to add the name of an additional pursuer, a petitioner or person whose concurrence is necessary;
 - (v) where the cause has been commenced or presented in the name of the wrong person, or it is doubtful whether it has been commenced or presented in the name of the right person, to allow any other person to be sisted in substitution for, or in addition to, the original person; or
 - (vi) to direct conclusions against a third party brought into an action under Chapter 26 (third party procedure);
- (c) an amendment of a condescendence, defences, answers, pleas-in-law or other pleadings which may be necessary for determining the real question in controversy between the parties; and
- (d) where it appears that all parties having an interest have not been called or that the cause has been directed against the wrong person, an amendment inserting in the instance of the principal writ an additional or substitute party and directing existing or additional conclusions or craves, averments and pleas-in-law against that party.

Applications to amend

24.2.—(1) Subject to paragraph (2), a party seeking to amend shall lodge a minute of amendment in process setting out his proposed amendment and, at the same time, enrol a motion—

- (a) to allow the minute of amendment to be received; and
- (b) to allow—

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- (i) amendment in terms of the minute of amendment and, where appropriate, to grant an order under rule 24.3(1) or (2) (service of amended pleadings); or
 - (ii) in any other case, where the minute of amendment may require to be answered, any other party to lodge answers within a specified period or such period as the court thinks fit.
- (2) Where the amendment proposed is of a minor and formal nature, the party seeking to amend may enrol a motion to allow amendment in the terms set out in the motion.
- (3) Where the court has pronounced an interlocutor allowing a minute of amendment to be received and answered, then—
- (a) where answers have been lodged, parties may adjust the minute of amendment and answers within 4 weeks after the date on which answers were lodged or, where more than one set of answers have been lodged, the latest date on which answers were lodged;
 - (b) the party who has lodged the minute of amendment shall—
 - (i) where answers have been lodged, within 14 days after the expiry of the period for adjustment of the minute of amendment and answers or any continuation of it, or
 - (ii) where no answers have been lodged, within 14 days after the expiry of the period for lodging answers or any prorogation of it,enrol a motion to amend the writ or other pleadings in terms of the minute of amendment and answers (if any) or for other further procedure, as the case may be.
- (4) Where a party fails to enrol a motion under paragraph (3)(b), the court shall appoint the cause to be put out on the By Order Roll and, having heard parties on that roll, may—
- (a) if moved to do so, allow the amendment;
 - (b) make such order as to further procedure as it thinks fit; and
 - (c) in any event, make such order in respect of expenses as it thinks fit.
- (5) Where a party to a cause before the Inner House enrolls a motion to amend a record in terms of a minute of amendment and answers (if any), he shall at the same time enrol for an order for further procedure.

Service of amended pleadings

- 24.3.—**(1) In an undefended action where no appearance has been entered or in an unopposed petition or note, unless the amendment is formal in character, the court shall—
- (a) order that a copy of the principal writ as amended be served on a specified person; and
 - (b) allow that person to lodge defences or answers, as the case may be, within such period as the court thinks fit.
- (2) Where an amendment under rule 24.1(2)(d) (all parties not, or wrong person, called) has been made—
- (a) the court shall order that a copy of the pleadings as so amended be served by the party who made the amendment on that additional or substitute party with a notice in Form 24.3 specifying the date by which defences or answers, as the case may be, must be lodged; and
 - (b) the party who made the amendment shall lodge in process—
 - (i) a copy of the pleadings as amended;
 - (ii) a copy of the notice mentioned in sub-paragraph (a);
 - (iii) a copy of the interlocutor ordering service; and
 - (iv) a certificate of service.

(3) When paragraph (2) has been complied with, the cause as so amended shall proceed in every respect as if that party had originally been made a party to the cause.

Expenses and conditions of amendment

24.4. The court shall find the party making an amendment liable in the expenses occasioned by the amendment unless it is shown that it is just and equitable that the expenses occasioned by the amendment should be otherwise dealt with, and may attach such other conditions as it thinks fit.

Effect of amendment on diligence

24.5. Where an amendment has been allowed, the amendment shall—

- (a) not validate diligence used on the dependence of a cause so as to prejudice the rights of creditors, of the party against whom the diligence has been executed, who are interested in defeating such diligence; and
- (b) preclude any objection to such diligence stated by a party or any person by virtue of a title acquired or in right of a debt contracted by him subsequent to the execution of such diligence.