
STATUTORY INSTRUMENTS

1998 No. 890

Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) 1998

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994⁽¹⁾ shall be amended in accordance with the following sub-paragraphs.

(2) In rule 6.2 (fixing and allocation of diets in Outer House)—

(a) for paragraphs (5) to (12) substitute—

“(5) When a party enrolls for a proof to be allowed or issues to be approved in a cause depending before the Outer House he shall include in the enrolled motion his estimate of the likely duration of the proof or jury trial and request that the diet be allocated accordingly.

(6) If any other party considers that the estimate so included is too low, he shall record upon the enrolled motion his own estimate.

(7) On such papers (whether or not the closed record) as are transmitted to the Keeper of the Rolls for the purpose of his allocating the diet, the clerk of court shall note the estimate provided in pursuance of paragraph (5) unless a higher estimate is recorded under paragraph (6), in which case the note shall only be of the higher (or as the case may be the highest) estimate so recorded; and the Keeper of the Rolls shall allocate the diet of proof or jury trial accordingly and give written intimation of it to each party.”.

(3) For rule 6.3 substitute—

“Allocation of diets in Inner House

6.3.—(1) This rule applies to the allocation of diets in the Inner House.

(2) When a party enrolls for a cause depending before the Inner House to be appointed to the Summar Roll for hearing he shall include in the enrolled motion his estimate of the likely duration of the hearing and request that the diet be allocated accordingly.

(3) If any other party considers that the estimate so included is too low, he shall record upon the enrolled motion his own estimate.

(4) On such papers (whether or not the reclaiming print) as are transmitted to the Keeper of the Rolls for the purpose of his allocating the diet, the clerk of court shall note the estimate provided in pursuance of paragraph (2) unless a higher estimate is recorded under paragraph (3), in which case the note shall only be of the higher (or as the case may be of the highest) estimate so recorded; and the Keeper of the Rolls shall allocate the diet for the hearing accordingly and give written intimation of it to each party.

(5) Not less than five weeks before the hearing of the cause on the Summar Roll, the Keeper of the Rolls shall put the cause out on the By Order Roll before a Division of the Inner House.

(6) At a hearing on the By Order Roll under paragraph (5), the parties shall—

(1) S.I.1994/1443; relevant amending instruments are S.I. 1995/1396, S.I. 1996/1756.

- (a) advise the court whether or not the hearing on the Summar Roll is to proceed; and
- (b) where it is to do so, provide the court with a re-assessment of its likely duration.”.

(4) In rule 13.10(1) (application to loose, restrict or recall an arrestment or to recall, in whole or in part, an inhibition), for the words “mentioned in rule 13.6(c)” substitute “such as is mentioned in sub-paragraphs (i) to (iii) of rule 13.6(c) (but irrespective of whether any warrant was inserted in the summons)”.

(5) In rule 14.3 (applications to be made by petition in the Inner House), paragraphs (h) and (i) shall be omitted.

(6) In Chapter 22 (making up and closing records)—

- (a) for rules 22.1 to 22.3(4) substitute—

“Making up open record

22.1 –

- (1) Subject to any other provision in these rules—
 - (a) where defences have been lodged, the pursuer in an action shall, within fourteen days after the date on which the time for lodging defences expired or on which the defences were lodged (whichever date was the earlier); or
 - (b) where in a cause a party is ordered by the court to make up an open record he shall within such period as is specified by the court,

lodge two copies of the open record in process; and on being given, in accordance with rule 22.2(1), a date for the commencement of the adjustment period and a date on which it shall close, he shall forthwith send not less than four copies of the open record (endorsed in pursuance of that rule) to every other party.

(2) Where the pursuer, petitioner, noter or minuter, as the case may be, fails to comply with the requirements of paragraph (1), the defender or other party may apply by motion for decree of dismissal.

(3) An open record shall consist of the pleadings of the parties and the interlocutors pronounced in the action or cause.

Adjustment

22.2 –

(1) On an open record being lodged in process the Assistant Clerk of Session shall endorse it, and the interlocutor sheet, with a stamp so as to show the date of lodging, a date on which the adjustment period shall commence (which shall be a date determined by the Deputy Principal Clerk of Session, being ordinarily the first Wednesday which occurs at least three days after the date of lodging but which may be such later date as the Deputy Principal Clerk of Session considers appropriate) and a date on which that period shall end and the record shall close (which shall be the date eight weeks after that on which the adjustment period commences); but this paragraph is without prejudice to paragraph (3).

(2) During the adjustment period parties may adjust their respective pleadings and shall intimate any such adjustments to one another.

(3) At any time during the adjustment period the court may, on the motion of any party, pronounce an interlocutor—

- (a) closing the record; or
- (b) extending the period of adjustment to such date as the court thinks fit, on which date the record shall close.

(4) On enrolling a motion under paragraph (3), a party shall lodge in process a copy of the open record (endorsed in pursuance of paragraph (1)) showing the adjustments, if any, as at the date of enrolment.

(5) An endorsement in pursuance of paragraph (1) may be corrected or altered by the Deputy Principal Clerk of Session at any time before the date for the time being shown in the endorsement as the date on which the record shall close.

(6) An endorsement which cannot be corrected or altered under paragraph (5) may, on cause shown, be corrected by the Lord Ordinary at any time.

Closing record

22.3 –

(1) The pursuer shall, within four weeks after the date on which the record is closed—

(a) send not less than six copies of the closed record to the defender and to every other party; and

(b) lodge three copies of the closed record in process,

and if there is failure to do so the defender or any other party may apply by motion for decree of dismissal.

(2) A closed record shall consist of the pleadings of the parties and the interlocutors pronounced in the action or cause (endorsed in pursuance of rule 22.2(1)).”; and

(b) in rule 22.3(5), for the words “paragraph (2)” substitute “paragraph (1)(b)”.

(7) In rule 37.4 (which lists certain rules relating to proofs which apply also in relation to jury trials) the words “rule 36.6 (notices to admit and notices of non-admission)” and “rule 36.11 (recording of evidence)” shall be omitted.

(8) After rule 37.5 insert—

“Recording of proceedings at jury trial

37.5A.—(1) Subject to any other provision in these Rules, proceedings at a jury trial shall be recorded by—

(a) a shorthand writer to whom the oath *de fidei administratione officii* has been administered on his appointment as a shorthand writer in the Court of Session; or

(b) tape recording or other mechanical means approved by the Lord President.

(2) In paragraph (1), “the proceedings” means the whole proceedings including, without prejudice to that generality—

(a) discussions—

(i) with respect to any challenge of a juror; and

(ii) on any question arising in the course of the trial;

(b) the decision of the Lord Ordinary on any matter referred to in sub-paragraph (a);

(c) the evidence led at the trial;

(d) the Lord Ordinary’s charge to the jury;

(e) the speeches of counsel or agents;

(f) the verdict of the jury; and

(g) any request for a direction to be given under rule 37.7, any hearing in relation to such a request and any direction so given.

(3) A transcript of the record of proceedings shall be made only on the direction of the court; and the cost shall, in the first instance, be borne by the agents for the parties in equal proportions.

(4) Any transcript so made shall be certified as a faithful record of proceedings—

- (a) where the recording was under sub-paragraph (a) of paragraph (1), by whoever recorded the proceedings; and
- (b) where it was under sub-paragraph (b) of that paragraph, by whoever transcribed the record.

(5) The Lord Ordinary may make such alterations to the transcript as appear to him to be necessary after hearing the parties; and, where such alterations are made, he shall authenticate the alterations.

(6) Where a transcript has been so made for the use of the court, copies of it may be obtained by any party from the transcriber on payment of his fee.

(7) Except with leave of the court, the transcript may be borrowed from process only for the purpose of enabling a party to consider whether to reclaim against the interlocutor of the court applying the verdict of the jury or whether to apply for a new trial.

(8) Where a transcript is required for a purpose mentioned in paragraph (7) but has not been directed to be transcribed under paragraph (3), a party—

- (a) may request such a transcript from the shorthand writer, or as the case may be, from a person who might have transcribed the recording had there been such a direction, the cost of the requested transcript being borne by the agent for the requester in the first instance; and
- (b) shall lodge the transcript in process;

and copies of it may be obtained by any party from the transcriber on payment of his fee.”.

(9) In rule 38.4(7) (requirement for leave of commercial judge to reclaim against interlocutor pronounced on the Commercial Roll), for the words “a final interlocutor” substitute “an interlocutor which makes such disposal as is mentioned in rule 38.3(2)”.

(10) In rule 42.1(2) (lodging of account of expenses of process), after sub-paragraph (a) insert—

- “(aa) if he has failed to comply with sub-paragraph (a), lodge such account at any time with leave of the court but subject to such conditions (if any) as the court thinks fit to impose; and”.

(11) In rule 42.13(2) (additional witness fees for skilled persons), for the words “before a proof or jury trial in order to qualify him to give evidence, charges for such investigations and for any attendance at the proof or jury trial” substitute “in order to qualify him to give evidence in a prospective proof or jury trial, charges for such investigations and (if there is a proof or jury trial) for any attendance at it”.

(12) In rule 49.60 (defenders in applications for orders under section 11 of Children (Scotland) Act 1995) paragraph (e) shall be omitted.

(13) In rule 59.1 (applications for letters of arrestment or inhibition)—

(a) in paragraph (1)—

- (i) the word “or” which occurs immediately after sub-paragraph (c) shall be omitted; and
- (ii) after sub-paragraph (d) insert
“; or

(e) Form 59.1-E (inhibition in respect of future or contingent debt)”;

- (b) in paragraph (3), at the beginning insert “Except where the application is in Form 59.1-E,”;
- (c) in paragraph (4), at the beginning insert “Where the application is in any of Forms 59.1-A to 59.1-D,”; and
- (d) after paragraph (4) insert the following paragraphs—

“(4A) Where the application is in Form 59.1-E, it shall be placed before the Lord Ordinary together with any such documents as are mentioned in paragraph (2); and if the Lord Ordinary is satisfied as is mentioned in paragraph (3)—

- (a) he shall sign and date the warrant in the application; and
- (b) the application shall be signeted,

and such signeted application and warrant shall constitute letters of inhibition.

(4B) The decision of the Lord Ordinary as respects an application in Form 59.1-E shall be final and not subject to review.”.

(14) In rule 67.24(2) (duties of curator *ad litem* as respects application for adoption order), in sub-paragraph (p), for the word “social” substitute “racial”.

(15) In each of rules 70.6(2)(d) and 70.10(2)(d) (persons on whom there is to be service of certain petitions), for the words “the reporter to the children’s panel, in the local authority area in which the child resides” substitute “for the area in which the child resides and the Principal Reporter”.

(16) In rule 76.8(2)(c) (applications under paragraph 12 of Schedule 1 to Proceeds of Crime (Scotland) Act 1995), for the word “of”, where it first occurs, substitute “to facilitate the”.

(17) In the appendix—

- (a) omit Forms 6.2 (form for information for fixing and allocation of diet for a hearing in the Outer House) and 6.3 (corresponding form for a hearing in the Inner House);
- (b) in Form 16.5 (form of citation by advertisement), for the words “by (*date on which period of notice expires*)” substitute “not later than six months from the date of publication of this advertisement”; and
- (c) after Form 59.1-D, insert as Form 59.1-E the following—

“Form of letters of inhibition in respect of future or contingent debt

IN THE COURT OF SESSION

Application of (*applicant’s name*) for Letters of Inhibition

My Lords of Council and Session—

1. In a (*describe deed*) dated (*date*), (*debtor’s name, designation and address*) bound himself [or herself or themselves or itself] to pay to (*applicant’s name, designation and address*), (*amount in words and figures and date when, or circumstances in which, amount falls due*).

2. The deed is not yet liquid but the debtor is [*specify* *vergens ad inopiam or in meditatione fugae or other similar grounds*].

3. A copy of the deed is produced with this application.

4. The applicant, therefore, requests your Lordships to grant warrant to inhibit (*debtor’s name*).

According to Justice etc.

(*Signed*)

Solicitor [*or Agent*] for applicant (*Address*)

Warrant to inhibit granted in accordance with the above application.

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

Date:
(Signed)
Lord
(Signet)".