

Act of Sederunt (Rules of the Court of Session 1994) 1994/1443

para. 42A_1 Application and interpretation of this Chapter



Version 2 of 3

22 September 2015 - 29 February 2020

Subjects

Civil procedure

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42A.1.— Application and interpretation of this Chapter

- (1) Subject to paragraph (3), this Chapter applies to actions—
 - (a) proceeding as ordinary actions by virtue of rule 43.1A (actions based on clinical negligence)² or rule 43.5 (motions to dispense with timetable)³;
 - (b) appointed to the procedure in this Chapter under paragraph (2).
- (2) The Lord Ordinary may, after considering the likely complexity of an action and being satisfied that the [...] ⁴ efficient determination of the action would be served by doing so, appoint an action to which Chapter 43 applies (including actions relating to catastrophic injuries) to the procedure in this Chapter.
- (3) Any party to an action may apply by motion to have the action withdrawn from the procedure in this Chapter.
- (4) No motion under paragraph (3) shall be granted unless the court is satisfied that there are exceptional reasons for not following the procedure in this Chapter.
- (5) In this Chapter—

“*personal injuries*” and “*personal injuries action*” have the meanings assigned to them in Rule 43.1(2)⁵;

“*proof*” includes jury trial.

(6) Rule 22.3 (closing record)⁶ does not apply to an action to which this Chapter relates.

]¹

Notes

- 1 Added by Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2013/120 (Scottish SI) rule 2 (May 1, 2013: insertion has effect subject to transitional provisions specified in SSI 2013/120 rule.5)
- 2 Rule 43.1A was inserted by S.S.I. 2007/282 and amended by S.S.I. 2012/126.
- 3 Rule 43.5 was inserted by S.S.I. 2002/570 and amended by 2008/349.
- 4 Words revoked by Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015/227 (Scottish SI) rule 6(2)(a) (September 22, 2015: revocation has effect subject to saving specified in SSI 2015/227 rule 11(1))
- 5 Rule 43.1, last amended by S.S.I. 2011/288.
- 6 Rule 22.3, last amended by S.S.I. 2007/7.

Commentary References

Books

Sch. 2

Civil Procedure and Practice 5th Ed.

Chapter 2 - The Different Courts and Their Rules of Procedure—An Outline

2-17 - Act of Sederunt (Rules of the Court of Session 1994) 1994 (SI 1994/1443)

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No. 1 of 2013: Personal Injury Actions relating to alleged ground contamination at the Watling Street Development in Motherwell

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Sch. 2(4)(42A)

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Sch. 2(4)(42A) para. 42A.1(6)

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Act of Sederunt (Rules of the Court of Session 1994) 1994/1443

para. 42A_2 Appointment of action to the By Order (Adjustment) Roll



Version 1 of 2

1 May 2013 - 29 February 2020

Subjects

Civil procedure

[

42A.2. Appointment of action to the By Order (Adjustment) Roll

The court shall, no later than 7 days after the date on which the record is closed, appoint the action to the By Order (Adjustment) Roll.

]¹

Notes

- 1 Added by Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2013/120 (Scottish SI) rule 2 (May 1, 2013: insertion has effect subject to transitional provisions specified in SSI 2013/120 rule.5)

Commentary References

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Sch. 2(4)(42A) para. 42A.2

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Act of Sederunt (Rules of the Court of Session 1994) 1994/1443

para. 42A_3 Lodging of closed record etc.



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22 September 2015 - 29 February 2020

Subjects

Civil procedure

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42A.3.— Lodging of closed record etc.

(1) The pursuer must, no later than 7 days before the hearing on the By Order (Adjustment) Roll—

- (a) send a copy of the closed record to the defender and to every other party; and
- (b) lodge three copies of the closed record in process.

(2) A closed record is to consist of the pleadings of the parties and the interlocutors pronounced in the action.

(3) At the same time as lodging the record each party must lodge in process and send to every other party a written statement containing proposals for further procedure which must state—

- (a) whether the party is seeking to have the action appointed to debate or to have the action sent to proof;
- (b) where it is sought to have the action appointed to debate—
 - (i) the legal argument on which any preliminary plea should be sustained or repelled; and
 - (ii) the principal authorities (including statutory provisions) on which the argument is founded;
- (c) where it is sought to have the action appointed to proof—
 - (i) the issues for proof;

- (ii) the names, occupations (where known) and addresses of the witnesses who are intended to be called to give evidence, including the matters to which each witness is expected to speak and the time estimated for each witness;
- (iii) whether any such witness is considered to be a vulnerable witness within the meaning of section 11(1) of the Vulnerable Witnesses (Scotland) Act 2004 and whether any child witness notice under section 12(2) of that Act or any vulnerable witness application under section 12(6) of that Act has been, or is to be, lodged in respect of that witness;
- (iv) the progress made in preparing and exchanging the reports of any skilled persons;
- (v) the progress made in obtaining and exchanging records, particularly medical records;
- (vi) the progress made in taking and exchanging witness statements;
- (vii) the time estimated for proof and how that estimate was arrived at;
- (viii) any other progress that has been made, is to be made, or could be made in advance of the proof;
- (ix) whether an application has been or is to be made under rule 37.1 (applications for jury trial).

]¹

Notes

- 1 Substituted by Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015/227 (Scottish SI) rule 6(2)(b) (September 22, 2015: substitution has effect subject to saving specified in SSI 2015/227 rule 11(1))

Commentary References

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Sch. 2(4)(42A) para. 42A.3(3)(c)(vi)

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Act of Sederunt (Rules of the Court of Session 1994) 1994/1443

para. 42A_4 Hearing on the By Order (Adjustment) Roll



Superseded

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22 September 2015 - 29 February 2020

Subjects

Civil procedure

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42A.4.— Hearing on the By Order (Adjustment) Roll

(1) At the hearing on the By Order (Adjustment) Roll the Lord Ordinary, after considering the written statements lodged by the parties under rule 42A.3(3) and hearing from the parties, is to determine whether the action should be appointed to debate or sent to proof on the whole or any part of the action.

(2) Before determining whether the action should be appointed to debate the Lord Ordinary is to hear from the parties with a view to ascertaining whether agreement can be reached on the points of law in contention.

(3) Where the action is appointed to debate, the Lord Ordinary may order that written arguments on any question of law are to be submitted.

(4) Before determining whether the action should be sent to proof, the Lord Ordinary is to hear from parties with a view to ascertaining—

(a) the matters in dispute between the parties;

(b) the readiness of parties to proceed to proof; and

(c) without prejudice to the generality of subparagraphs (a) and (b)—

(i) whether reports of skilled persons have been exchanged;

(ii) the nature and extent of the dispute between skilled persons;

(iii) whether there are facts that can be agreed between parties, upon which skilled persons can comment;

- (iv) the extent to which agreement can be reached between the parties on the relevant literature upon which skilled persons intend to rely;
- (v) whether there has been a meeting between skilled persons; or whether such a meeting would be useful;
- (vi) whether a proof on a particular issue would allow scope for the matter to be resolved;
- (vii) whether witness statements have been exchanged;
- (viii) whether any party is experiencing difficulties in obtaining precognition facilities;
- (ix) whether all relevant records have been recovered and whether there is an agreed bundle of medical records;
- (x) whether there is a relevant case that is supported by evidence of skilled persons;
- (xi) if there is no evidence of skilled persons to support a relevant case, whether such evidence is necessary;
- (xii) whether there is a relevant defence to any or all of the cases supported by evidence of skilled persons;
- (xiii) if there is no evidence of skilled persons to support a relevant defence, whether such evidence is necessary;
- (xiv) whether causation of some or all of the injuries is the main area of dispute and, if so, what the position of the respective skilled persons is;
- (xv) whether valuations have been, or could be, exchanged;
- (xvi) if valuations have been exchanged showing a significant disparity, whether parties should be asked to provide an explanation for such disparity;
- (xvii) whether a joint minute has been considered;
- (xviii) whether any of the heads of damage can be agreed;
- (ixx) whether any orders would facilitate the resolution of the case or the narrowing of the scope of the dispute;

- (xx) whether a pre-trial meeting should be fixed;
 - (xxi) whether amendment, other than updating, is anticipated; and
 - (xxii) the time required for proof.
- (5) Where the action is sent to proof the Lord Ordinary must—
- (a) fix a date for the hearing of the proof;
 - (b) fix a pre-proof timetable in accordance with rule 42A.5.
- (6) The Lord Ordinary may fix a further hearing on the By Order (Adjustment) Roll—
- (a) on the motion of any party;
 - (b) on the Lord Ordinary's own initiative.
- (7) A further hearing under paragraph (6) may be fixed—
- (a) at the hearing on the By Order (Adjustment) Roll or at any time thereafter;
 - (b) whether or not the action has been appointed to debate or sent to proof.

]¹

Notes

- 1 Substituted by Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015/227 (Scottish SI) rule 6(2)(c) (September 22, 2015: substitution has effect subject to saving specified in SSI 2015/227 rule 11(1))

Commentary References

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Sch. 2(4)(42A) para. 42A.4

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Sch. 2(4)(42A) para. 42A.4(5)

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Sch. 2(4)(42A) para. 42A.4(6)

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Sch. 2(4)(42A) para. 42A.4(7)

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para. 42A_5 Pre-proof timetable

 **Superseded**

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Subjects

Civil procedure

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42A.5.— Pre-proof timetable

(1) Subject to paragraph (4) the pre-proof timetable mentioned in [rule 42A.4(5)(b)]² shall contain provision for the following—

(a) no later than 6 months before the proof—

(i) a date for a procedural hearing;

(ii) the last date for the lodging of a draft valuation and vouchings by the pursuer;

(b) no later than 5 months before the proof, the last date for the lodging of a draft valuation and vouchings by the defender;

(c) no later than 4 months before the proof, the last date for the lodging of witness lists and productions, including a paginated joint bundle of medical records, by the parties;

(d) no later than 3 months before the proof, the last date for the pre-trial meeting;

(e) no later than 2 months before the proof, a date for a further procedural hearing.

[

(2) Rule 43.10(1), (2)(b) and (5) applies to a pre-trial meeting held under this Chapter as it applies to a pre-trial meeting held under Chapter 43.

]³

(3) Prior to the procedural hearing mentioned in subparagraph (1)(e)—

(a) the pursuer shall lodge in process a joint minute of the pre-trial meeting in Form 43.10;

(b) the parties shall lodge in process any other joint minutes.

(4) At any time the Lord Ordinary may, at his own instance or on the motion of a party—

(a) fix a procedural hearing;

(b) vary the pre-proof timetable,

where he considers that the [...] ⁴ efficient determination of the action would be served by doing so.

]¹

Notes

- 1 Added by Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2013/120 (Scottish SI) rule 2 (May 1, 2013: insertion has effect subject to transitional provisions specified in SSI 2013/120 rule.5)
- 2 Words substituted by Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015/227 (Scottish SI) rule 6(2)(d)(i) (September 22, 2015: substitution has effect subject to saving specified in SSI 2015/227 rule 11(1))
- 3 Substituted by Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015/227 (Scottish SI) rule 6(2)(d)(ii) (September 22, 2015: substitution has effect subject to saving specified in SSI 2015/227 rule 11(1))
- 4 Words revoked by Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015/227 (Scottish SI) rule 6(2)(d)(iii) (September 22, 2015: revocation has effect subject to saving specified in SSI 2015/227 rule 11(1))

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Act of Sederunt (Rules of the Court of Session 1994) 1994/1443

para. 42A_6 Power to make orders

 **Superseded**

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Subjects

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42A.6.— Power to make orders

(1) Following the fixing of a hearing under rule 42A.4(6) or 42A.5(4)(a), or the variation of the pre-proof timetable under rule 42A.5(4)(b), the Lord Ordinary may make such orders as the Lord Ordinary thinks necessary to secure the efficient determination of the action.

(2) In particular, the Lord Ordinary may make orders to resolve any matters arising or outstanding from the written statements lodged by parties under rule 42A.3(3) or the pre-proof timetable fixed under rule 42A.4(5)(b).

]¹

Notes

- 1 Added by Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Personal Injury and Remits) 2015/227 (Scottish SI) rule 6(2)(e) (September 22, 2015: insertion has effect subject to saving specified in SSI 2015/227 rule 11(1))

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