**ASSPIC - Guidance Note by PI Administrative Sheriff - motions to sist**

**Introduction**

[1] As there appears to be (i) uncertainty about what can or cannot happen during periods when an action is sisted (e.g. can productions be lodged?) and (ii) a growing tendency for agents to seek short sists (with or without associated variations of the timetable), the court has reviewed practice and offers the following guidance.

**The nature of a sist**

[2] A sist is a halt on the course of an action. Once an action is sisted, no procedural step, however formal, may be undertaken, with the exception of lodging Minutes of Tender and Pursuer’s Offers, unless the sist is recalled on the motion of parties or *ex proprio motu*.

[3] As not even a formal step may be taken, that means that nothing is allowed to happen with the process during a period of sist, with the exception specified in [2].That would include the lodging of steps of process or productions, which will not be permitted.

**Sists in Chapter 36**

[4] Applications to Sist an action in Chapter 36 are regulated by Rule 36.H1, which provides that a sist may only be granted (i) on cause shown and (ii) for a specified period. The purpose of this rule is to vest control over the pace of procedure in the court ensuring that, where appropriate, personal injury actions proceed expeditiously.

[5] A timetable is to be issued when the (first set of) defences are lodged: OCR 36.G1(b).

*Motion to sist made before defences lodged*

[6] The current practice in cases where a NID has been lodged is for the interlocutor sisting the action to (i) specify the date on which the sist expires and (ii) the date by which defences are due, which will normally be about 14 days after the expiry of the sist. This practice will continue.

[7] Any defences lodged after the sist has been granted will be returned to agents for lodging after the sist has expired and by the new due date.

*Motion to sist made after timetable issued*

[6] The timetable is to be treated for all purposes as an interlocutor [36.G1(2)] . Accordingly, a sist will impact a Chapter 36 timetable. This creates the situation whereby, assuming that the timetable dates are not varied, it is likely that the dates by which parties must undertake procedural steps will have passed during the period of sist, even though compliance with them is suspended while the action remains sisted.

[7] When the sist is recalled, the requirements of the timetable immediately become “live” again. That may not be a problem if the relevant date has not been reached, but can be problematic where one or more of the timetable dates have passed.

[8] It appears that agents, anticipating this difficulty, are lodging with the court an increasing number of motions to ‘sist action plus vary timetable’.

[9] An interlocutor which sists the action and varies the timetable is also problematic. If the varied timetable dates are after the sist expiry date, the sist serves no purpose. If one or more of the varied timetable dates are before the sist expiry date, then that simply introduces (i) ambiguity as to what can and cannot be done (e.g. can productions be lodged or not?) and/or (ii) delays, but does not eliminate, the requirement for a motion to vary the timetable.

**The court’s approach**

[10] From the date hereof, the following practice will be applied:

1. motions to ‘sist plus vary timetable’ will not normally be accepted;
2. timetable variations rather than a sist are appropriate where there is a need for more time to deal with something which has a readily identifiable end date (e.g. the production of an expert report);
3. a sist will be considered appropriate in circumstances where, for good reasons, it is not going to be possible to progress an action e.g. a pursuer is to undergo medical treatment, the results of which will not be known for a period measurable in months. In such a situation, a timetable variation to accommodate a lengthy delay is not appropriate;
4. motions to sist once a timetable has been issued should include a motion to discharge the timetable and for a procedural hearing to be fixed for not less than 7 days after expiry of sist. That hearing can of course be discharged by written motion if parties are agreed as to further procedure in which case an appropriate motion should be lodged in terms of 36.H1.

[11] If agents encounter difficulties with the foregoing arrangements, they should be drawn to the attention of the court’s administrative staff

**NB - This note is not a Practice Note and simply sets out a position which will achieve consistency amongst agents ; the court’s administrative staff and judiciary all as discussed at the Personal Injury Users Group. It will be reviewed in the light of experience.**