

2012 No. 126

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 2) (Miscellaneous) 2012**

<i>Made</i>	- - - -	<i>24th April 2012</i>
<i>Laid before the Scottish Parliament</i>		<i>26th April 2012</i>
<i>Coming into force</i>	- -	<i>28th May 2012</i>

The Lords of Council and Session, under and by virtue of the powers conferred by section 5 of the Court of Session Act 1988(a) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation, commencement etc.

- 1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 2) (Miscellaneous) 2012 and comes into force on 28th May 2012.
- (2) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.
- (3) In this Act of Sederunt, “the Rules” means the Rules of the Court of Session 1994(b).

Disposals under petition procedure

- 2.—(1) The Rules are amended in accordance with the following subparagraph.
- (2) After rule 14.9 (unopposed petitions), insert—

“Disposals in petitions

- 14.10.—(1) The court may make such order to dispose of a petition as it thinks fit, whether or not such order was sought in the petition.
- (2) An order referred to in paragraph (1) is any order that could be made if sought in any action or petition.”.

Actions based on clinical negligence

- 3.—(1) The Rules are amended in accordance with the following subparagraph.

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 9; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); and the Judiciary and Courts (Scotland) Act 2008, (asp 6), section 46(3).

(b) S.I. 1994/1443, last amended by S.S.I. 2012/100.

(2) In rule 43.1A (actions based on clinical negligence)(a), in paragraph (6), for “The” substitute “Rules 43.11 (applications for interim payments of damages)(b), 43.12 (adjustment on final decree)(c) and 43.13 (applications for further damages)(d) shall apply, but the”.

Applications for judicial review

4.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In the Appendix, in Form 58.6 (form of petition in application for judicial review)(e), in paragraph 1, for “, *title and interest*” substitute “*and standing*”.

Applications for parental orders under the Human Fertilisation and Embryology Act 2008

5.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In the Appendix, in Form 97.3 (form of petition for parental order under section 54 of the Human Fertilisation and Embryology Act 2008)(f), in paragraph 7, for “other than the female petitioner” substitute “who is not one of the petitioners”.

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
24th April 2012

(a) Rule 43.1A was inserted by S.S.I. 2007/282.
(b) Rule 43.11 was substituted by S.S.I. 2002/570 and amended by S.S.I. 2004/331, 2006/83 and 2010/205.
(c) Rule 43.12 was substituted by S.S.I. 2002/570.
(d) Rule 43.12 was substituted by S.S.I. 2002/570.
(e) Form 58.6 was amended by S.S.I. 2007/548 and S.S.I. 2008/349.
(f) Form 97.3 was inserted by S.S.I. 2010/136.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994.

Paragraph 2 inserts a new rule into Chapter 14 (petitions) regarding the disposals which the court may make where a petition is presented to it. The rule provides that the court may make such order as it sees fit to dispose of a petition, being any order which could be sought in any action or petition. The rule also provides that such an order may be made by the court whether or not it was sought in the petition. This mirrors the options of the court in disposing of a petition for judicial review under rule 58.4(b).

Paragraph 3 amends the rule on actions based on clinical negligence which are raised as ordinary actions (rule 43.1A). The amendment has the effect that certain rules in Chapter 43 (actions of damages for, or arising from, personal injuries) apply in relation to such actions. The applicable rules are rule 43.11 (applications for interim payments of damages), rule 43.12 (adjustment on final decree) and rule 43.13 (applications for further damages).

Paragraph 4 amends Form 58.6, the form of petition in an application for judicial review, to reflect the decision of the Supreme Court in *AXA General Insurance Limited and others v. The Lord Advocate and others* 2011 UKSC 46 in relation to the appropriate test of standing in applications to the Court of Session's supervisory jurisdiction in the field of public law.

Paragraph 5 makes a minor amendment to the form of petition for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008, to reflect the scope of possible petitioners under that provision.

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