

## CHAPTER 23

### MOTIONS

#### PART 1

#### INTRODUCTION

##### Interpretation of this Chapter

**23.1.** In this Chapter, unless the context otherwise requires, "party" includes any person entitled under these Rules to enrol a motion or to whom intimation of a motion is required to be made by these Rules or the court.

##### Making of motions

**23.1A.**-(1) A motion by a party may be -

- (a) made orally at the bar with leave of the court during any hearing of a cause; or
- (b) enrolled in the cause in accordance with the relevant rules.

(2) In paragraph (1)(b), the "relevant rules" are-

- (a) where paragraph (3) applies, Parts 2 and 4 of this Chapter;
- (b) where paragraph (3) does not apply, Parts 3 and 4 of this Chapter.

(3) This paragraph applies –

- (a) where the cause was initiated by summons, is proceeding in the Outer House and is not a commercial action; and
- (b) each party has provided to the Deputy Principal Clerk an email address for the purpose of transacting motion business.

(4) Subject to paragraph (5), an agent representing a party in a cause of the sort mentioned in paragraph (3)(a) must provide to the Deputy Principal Clerk an email address for the purpose of transacting motion business.

(5) An agent who does not have suitable facilities for transacting motion business by email may make a declaration in writing to that effect, which must be –

- (a) sent to the Deputy Principal Clerk; and
- (b) intimated to each of the other parties to the cause.

(6) The Deputy Principal Clerk must maintain a list of the email addresses provided to him for the purpose of transacting motion business, which must be published in up-to-date form on the website of the Scottish Court Service.

(7) The Deputy Principal Clerk must also include on the list maintained under paragraph (6) an email address of the court for the purpose of enrolling motions.

(8) In this rule, "transacting motion business" means -

- (a) intimating and enrolling motions;
- (b) receiving intimation of motions;
- (c) intimating consent or opposition to motions;
- (d) receiving intimation of or opposition to motions.

## PART 2

### MOTIONS ETC. INTIMATED AND ENROLLED BY EMAIL

#### Interpretation of this Part

**23.1B.**-(1) In this Part -

- “court day” means a day on which the Office of Court is open;
- “court day 1” means the court day on which a motion is treated as being intimated under rule 23.1C;
- “court day 3” means the second court day after court day 1;
- “court day 4” means the third court day after court day 1;
- “enrolling party” means the party enrolling the motion; and
- “receiving party” means a party receiving intimation of the motion from the enrolling party.

(2) In this Part, a reference to a party’s address is a reference to the email address listed for that party’s agent or, as the case may be, that party, in the list maintained under rule 23.1A(6); and a reference to the court’s email address is a reference to the email address included on that list by virtue of rule 23.1A(7).

#### Intimation of motions by email

**23.1C.**-(1) Subject to paragraph (2) and any other provision in these Rules, an enrolling party in a cause where -

- (a) appearance has been entered by a defender under rule 17.1(1),
- (b) defences, a minute or answers have been lodged by a party, or
- (c) provision is made for intimation of a motion to a party in accordance with this Part,

shall give intimation of his intention to make such enrolment, and of the terms of the motion, to every such party by sending an email in Form 23.1C to the addresses of every such party.

(2) The requirement under paragraph (1) to give intimation of a motion to a party by email shall not apply where that party -

- (a) having entered appearance, fails to lodge defences within the period for lodging those defences;
- (b) has not lodged answers within the period of notice for lodging those answers; or
- (c) has withdrawn or is deemed to have withdrawn his defences, minute, note or answers, as the case may be.

(3) Subject to rule 23.1J, a motion intimated under this rule shall be intimated not later than 5 p.m. on a court day.

#### Opposition to motions by email

**23.1D.**-(1) A receiving party shall intimate any opposition to a motion intimated under rule 23.1C by sending an email in Form 23.1D to the address of the enrolling party.

(2) Subject to paragraph (3) and rule 23.1J, any opposition to a motion under this rule shall be intimated to the enrolling party not later than 5 p.m. on court day 3.

(3) Late opposition to a motion under this rule should be sent to the email address of the court and may only be allowed with the leave of the court, on cause shown.

### **Consent to motions by email**

**23.1E.** Where a receiving party seeks to consent to a motion intimated under rule 23.1C, the receiving party may intimate such consent by sending an email confirming the consent to the address of the enrolling party.

### **Enrolling unopposed motions by email**

**23.1F.**-(1) This rule applies where a motion has been intimated under rule 23.1C and no opposition has been intimated under rule 23.1D.

(2) The motion shall be enrolled by the enrolling party not later than 12.30 p.m. on court day 4 by sending an email in Form 23.1C headed “Unopposed Motion” to the email address of the court.

(3) Subject to paragraph (4), a motion enrolled under paragraph (2) shall be determined by the court by 5 p.m. on court day 4.

(4) Where for any reason it is not possible for a motion enrolled under paragraph (2) to be determined by 5 p.m. on court day 4, the clerk of session shall advise the parties or their agents of that fact and shall give reasons.

(5) A motion enrolled under paragraph (2) shall appear in the rolls.

### **Enrolling opposed motions by email**

**23.1G.**-(1) This rule applies where opposition to a motion has been intimated under rule 23.1D.

(2) The motion shall be enrolled by the enrolling party not later than 12.30 p.m. on court day 4 by sending an email in Form 23.1C headed “Opposed Motion”, together with an attached Form 23.1D to the email address of the court.

(3) Where a motion is enrolled under paragraph (2) the motion shall be heard on the first sederunt day after court day 4, or, if this is not possible, at another date and time convenient to the court and, where possible, to parties.

(4) Where a motion is opposed under this Part, the entry in the rolls in respect of that motion shall be starred.

### **Issuing of interlocutor by email**

**23.1H.** Where the court pronounces an interlocutor in respect of a motion intimated and enrolled under this Part, the clerk of session shall forthwith email a copy of the interlocutor to the addresses of the enrolling party and every receiving party.

### **Other periods of intimation etc. under these Rules**

**23.1J.**—(1) Where these Rules otherwise provide for a period of intimation of -

- (a) a motion;
- (b) opposition to a motion; or
- (c) consent to a motion,

that period shall apply, notwithstanding the intimation period referred to in this Part.

(2) Paragraph (1) applies whether or not the intimation period mentioned elsewhere in these Rules is referred to by a specific number of days.

(3) Where -

- (a) every receiving party in a cause consents to a shorter period of intimation; or
- (b) the court shortens the period of intimation,

the enrolling party, when intimating a motion by email under rule 23.1C, may indicate that the period within which opposition to the motion is to be intimated by a receiving party is shortened accordingly; and rule 23.1D(2) shall be read accordingly.

(4) Where paragraph (3) applies, notwithstanding the time periods referred to in rule 23.1F(2), (3) and (4) and rule 23.1G(2) and (3), the motion may be enrolled by the enrolling party, or heard or otherwise determined by the court at an earlier time and date than that which is specified in those rules.

(5) Subject to paragraphs (1) and (2), where a motion is intimated under this Part after the lapse of one year from the date of the last interlocutor in the cause -

- (a) in the application of rule 23.1D, the reference to court day 3 shall be read as a reference to the fourteenth court day after court day 1; and
- (b) in the application of rules 23.1F and 23.1G, references to court day 4 shall be read as references to the fifteenth court day after court day 1.

### **PART 3**

#### **MOTIONS ETC. INTIMATED AND ENROLLED BY OTHERS MEANS**

##### **Enrolment of motions**

##### **23.2**

(2) A motion may be enrolled-

- (a) by lodging it in Form 23.2, with any document which requires to be lodged with or which accompanies the motion, at the appropriate department of the Office of Court during its normal office hours;
- (b) subject to paragraph (3), by posting it in Form 23.2, with any document which requires to be lodged with or which accompanies the motion, to the appropriate department of the Office of Court; or
- (c) subject to paragraph (4), by sending it by facsimile transmission in Form 23.2, with any document which requires to be lodged with or which accompanies the motion, to the appropriate department of the Office of Court.

(3) A motion may not be enrolled under paragraph (2)(b) where a fee is payable with that motion unless-

- (a) the motion is enrolled by an agent who has a Court of Session account; or
- (b) is accompanied by a cheque from the agent for the fee.

(4) A motion may not be enrolled under paragraph (2)(c) where-

- (a) a document which requires to be lodged with, or which accompanies, the motion-
  - (i) is a step of process which requires to be or is signed;
  - (ii) is an open or closed record, reclaiming print, appeal print or appendix;
  - (iii) consists of more than four pages (including the backing sheet); or
  - (iv) does not fall within a class of documents prescribed by the Lord President by direction as a document which may be sent by facsimile transmission in support of a motion of a category, and on such conditions, prescribed by that direction;
- (b) a fee is payable with that motion unless the motion is enrolled by an agent who has a Court of Session account; or

(c) it falls within a category of motions prescribed by the Lord President by direction as unsuitable for enrolment by facsimile transmission.

(5) On receipt of a motion lodged, sent by post or transmitted by facsimile under paragraph (2), a clerk of session shall attach the motion to the motion sheet.

(6) A motion sent by post or facsimile transmission under paragraph (2) shall be treated as enrolled when it is received in the appropriate department of the Office of Court.

### **Intimation of motions**

**23.3.**-(1) Subject to paragraph (2) and any other provision in these Rules, the party enrolling a motion in a cause where-

- (a) appearance has been entered by a defender under rule 17.1(1),
- (b) defences, a minute or answers have been lodged by a party, or
- (c) provision is made for intimation of a motion to a party in accordance with this Part,

shall give written intimation of his intention to make such enrolment, and of the terms of the motion, to every such party.

(2) The requirement under paragraph (1) to give written intimation of a motion to a party shall not apply where that party-

- (a) having entered appearance, fails to lodge defences within the period for lodging those defences;
- (b) has not lodged answers within the period of notice for lodging those answers; or
- (c) has withdrawn or is deemed to have withdrawn his defences, minute, note or answers, as the case may be.

(3) Such intimation shall be made so as to reach the other party not later than 12.30 p.m. on the day before enrolment, except where-

- (a) the other party concerned in the motion consents to a shorter period of intimation;
- (b) the period of intimation is otherwise provided in these Rules; or
- (c) the court shortens or extends the period of intimation or dispenses with intimation.

(4) Where a motion is enrolled under rule 23.2 after the lapse of one year from the date of the last interlocutor in the cause, written intimation shall be given to every other party not less than 14 days before the date of enrolment.

(5) Where written intimation of a motion has been given under this rule, the party enrolling the motion shall state that this has been done on the motion in Form 23.2.

### **Opposition to motions**

**23.4.**-(1) Where a party seeks to oppose a motion enrolled under rule 23.2, he shall-

- (a) not later than the day and time as the Lord President shall prescribe by direction for the lodging of notices of opposition to motions, lodge a notice of his opposition in Form 23.4 at the appropriate department of the Office of Court during its normal office hours;
- (b) post a notice of opposition in Form 23.4 to the appropriate department of the Office of Court; or
- (c) send by facsimile transmission a notice of opposition in Form 23.4 to the appropriate department of the Office of Court.

(2) Opposition to a motion sent by post or facsimile transmission under paragraph (1)(b) or (c) shall be treated as lodged when the notice of opposition is received in the appropriate department of

the Office of Court.

(3) On receipt of a notice of opposition lodged, sent by post or facsimile transmission under paragraph (1), a clerk of session shall attach the notice to the motion sheet.

(4) A party who opposes a motion under this rule shall give written intimation of his opposition to every other party so as to reach such other party not later than 12.30 p.m. on the day on which the opposition is lodged or treated as lodged.

(5) Where written intimation of opposition to a motion has been given under this rule, the party who has given such intimation shall state that this has been done on the notice of opposition in Form 23.4.

(6) Where a motion is opposed under this rule, the entry in the rolls in respect of that motion shall be starred.

### **Consent to motions**

**23.5.** Where a party seeks to consent to a motion enrolled under rule 23.2, he may-

- (a) endorse the motion with his consent;
- (b) post a notice of consent in Form 23.5 to the appropriate department of the Office of Court;  
or
- (c) send by facsimile transmission a notice of consent in Form 23.5 to the appropriate department of the Office of Court.

### **Hearing of motions**

**23.6.**-(1) Subject to the rules mentioned in paragraph (2), the day of publication on the walls of the court and of the hearing of a motion enrolled under this Part on any day shall be determined in accordance with such provisions as the Lord President shall prescribe by direction.

(2) The rules referred to in paragraph (1) are:-

- rule 23.7 (motions in session outwith a term or in vacation),
- rule 23.8 (motions by pursuer before calling or petitioner before first order),
- rule 23.9 (motions where caveat lodged),
- rule 23.10 (motions by defender or other person before calling).

(3) A motion enrolled in a cause in the Outer House shall be heard by the Lord Ordinary.

(4) A motion enrolled in a cause in the Inner House shall be heard in the Single Bills by a Division of the Inner House.

## **PART 4**

### **GENERAL PROVISION RELATING TO MOTIONS**

#### **Motions in session outwith a term or in vacation**

**23.7.**-(1) A motion which is to be heard by the Lord Ordinary in session outwith a term, or in vacation by the vacation judge, shall not appear in the rolls.

(2) A party enrolling such a motion shall be informed at the time of enrolment whether or not any appearance is required.

(3) Any such motion which is opposed in accordance with rule 23.4 shall require appearance for the party whose motion it is.

(4) On the afternoon of the day preceding each sitting of the Lord Ordinary in session outwith a term or of the vacation judge there shall be published on the walls of the court a list of unopposed motions for which appearance is required followed by a list of opposed motions, each in alphabetic order.

(5) Motions before the Lord Ordinary in session outwith a term or the vacation judge shall be called for hearing in the order in which they appear in the list published under paragraph (4).

#### **Motions by pursuer before calling or petitioner before first order**

**23.8.**-(1) A motion enrolled by a pursuer in an action before the calling of the summons or by a petitioner before an order under rule 14.5(1)(a) (order for intimation, service and advertisement in petitions) has been made-

- (a) shall, subject to any other provision in these Rules, be brought as soon as reasonably practicable by the Keeper of the Rolls, or a clerk of session instructed by him, before the Lord Ordinary sitting in court or in chambers; and
- (b) shall not require to be published in the rolls.

(2) On enrolling such a motion, the pursuer or petitioner, as the case may be, shall be informed whether or not appearance is required.

#### **Motions where caveat lodged**

**23.9.** Where a motion in respect of which a caveat has been lodged is enrolled, the Keeper of the Rolls shall-

- (a) fix a hearing of the motion before the Lord Ordinary sitting in court or in chambers as soon as reasonably practicable; and
- (b) inform the parties concerned of the date and time of the hearing.

#### **Motions by defender or other person before calling**

**23.10.**-(1) A motion enrolled in an action before the calling of the summons by a person other than the pursuer shall be intimated forthwith by the Deputy Principal Clerk to the pursuer.

(2) The Keeper of the Rolls shall-

- (a) fix a hearing of such a motion before the Lord Ordinary sitting in court or in chambers as soon as reasonably practicable; and
- (b) inform the parties concerned of the date and time of the hearing.

#### **Statutory applications by motion**

**23.11.** Unless otherwise provided in these Rules or any other enactment, an application to the court under any other enactment in a cause depending before the court shall be made by motion.

#### **Expenses of motions**

**23.12.** Where a motion is called for hearing in the Motion Roll or Single Bills and is dropped, the Auditor shall, in taxing any expenses found due to the party on whose behalf the motion was enrolled, disallow the expenses occasioned by the motion unless he is satisfied that the motion was properly enrolled and properly dropped.

#### **Conditions attached to granting of motions**

**23.13.** Where the court grants a motion in whole or in part, it may do so subject to such conditions, if any, as to expenses or otherwise as it thinks fit.

### **Appearance by solicitor for certain motions**

**23.14.**-(1) A solicitor shall have a right of audience before the court in respect of a motion which is heard in chambers under any of the following rules:-

- rule 23.8 (motions by pursuer before calling or petitioner before first order),
- rule 23.9 (motions where caveat lodged),
- rule 23.10 (motions by defender or other person before calling).

(2) A solicitor shall have a right of audience before the Lord Ordinary sitting during session outwith a term in respect of any motion.

### **Starred Motions**

**23.15.**- Where appearance for the party who enrolled the motion is required for a motion, the entry in the rolls in respect of that motion shall be starred.