

2004 No.

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment No.
4) (Personal Injuries Actions) 2004**

Made - - - - *8th June 2004*

Coming into force - - *29th June 2004*

The Lords of Council and Session, under and by virtue of the powers conferred upon them 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 and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Personal Injuries Actions) 2004 and shall come into force on 29th June 2004.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

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

(2) For rule 43.1(3) (disapplication of certain rules to personal injuries actions), there shall be substituted the following:—

“(3) The following rules shall not apply to an action to which this Chapter applies—
rule 4.9(2) (prorogation of time for lodging document),
rule 6.2 (fixing and allocation of diets in Outer House),
rule 13.2 (form of summonses),
rule 13.6A(1)(a) (arrestment to found jurisdiction),
rule 13.7 (service and intimation of summonses),
rule 13.13(6) (falling of instance),
rule 18.1(1)(b) (defences to include pleas-in-law),
rule 22.1 (making up open record),
rule 22.2 (adjustment),
rule 22.3 (closing record),
rule 36.3 (lodging productions).”.

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3) and by the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45.

(b) S.I. 1994/1443, last amended by S.S.I. 2004/151.

(3) In the appendix for Form 43.2–A (form of summons and backing in personal injuries action) and Form 43.2–B (form of order of court in personal injury action for recovery of documents) there shall be substituted respectively the forms set out in the Schedule to this Act of Sederunt.

Cullen of Whitekrk

Lord President
I.P.D.

Edinburgh
8th June 2004

SCHEDULE

Rule 43.2(1)

Form 43.2-A

Form of summons and backing in personal injuries action

[Insert the Royal Arms in Scotland]

(This space will contain the cause reference number assigned to the summons on being presented for signeting and registration)

IN THE COURT OF SESSION

SUMMONS

(Personal injuries action)

[A.B.] *(designation and address)*, Pursuer

against

[C.D.] *(designation and address)*, Defender

Elizabeth II, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, to [C.D.].

By this summons, the pursuer craves the Lords of our Council and Session to pronounce a decree against you in terms of the conclusions appended to this summons. If you have any good reason why such decree should not be pronounced, you must enter appearance at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ, within three days after the date of the calling of the summons in court. The summons shall not call in court earlier than *(enter period of notice)* days after it has been served on you. **Be warned that, if appearance is not entered on your behalf, the pursuer may obtain decree against you in your absence.**

This summons is warrant for intimation to *(name and address and reason for intimation as set out in the rule of the Rules of the Court of Session 1994 requiring intimation)*.

Given under our Signet at Edinburgh on *(date)*.

(Signed)

(Name and address of or agent for pursuer)

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CONCLUSIONS

FIRST. For payment by the defender to the pursuer of the sum of *(amount of sum in words and figures)*.

SECOND. *[enter only if a claim for provisional damages is sought in terms of rule 43.2(2)]* For payment by the defender to the pursuer of *(enter amount in words and figures)* of provisional damages.

THIRD. For the expenses of the action

STATEMENT OF CLAIM

1. The pursuer is (*state designation, address, occupation and date of birth of pursuer*). [*In an action arising out of the death of a relative state designation of the deceased and relation to the pursuer*].
2. The defender is (*state designation, address and occupation of defender*).
3. The court has jurisdiction to hear this claim against the defender because (*state briefly ground of jurisdiction*).
4. (*State briefly the facts necessary to establish the claim*).
5. (*State briefly the personal injuries suffered and the heads of claim. Give names and addresses of medical practitioners and hospitals or other institutions in which the person injured received treatment*).
6. (*State whether claim based on fault at common law or breach of statutory duty; if breach of statutory duty, state provision of enactment*).

IN RESPECT WHEREOF

(Signed)

Solicitor [*or Agent*] for the pursuer

(*address and solicitor/agent's reference number*)

(*Backing of summons*)

(*This space will contain the cause reference number assigned to the summons on being presented for signing and registration*)

Rule 43.2(4)

Form 43.2-B

Form of order of court for recovery of documents in personal injuries action

IN THE COURT OF SESSION

In the Cause (Cause Reference No.)

SPECIFICATION OF DOCUMENTS

[A.B.] (*designation and address*)

Pursuer

against

[C.D.] (*designation and address*)

Defender

Date: (*date of posting or other method of service*)

To: (*name and address of party or parties from whom the following documents are sought to be recovered*)

You are hereby required to produce to the agent for the pursuer within seven days of the service on you of this Order:–

[Insert such of the following calls as are required.]

1. All books, medical records, reports, charts, X-rays, notes and other documents of (*specify the name of each medical practitioner or general practitioner practice named in summons in accordance with rule 43.2(1)(b)*), and relating to the pursuer [*or, as the case may be, the deceased*], in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature, extent and cause of the pursuer's [*or, as the case may be, the deceased's*] injuries when he intended his doctor on or after (*specify date*) and the treatment received by him since that date.

2. All books, medical records, reports, charts, X-rays, notes and other documents of (*specify, in separate calls, the name of each hospital or other institution named in summons in accordance with rule 43.2(1)(b)*), and relating to the pursuer [*or, as the case may be, the deceased*], in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature, extent and cause of all injuries from which the pursuer [*or, as the case may be, the deceased*] was suffering when he was admitted to that institution on or about (*specify date*), the treatment received by him since that date and his certificate of discharge, if any.

3. The medical records and capability assessments held by the defender's occupational health department relating to the pursuer [*or, as the case may be, the deceased*], except insofar as prepared for or in contemplation of litigation, in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature and extent of any injuries, symptoms and condition from which the pursuer [*or as the case may be, the deceased*] was suffering and the nature of any assessment and diagnosis made thereof on or subsequent to (*specify date*).

4. All wage books, cash books, wage sheets, computer records and other earnings information relating to the pursuer (*or, as the case may be, the deceased*) (N.I. Number (*specify number*)) held by or on behalf of (*specify employer*), for the period (*specify dates commencing not earlier than 26 weeks prior to the date of the accident or the first date of relevant absence, as the case may be*) in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show:–

- (a) the pursuer's [*or, as the case may be, the deceased's*] earnings, both gross and net of income tax and employee National Insurance Contributions, over the said period;
- (b) the period or periods of the pursuer's [*or, as the case may be, the deceased's*] absence from employment over the said period and the reason for absence;
- (c) details of any increases in the rate paid over the period (*specify dates*) and the dates on which any such increases took effect;
- (d) the effective date of, the reasons for and the terms (including any terms relative to any pension entitlement) of the termination of the pursuer's [*or, as the case may be, the deceased's*] employment;
- (e) the nature and extent of contributions (if any) to any occupational pension scheme made by the pursuer [*or, as the case may be, the deceased*] and his employer;
- (f) the pursuer's present entitlement (if any) to occupational pension and the manner in which said entitlement is calculated.

5. All accident reports, memoranda or other written communications made to the defender or anyone on his behalf by an employee of the defender who was present at or about the time at which the pursuer [*or, as the case may be, the deceased*] sustained the injuries in respect of which the summons in this cause was issued and relevant to the matters contained in the statement of claim.

6. Any assessment current at the time of the accident referred to in the summons or at the time of the circumstances referred to in the summons giving rise to the cause of action (as the case may be) undertaken by or on behalf of the defender for the purpose of regulation 3 of the

Management of Health and Safety at Work Regulations 1992 and subsequently regulation 3 of the Management of Health and Safety at Work Regulations 1999 in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries relating to the risks posed to workers.

7. Failing originals, drafts, copies or duplicates of the above or any of them.

(Signature, name and business address of the agent for the pursuer.)

NOTES

- (1) The documents recovered will be considered by the parties to the action and they may or may not be lodged in the court process. A written receipt will be given or sent to you by the pursuer, who may thereafter allow them to be inspected by the other parties. The party in whose possession the documents are will be responsible for their safekeeping.
- (2) Parties are obliged by the rules of court to return the documents to you when their purpose with the documents is finished. If they do not, you will be entitled to apply to the court, under rule 35.3(9) of the Rules of the Court of Session 1994, for an order to have this done and you may apply for an award of expenses incurred in doing so. Further information about this can be obtained from the General Department, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ (Tel. 0131-225-2595).
- (3) If you claim that any of the documents produced by you are **confidential**, you must still produce such documents but may place them in a separate sealed packet by themselves, marked "CONFIDENTIAL". In that event they must be delivered or sent by post to the **Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh, EH1 1RQ**. Any party who wishes to open the sealed packet must apply to the court by motion. A party who makes such an application must intimate the motion to you.
- (4) Subject to paragraph (3) above, you may produce these documents by sending them by registered post or by the first class recorded delivery service or registered postal packet, or by hand to *(name and address of the agent for the pursuer)*.

CERTIFICATE

(Date)

I hereby certify with reference to the above order of the Court of Session in the cause (*cause reference number*) and the enclosed specification of documents, served on me and market respectively X and Y:–

(1) That the documents which are produced and which are listed in the enclosed inventory signed by me and marked Z, are all the documents in my possession falling within the specification,

or

That I have no documents in my possession falling within the specification.

(2) That, to the best of my knowledge and belief, there are in existence other documents falling within the specification, but not in my possession. These documents are as follows:– (*describe them by reference to the descriptions of documents in the specification*). They were last seen by me on or about (*date*), at (*place*), in the hands of (*name and address of the person*),

or

That I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification.

(Signed)

(Name and address)

EXPLANATORY NOTE

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

This Act of Sederunt makes various minor amendments to the rules of procedure and forms which are to be used for personal injuries actions in the Court of Session.