

## CHAPTER 22

### MAKING UP AND CLOSING RECORDS

#### Making up open records

**22.1.**-(1) Subject to any other provision in these rules –

- (a) where defences have been lodged, the pursuer in an action shall, within fourteen days after the date on which the time for lodging defences expired or on which the defences were lodged (whichever date was the earlier); or
- (b) where in a cause a party is ordered by the court to make up an open record he shall within such period as is specified by the court,

lodge two copies of the open record in process; and on being given, in accordance with rule 22.2(1), a date for the commencement of the adjustment period and a date on which it shall close, he shall forthwith send a copy of the open record (endorsed in pursuance of that rule) to every other party.

(2) Where the pursuer, petitioner, noter or minuter, as the case may be, fails to comply with the requirements of paragraph (1), the defender or other party may apply by motion for decree of dismissal.

(3) An open record shall consist of the pleadings of the parties and the interlocutors pronounced in the action or cause.

#### Adjustment

**22.2.**-(1) On an open record being lodged in process the Assistant Clerk of Session shall endorse it, and the interlocutor sheet, with a stamp so as to show the date of lodging, a date on which the adjustment period shall commence (which shall be a date determined by the Deputy Principal Clerk of Session, being ordinarily the first Wednesday which occurs at least three days after the date of lodging but which may be such later date as the Deputy Principal Clerk of Session considers appropriate) and a date on which that period shall end and the record shall close (which shall be the date eight weeks after that on which the adjustment period commences); but his paragraph is without prejudice to paragraph (3).

(2) During the adjustment period parties may adjust their respective pleadings and shall intimate any such adjustments to one another.

(3) At any time during the adjustment period the court may, on the motion of any party, pronounce an interlocutor -

- (a) closing the record; or
- (b) extending the period of adjustment to such date as the court thinks fit, on which date the record shall close.

(4) On enrolling a motion under paragraph (3), a party shall make available for the use of the court a copy of the open record (endorsed in pursuance of paragraph (1)) showing the adjustments, if any, as at the date of enrolment.

(5) An endorsement in pursuance of paragraph (1) may be corrected or altered by the Deputy Principal Clerk of Session at any time before the date for the time being shown in the endorsement as the date on which the record shall close.

(6) An endorsement which cannot be corrected or altered under paragraph (5) may, on cause shown, be corrected by the Lord Ordinary at any time.

## **Closing records**

**22.3.**-(1) The pursuer shall, within four weeks after the date on which the record is closed -

- (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,

and if there is failure to do so the defender or any other party may apply by motion for decree of dismissal.

(2) A closed record shall consist of the pleadings of the parties and the interlocutors pronounced in the action or cause (endorsed in pursuance of rule 22,2(1)),”; and

(3) if the pursuer fails to comply with either of the requirements of paragraph (2), the court may, on the motion of any other party, grant decree of dismissal.

(4) A closed record shall consist of the pleadings of the parties and the interlocutors pronounced in the cause.

(5) The pursuer shall, on lodging the copies of the closed record as required by paragraph (1)(b), enrol a motion craving the court-

(a) where parties have agreed on further procedure, of consent-

- (i) to appoint the cause to the Procedure Roll for consideration of all the preliminary pleas of parties or such of the pleas as may be specified;
- (ii) to allow to parties a preliminary proof on specified matters or in respect of specified pleas;
- (iii) to allow to parties a proof before answer of their respective averments under reservation of such preliminary pleas as may be specified;
- (iv) to allow a proof;
- (v) to allow issues for jury trial; or
- (vi) to make some other specified order; or

(b) where parties have been unable to agree on further procedure, to appoint the cause to the By Order (Adjustment) Roll.

(6) In a cause which is one of more than one cause arising out of the same cause of action, the court may, on or after pronouncing an interlocutor ordering further procedure under paragraph (5)-

- (a) on the motion of a party to that cause, and
- (b) after hearing parties to all those causes, appoint that cause or any other of those causes to be the leading cause and to sist the other causes pending the determination of the leading cause.

(7) In this rule, "pursuer " includes petitioner, noter or minuter, as the case may be.

## **Notes of argument**

**22.4.**-(1) Where a cause has been appointed to the Procedure Roll, a party seeking to have a preliminary plea sustained shall –

- (a) lodge in process a concise note of argument consisting of numbered paragraphs stating the grounds on which he proposes to submit that the preliminary plea should be sustained,
- (b) lodge a copy of the note with the Keeper of the Rolls, and
- (c) send a copy of the note to every other party.

(2) The note shall be lodged and sent in accordance with paragraph (1) within 28 days after the date of the interlocutor appointing the cause to the Procedure Roll unless the court, at its own instance or on the motion of a party, orders that the note be lodged and sent within a different period.