STATUTORY INSTRUMENTS

1976 No. 2160 (S. 172)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Consistorial Actions (Sheriff Court) Rules) 1976

Made - - - -	10*th December* 1976
Coming into Operation	1*st January* 1977

The Lords of Council and Session under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971**(a)** and sections 1(4) and 11 of the Divorce (Scotland) Act 1976**(b)** and of all other powers competent to them in that behalf do hereby enact and declare:—

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Consistorial Actions (Sheriff Court) Rules) 1976 and shall come into operation on 1st January 1977.

(2) In this Act of Sederunt "the Act of 1976" means the Divorce (Scotland) Act 1976.

(3) The Interpretation Act 1889**(c)** shall apply to the interpretation of this Act of Sederunt as it applies to the interpretation of an Act of Parliament.

Amendment of rules relating to consistorial actions

2. In Schedule 1 to the Sheriff Courts (Scotland) Act 1907**(d)**—

(*a*) for rule 174 there shall be substituted the following rules:—

"174—Intimation following allegations of adultery

In any action in which adultery is averred, where the name of the person with whom adultery is alleged to have been committed is disclosed in the action, and such person is not a party to the action, the sheriff shall not allow proof unless the action has been intimated to such person or the sheriff is satisfied that the address of such person is unknown. An order for such intimation may be contained in the original warrant of citation, or intimation may be appointed to be made at a later stage, and such person may apply by minute craving to be sisted as a party and setting forth articulate answers to the allegations made against him or her:

(a) 1971 c. 58.
(b) 1976 c. 39.
(c) 1889 c. 63.
(d) 1907 c. 51.

Provided that the requirement of intimation under this rule shall not apply where the pursuer alleges rape upon or incest with a named person by the defender.

174A—Intimation where improper relationship other than adultery

(1) In an action in which the pursuer alleges sodomy, incest or any homosexual relationship between the defender and a named person, the pursuer shall immediately after tabling enrol a motion for intimation to that person, and the court at the hearing of the motion, may make an order for intimation or an order dispensing with intimation to that person as it thinks fit.

(2) Where the court makes an order dispensing with intimation under paragraph (1) it may also make an order that the name of that person be deleted from the condescendence in the initial writ.

174B—Notice in actions of separation

Where the facts set out in section 1(2)(*d*) (two years' non-cohabitation and the defender's consent to decree) of the Act of 1976 are relied on in an action of separation, a notice as nearly as may be in the terms set out in Form N shall be sent with the copy of the initial writ served on the defender, together with a notice as nearly as may be in the terms set out in Form O.

174C—Consent to grant of decree

(1) Where in an action of separation in which the facts set out in section 1(2)(*d*) of the Act of 1976 (two years' non-cohabitation and the defender's consent to decree) are relied on, the defender wishes to indicate to the court that he consents to the grant of a decree, he shall do so by giving notice in writing to that effect to the sheriff clerk at the sheriff court referred to in the initial writ who shall, on receipt of such notice, lodge it in process.

(2) For the purposes of paragraph (1) a notice of consent in the form set out in Form O containing a statement that the defender consents to the grant of a decree shall be treated as notice under that paragraph if it is signed by the defender; and the evidence of one witness shall be sufficient for establishing that the signature on the notice of consent bearing to be that of the defender is in fact that of the defender.

(3) Where in an action of separation the initial writ contains an averment for the purposes of the said section 1(2)(*d*) that the defender consents to the grant of a decree, he may give notice in writing to the court that he has not consented to a decree being granted or that he withdraws any consent which he has already given.

(4) In a case where the defender gives notice under paragraph (3) the sheriff clerk shall intimate its terms to the pursuer.

(5) On receiving intimation under paragraph (4) of a notice given under paragraph (3) the pursuer shall if none of the other facts mentioned in section 1(2) of the Act of 1976 are averred in the initial writ, enrol a motion for the action to be sisted, and the court may grant that motion.

(6) If such a motion is granted and the sist is not recalled or renewed within a period of six months from the date of the interlocutor granting the sist, the pursuer shall be deemed to have abandoned the action.

174D—Special Application for Appointment of a Curator *ad litem*

(1) In an action of separation where it appears to the court that the defender is suffering from mental disorder within the meaning of the Mental Health (Scotland) Act 1960, the court shall—

(i) appoint a curator *ad litem* to the defender; and

(ii) in an action of separation under section 1(2)(*d*) of the Act of 1976, make an order informing the Mental Welfare Commission for Scotland of the ground of the action and requesting them to provide a report indicating whether in their opinion the defender is capable of deciding whether or not to give consent to the granting of decree.

(2) The pursuer shall within seven days of the making of an order under head (i) of paragraph (1) appointing a curator *ad litem* to the defender send to the curator a certified copy initial writ and defences, if any.

(3) The curator *ad litem* may, within 14 days of the Commission providing the report under head (ii) of paragraph (1) or in any other case in which no such report is requested, within 21 days of his appointment under head (i) of that paragraph lodge—

(i) a notice of appearance;

(ii) defences to the action;

(iii) a minute adopting defences already lodged; or

(iv) a minute stating that he does not intend to lodge defences;

and may appear in the action at any time to protect the interests of the defender.";

(*b*) at the end, after Form M, there shall be added the following forms:—

"

FORM N

Form of Notice to defender where it is stated he consents to the granting of decree of separation.

TAKE NOTICE that the copy initial writ served on you together with this Notice states that you consent to the grant of decree of separation—

1. If you do so consent the consequences to you are that—

(*a*) provided the pursuer establishes the fact that there has been no cohabitation between the parties to the marriage at any time during a continuous period of two years after the date of the marriage and immediately preceding the bringing of this action and that you consent, a decree of separation will be granted;

(*b*) on the grant of decree of separation you will be obliged to live apart from the pursuer but the marriage will continue to subsist; a husband will continue to have a legal obligation to support his wife and children;

(*c*) apart from these consequences there may be others applicable to you depending upon your particular circumstances.

2. If you do consent to the grant of decree you may apply to the court in this action—

(*a*) for payment by the pursuer to you of aliment; and

(*b*) for an order providing for access to or the custody, maintenance and education of any child of the marriage, or any child accepted as such, who is under 16 years of age.

3. In order to make such an application to the court you require to lodge a notice of appearance in this action. If you wish to make such an application you should consult a solicitor.

4. If after considering the foregoing, you wish to consent to decree, you should complete and sign the attached Form of Notice of Consent and sent it to the sheriff clerk at the sheriff court referred to in the initial writ within 14 days of the date of this Notice.

5. If after consenting you wish to withdraw your consent you must immediately inform the sheriff clerk at the sheriff court referred to in the initial writ in writing that you withdraw your consent to decree being granted against you in the action at the instance of (insert name and address of your husband or wife as the case may be).

(Date) (Signed)

(Signature of Pursuer or his Agent)

FORM O

Form of Notice of Consent in actions of separation under section 1(2)(*d*) of the Divorce (Scotland) Act 1976.

I (full name and address of the defender to be inserted by the pursuer or the pursuer's solicitor before sending Notice) have received a copy of the initial writ in the action against me at the instance of (full name and address of pursuer to be inserted by him or his solicitor before sending Notice).

I understand that it states that I consent to the grant of decree in this action.

I have considered the consequences to me mentioned in the Notice sent together with this Notice.

I consent to the grant of decree in this action.

Dated Signed

Defender ".

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

C. G. Emslie, I.P.D.

10th December 1976.
Edinburgh.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt makes new provision in the rules of the Sheriff Court in accordance with sections 1(4) and 11 of the Divorce (Scotland) Act 1976, and otherwise makes certain amendments to the existing rules relating to consistorial actions.

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