1967 No. 1789 (S. 163)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 4) 1967

Made - - - - - 30*th November* 1967
Coming into Operation 1*st December* 1967

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(a) and of all other powers competent to them in that behalf, do hereby enact and declare as follows:—

1. The Rules of Court(b) are hereby amended as follows:— (1) by deleting Rule 167 and by substituting a new Rule 167 in the following terms:—

"167. Custody, maintenance or access claimed by defender

"(a) In any action for divorce, nullity of marriage or separation it shall be competent for the defender to claim custody of, maintenance for, or access to any child of the marriage to which such action relates or any such child as is mentioned in section 7 of the Act of 1958 (referred to in this Rule as a child of the marriage).

"(b) Where in any such action the pursuer concludes for custody, the defender, if he intends to oppose said conclusion, shall do so by way of defences, and if in his defences the defender claims that custody should be awarded to him he shall state therein the grounds upon which he bases his claim and shall include an appropriate plea-in-law.

"(c) Where in any such action the pursuer does not conclude for custody, the defender, if he intends to defend the action and also to claim that custody should be awarded to him, shall state in his defences the grounds upon which he bases his claim and shall include therein appropriate conclusions and pleas-in-law.

"(d) In any other case a defender who claims custody of, maintenance for, or access to a child of the marriage, shall lodge a minute which shall contain a conclusion in the form exemplified in Form 2, an articulate numbered statement of facts setting forth the facts on which the claim is founded, and a note of pleas-in-law in support thereof. On such minute being lodged the pursuer may lodge answers thereto within such period as the Court may allow.

"(e) Where in any such action as is mentioned in paragraph (a) hereof the summons does not include a conclusion with respect to the custody of, maintenance for, or access to a child of the marriage, a claim by the defender under this Rule may be heard and tried along with or after the claim in the pursuer's summons as the Court may consider just and expedient in the circumstances, having due regard to the provisions of section 8 of the Act of 1958; and if evidence is led with regard to either claim separately from the other, such evidence shall, so far as competent and relevant, be evidence with regard to the other claim.

(a) 1933 c. 41. (b) S.I. 1965/321 (1965 I, p. 803).

"(f) The provisions of Rule 163 (c) and (d) shall apply to an action in which there is no defence stated in defences and insisted upon at proof opposing the conclusion for divorce, as they apply to an undefended action.

"(g) In any such action as is mentioned in paragraph (a) hereof, where the parties are agreed as to the custody of, maintenance for, or access to a child of the marriage, they may embody such agreement in a joint minute. The Court may interpone authority to such joint minute without requiring amendment of the summons or the lodging of a minute under this Rule."

(2) by adding in Rule 92 (c) between the words "and thereafter" and "the action as so amended", the words:— "a copy of the said notice shall be lodged "in process with a certificate of execution thereon and".

2. This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 4) 1967 and shall come into operation on 1st December 1967.

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

J. L. Clyde,
I.P.D.

Edinburgh,
30th November 1967.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of Court by substituting a new Rule relating to consistorial causes in which a defender claims custody of, maintenance for, or access to a child of the marriage; and by providing that when an additional or substitute defender is called, a copy of the notice served upon him shall be lodged in process with a certificate of execution thereon.