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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 305**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session  
Amendment No.4) (Miscellaneous) 2001**

*Made* - - - - - *7th September 2001*

*Coming into force* - - - - - *18th September 2001*

The Lords of Council and Session, in exercise of the powers conferred upon them by section 5 of the Court of Session Act 1988 (1) and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation, commencement and interpretation**

1.—(1) This Act of Sederunt—

- (a) may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Miscellaneous) 2001;
- (b) shall come into force on 18th September 2001; and
- (c) shall be inserted in the Books of Sederunt.

(2) In this Act of Sederunt, any reference to a rule is to a rule contained in the Rules of the Court of Session 1994(2).

**Service by messenger-at-arms**

2.—(1) In rule 16.3(4), at the beginning there is inserted “Subject to paragraph (4A),”.

(2) After that rule there is inserted—

“(4A) Where the firm which employs the messenger-at-arms has in its possession—

- (a) the principal writ or a certified copy of it, it shall be competent for the messenger-at-arms to execute service of the document without having that writ or certified copy in his possession, in which case he shall, if required to do so by the person

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(1) 1988 c. 36. Section 5 was amended by section 2(3) of the Civil Evidence (Scotland) Act 1988 (c. 32) and by paragraph 45 of Schedule 4 to the Children (Scotland) Act 1995 (c. 36).

(2) S.I. 1994/1443. Amendments to the Rules relevant for the purposes of this Act of Sederunt were made by: S.I. 1997/2692 which inserted rule 40.7A; S.S.I. 2001/92 which inserted rule 5.1A and the Chapter referred to by title in paragraph 17; S.S.I. 2000/316 which inserted the Chapter referred to by title in paragraph 18.

on whom service is executed and within a reasonable time of being so required, show the principal writ or certified copy to the person;

- (b) a certified copy of the interlocutor, it shall be competent for the messenger-at-arms to execute service of the document if he has in his possession a facsimile copy of the certified copy interlocutor which he shall show, if required, to the person on whom he executes service.”.

### **Third party proceedings**

3.—(1) In rule 26.4(3), the word “and” after sub-paragraph (a) is omitted and at the end of sub-paragraph (b) there is inserted “and

- (c) where the pleadings have not been amended in accordance with the minute of amendment, a copy of that minute.”.

(2) In rule 26.6, before paragraph (1) there is inserted—

- “(A1) Where the pleadings have not been amended in accordance with the minute of amendment, no motion for a finding, order or decree against the third party may be enrolled by the defender unless, at or before the date on which he enrolls the motion, he enrolls a motion to amend the pleadings in accordance with the minute.”.

### **Abandonment of actions**

4. In rule 29.1(2)(a), for the word “he” there is substituted “the pursuer”.

### **Minutes of transference**

5. In rule 31.2, after paragraph (1) there is inserted—

“(1A) Where—

- (a) a question of liability is the subject of proceedings before the court; and
- (b) the effect of any statutory transfer while the cause is depending before the court is to transfer the liability if proved to a person other than an existing party to the cause,

any party to the proceedings may apply to the court by minute to have the cause transferred in favour of or against, as the case may be, the person to whom the liability has been transferred.”.

### **Commission and diligence**

6. In rule 35.2(3), for sub-paragraph (c) there is substituted—

“(c) where necessary—

- (i) the Advocate General for Scotland (in a case where the document or other property sought is in the possession of either a public authority exercising functions in relation to reserved matters within the meaning of Schedule 5 to the Scotland Act 1998, or a cross-border public authority within the meaning of section 88(5) of that Act); or

(ii) the Lord Advocate (in any other case),

and if there is any doubt, both.”.

### **Written statements in evidence**

7.—(1) For rule 36.8 there is substituted—

#### **“Lodging of certain written statements**

**36.8.** A party who wishes to have any written statement (including an affidavit) or report, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988, received in evidence shall lodge the statement or report in process and shall intimate such lodging to the other party or parties.”.

(2) In rule 49.28(5), for the words “(conditions for receiving certain written statements in evidence)” there is substituted “(lodging of certain written statements)”.

#### **Early disposal of appeals against orders under section 11(1) of the Children (Scotland) Act 1995**

8. In rule 40.7A—

- (a) after the word “against” there is inserted “(a)”;
- (b) after the word “judgment” there is inserted “; or  
(b) an interlocutor of an inferior court containing an order made under section 11(1) of the Children (Scotland) Act 1995”.

#### **Use of Gaelic**

9. After rule 40.20 there is inserted—

##### **“Use of Gaelic**

**40.21.**—(1) This rule applies where an appeal is only against an interlocutor of an inferior court which has granted an application by the appellant or the respondent, being in either case a party litigant, to address that court, or to give oral evidence, in Gaelic.

(2) Without prejudice to paragraph (3), if the party litigant in question wishes—

- (a) to address the Inner House in the appeal; or
- (b) where proof has been ordered by the Inner House, to give oral evidence to or address the judge to whom the Inner House has remitted the cause,

in Gaelic, he may lodge an application to that effect with the Deputy Principal Clerk not later than 14 days before the date of the appeal or, as the case may be, of the proof and shall intimate such application to the other parties in the proceedings.

(3) Where an application to use Gaelic is made orally at the bar, the Inner House or, as the case may be, the judge may if it or he thinks fit dispense with intimation and allow the application.

(4) The Inner House or, as the case may be, the judge may refuse an application to use Gaelic where it or he considers that to grant the application would hamper the proper administration of justice.

(5) Where an application to use Gaelic is granted, an interpreter shall be provided by the court.”.

#### **Remit to auditor**

**10.** In rule 42.1(2)(a), the words “or within such further period as the court may allow on special cause shown” are omitted.

## **Diet of taxation**

11. In rule 42.2, after paragraph (1) there is inserted—

“(1A) The party found liable in expenses shall, not later than 3 working days prior to the diet of taxation, intimate to the Auditor and to the party found entitled to expenses, specific points of objection, setting out each item objected to and stating concisely the nature and ground of objection in each case.

(1B) Subject to paragraph (1C), if the party found liable in expenses fails to intimate points of objection under paragraph (1A) within the time limit set out there, the Auditor shall not take account of them at the diet of taxation.

(1C) The Auditor may relieve a party from the consequences of a failure to comply with the requirement contained in paragraph (1B) because of mistake, oversight or other excusable cause on such conditions, if any, as the Auditor thinks fit.”.

## **Charges for witnesses**

12.—(1) In rule 42.13(1), for the words “the name of that witness is” there is substituted “a party has, at any time before the diet of taxation, enrolled a motion for the name of that witness to be”.

(2) In rule 42.13(3), for the words “not later than” there is substituted “before or at” and after the word “expenses” there is inserted “or on a motion enrolled at any time thereafter but before the diet of taxation”.

(3) At the end of that rule there is inserted—

“(4) Where a motion under paragraph (3) is enrolled after the court has awarded expenses, the expenses of the motion shall be borne by the party enrolling it.”.

## **Warrants for intimation**

13. In Form 43.3 (referred to in rule 43.3), after the paragraph beginning “[It is proposed] there is inserted—

“You are advised that although periods of 7 and 21 days are mentioned above, this does not mean that your right to be connected to the action will remain if the period of time, following the events which caused the death or personal injuries, within which the law would have allowed you to raise an action based on the events expires earlier.”.

## **Recognition, registration and enforcement of foreign judgments, etc.**

14. In rule 62.61(1), after sub-paragraph (b) there is inserted—

“(c) Article 20 of the United Nations (International Tribunal) (Rwanda) Order 1996 (enforcement of orders for the preservation or restitution of property).”.

## **Form of application relating to Hague Convention**

15. In rule 70.5(2), for the words “access to a child under the Hague Convention” there is substituted “organising or protecting rights of access granted by any court of a contracting party to the Hague Convention, or for securing respect for the conditions to which the exercise of such rights of access is subject”.

## **Applications for purposes of investigations ordered pursuant to Article 14 of Regulation 17 of the Council of the European Communities**

16. In rule 5.1A, for the words “rule 82.2” there is substituted “rule 83.2”.

17. In the Chapter of the rules entitled “Applications for purposes of investigations ordered pursuant to Article 14 of Regulation 17 of the Council of the European Communities”—

- (a) for the heading “Chapter 82” there is substituted “Chapter 83”;
- (b) the rules numbered 82.1, 82.2 and 82.3 shall be renumbered 83.1, 83.2 and 83.3 respectively;
- (c) in the rule numbered 82.1—
  - (i) for the words “Article 85(1)” there is substituted “Article 81(1)”;
  - (ii) for the words “Article 86” there is substituted “Article 82”;
- (d) in the rule numbered 82.3, for the words “rule 82.2(1)” there is substituted “rule 83.2(1)”.

18. That Chapter shall follow the Chapter of the rules entitled “The Human Rights Act 1998”.

Edinburgh  
7th September 2001

*Rodger of Earlsferry*  
Lord President, I.P.D

## EXPLANATORY NOTE

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

This Act of Sederunt makes various miscellaneous amendments to the Rules of the Court of Session.

Paragraph 2 amends rule 16.3 to regularise the current practice so that it is permissible, if the firm employing a messenger-at-arms has the relevant document or copy interlocutor in its possession, for the messenger-at-arms to effect service without having it in his possession.

Paragraph 3 amends rule 26.6 to provide that in a case where a minute of amendment has been lodged in third party proceedings but the pleadings have not been amended in accordance with the minute, a motion for decree against the third party may not be enrolled unless a motion is enrolled to have the pleadings so amended. By virtue of the amendment to rule 26.4, the minute should have been served with the third party notice.

Paragraph 4 makes a minor amendment to rule 29.1(2)(a) for the sake of clarity.

Paragraph 5 amends rule 31.2 to ensure that when on the transfer of an undertaking liability would transfer by statute to the new owner, any person who is party to a court action can join the new owner to the action for the purpose of receiving damage where liability is proved.

Paragraph 6 amends rule 35.2 to make it clear that where sought documents or property are in the hands of a reserved organisation service is on the Advocate General for Scotland, where they are in the hands of a devolved organisation service is on the Lord Advocate, and where there may be doubt, service is on both.

Paragraph 7 replaces rule 36.8 following the decision in *Glaser-v-Glaser*. A party who wishes a statement to be received in evidence will require to lodge the statement and intimate to the other parties that he has done so.

Paragraph 8 amends rule 40.7A so as to make appeals against orders made under section 11(1) of the Children (Scotland) Act 1995 subject to the fast-track procedures.

Paragraph 9 inserts a new rule 40.21 making provision for the use of Gaelic.

Paragraph 10 removes the ability of the court in rule 42.1(2)(a) to extend the period for lodging an account of expenses.

Paragraph 11 amends rule 42.2 by inserting provisions dealing with the requirement on the party found liable in expenses to intimate any points of objection to the expenses and with any failure to do so.

Paragraph 12 amends rule 42.13 to provide that charges for the attendance of a witness may be allowed if a party has enrolled a motion for the name of the witness to be noted in the minute of proceedings at any time before the taxation diet; and to allow for an expert witness motion to be enrolled at any time up to the diet of taxation, the expenses of such a motion being borne by the party enrolling it.

Paragraph 13 amends Form 43.3 to alert the connected person that his right may be time barred in spite of the periods mentioned.

Paragraph 14 amends rule 62.61 so as to apply Part X of Chapter 62 to orders under Article 20 of the “Rwanda” Order 1996 (S.I.1996/1296).

Paragraph 15 amends rule 70.52 following the decision in *D-v-B* to make it clear that an application under the Hague Convention is an application for organising or protecting rights of access granted by another court under the Convention or for securing any conditions attached to such rights of access.

Paragraph 16, 17 and 18 make various changes in respect of the Chapter inserted as Chapter 82 by [S.S.I. 2001/92](#). Paragraph 17(a) renumbers it as Chapter 83. Paragraphs 16 and 17(b) and (d) make consequential changes to various references and cross-references. Paragraph 18 ensures that the Chapter appears in the correct place. (A Chapter 82 had previously been inserted by [S.S.I. 2000/316](#).) Paragraph 17(c) corrects references to the EC Treaty (as amended by the Treaty of Amsterdam).