
STATUTORY INSTRUMENTS

1999 No. 1281 (S.98)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of the Court of Session
Amendment No. 4) (References to the Court
of Justice of the European Communities) 1999**

Made - - - - *28th April 1999*
Coming into force - - *1st May 1999*

The Lords of Council and Session, under and by virtue of the powers conferred on 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 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) (References to the Court of Justice of the European Communities) 1999 and shall come into force on 1st May 1999.

(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(2) shall be amended in accordance with this paragraph.

(2) In rule 62.18(1) (which defines certain expressions for the purposes of Part IV of Chapter 62), in paragraph (a) of the definition of “Community judgment”, for “187 or 192” substitute “244 or 256”.

(3) In rule 65.1(1) (which defines certain expressions for the purposes of Chapter 65), in paragraph (a) of the definition of “reference”, for “177” substitute “234”.

(4) In rule 65.2 (applications for reference to European Court), the words “in Form 65.2” shall cease to have effect.

(5) In rule 65.3 (preparation of reference)—

(a) after paragraph (1) insert—

(1) 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.
(2) S.I.1994/1443.

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“(1A) Except in so far as the court may otherwise direct, a reference shall be prepared in accordance with Form 65.3.

(1B) In preparing a reference, the parties shall have regard to the guidance set out in the annex to these Rules.”; and

(b) in paragraph (2), for the words “at the sight of the court” substitute “and any adjustments required by the court have been made”.

(6) In the appendix, for Form 65.2 there shall be substituted the form set out in Schedule 1 to this Act of Sederunt.

(7) After the appendix there shall be added the annex set out in Schedule 2 to this Act of Sederunt.

Saving

3. Nothing in this Act of Sederunt affects any reference made before the coming into force of this Act of Sederunt.

Edinburgh,
28 April 1999.

Rodger of Earlsferry
Lord President I.P.D.

SCHEDULE 1

Paragraph 2(6)

REFERENCES TO THE EUROPEAN COURT: FORM

“FORM 65.3

Form of reference to the European Court

REQUEST

for

PRELIMINARY RULING

of

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

from

THE COURT OF SESSION IN SCOTLAND

in the cause

[A.B.] (designation and address)

Pursuer [*or* Petitioner *or* Appellant]

against

[C.D.] (designation and address)

Defender [*or* Respondent]

[Here set out a clear and succinct statement of the case giving rise to the request for the ruling of the European Court in order to enable the European Court to consider and understand the issues of Community law raised and to enable governments of Member States and other interested parties to submit observations. The statement of the case should include:

- (a) particulars of the parties;*
- (b) the history of the dispute between the parties;*
- (c) the history of the proceedings;*
- (d) the relevant facts as agreed by the parties or found by the court or, failing such agreement or finding, the contentions of the parties on such facts;*
- (e) the nature of the issues of law and fact between the parties;*
- (f) the Scots law, so far as is relevant;*
- (g) the Treaty provisions or other acts, instruments or rules of Community law concerned; and*
- (h) an explanation of why the reference is being made.]*

The preliminary ruling of the Court of Justice of the European Communities is accordingly requested on the following questions:

1, 2, etc. *[Here set out the questions on which the ruling is sought, identifying the Treaty provisions or other acts, instruments or rules of Community law concerned.]*

Dated the day of 19 .”.

SCHEDULE 2

Paragraph 2(7).

REFERENCES TO THE EUROPEAN COURT: GUIDANCE**“ANNEX****NOTES FOR COMPLETION OF FORM 65.3****Guidance of the Court of Justice of the European Communities**

The development of the Community legal order is largely the result of co-operation between the Court of Justice of the European Communities and national courts and tribunals through the preliminary ruling procedure under Article 177 of the EC Treaty and the corresponding provisions of the ECSC and Euratom Treaties.¹

In order to make this co-operation more effective, and so enable the Court of Justice better to meet the requirements of national courts by providing helpful answers to preliminary questions, this Note for Guidance is addressed to all interested parties, in particular to all national courts and tribunals.

It must be emphasised that the Note is for information only and has no binding or interpretative effect in relation to the provisions governing the preliminary ruling procedure. It merely contains practical information which, in the light of experience in applying the preliminary ruling procedure, may help to prevent the kind of difficulties which the Court has sometimes encountered.

1. Any court or tribunal of a Member State may ask the Court of Justice to interpret a rule of Community law, whether contained in the Treaties or in acts of secondary law, if it considers that this is necessary for it to give judgment in a case pending before it.

Courts or tribunals against whose decisions there is no judicial remedy under national law must refer questions of interpretation arising before them to the Court of Justice, unless the Court has already ruled on the point or unless the correct application of the rule of Community law is obvious.²

2. The Court of Justice has jurisdiction to rule on the validity of acts of the Community institutions. National courts or tribunals may reject a plea challenging the validity of such an act. But where a national court (even one whose decision is still subject to appeal) intends to question the validity of a Community act, it must refer that question to the Court of Justice.³

Where, however, a national court or tribunal has serious doubts about the validity of a Community act on which a national measure is based, it may, in exceptional cases, temporarily suspend application of the latter measure or grant other interim relief with respect to it. It must then refer the question of validity to the Court of Justice, stating the reasons for which it considers that the Community act is not valid.⁴

3. Questions referred for a preliminary ruling must be limited to the interpretation or validity of a provision of Community law, since the Court of Justice does not have jurisdiction to interpret national law or assess its validity. It is for the referring court or tribunal to apply the relevant rule of Community law in the specific case pending before it.

4. The order of the national court or tribunal referring a question to the Court of Justice for a preliminary ruling may be in any form allowed by national procedural law. Reference of a question or questions to the Court of Justice generally involves stay of the national proceedings until the Court has given its ruling, but the decision to stay proceedings is one which it is for the national court alone to take in accordance with its own national law.

5. The order for reference containing the question or questions referred to the Court will have to be translated by the Court's translators into the other official languages of the Community. Questions concerning the interpretation or validity of Community law are frequently of general interest and the Member States and Community institutions are entitled to submit observations. It is therefore desirable that the reference should be drafted as clearly and precisely as possible.

6. The order for reference should contain a statement of reasons which is succinct but sufficiently complete to give the Court, and those to whom it must be notified (the Member States, the Commission and in certain cases the Council and the European Parliament), a clear understanding of the factual and legal context of the main proceedings.⁵

In particular, it should include a statement of the facts which are essential to a full understanding of the legal significance of the main proceedings, an exposition of the national law which may be applicable, a statement of the reasons which have prompted the national court to refer the question or questions to the Court of Justice and, where appropriate, a summary of the arguments of the parties. The aim should be to put the Court of Justice in a position to give the national court an answer which will be of assistance to it.

The order for reference should also be accompanied by copies of any documents needed for a proper understanding of the case, especially the text of the applicable national provisions. However, as the case-file or documents annexed to the order for reference are not always translated in full into the other official languages of the Community, the national court should ensure that the order for reference itself includes all the relevant information.

7. A national court or tribunal may refer a question to the Court of Justice as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment. It must be stressed, however, that it is not for the Court of Justice to decide issues of fact or to resolve disputes as to the interpretation or application of rules of national law. It is therefore desirable that a decision to refer should not be taken until the national proceedings have reached a stage where the national court is able to define, if only as a working hypothesis, the factual and legal context of the question; on any view, the administration of justice is likely to be best served if the reference is not made until both sides have been heard.

8. The order for reference and the relevant documents should be sent by the national court directly to the Court of Justice, by registered post (addressed to the Registry of the Court of Justice of the European Communities, L-2925 Luxembourg, telephone (352) 43031). The Court Registry will remain in contact with the national court until judgment is given, and will send copies of the various documents (written observations, Report for the Hearing, Opinion of the Advocate General). The Court will also send its judgment to the national court. The Court would appreciate being informed about the application of its judgment in the national proceedings and being sent a copy of the national court's final decision.

9. Proceedings for a preliminary ruling before the Court of Justice are free of charge. The Court does not rule on costs."

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EXPLANATORY NOTE

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

This Act of Sederunt amends rules 65.2 and 65.3 of the Rules of the Court of Session (which relate to the form and preparation of references to the Court of Justice of the European Communities).

The Act also substitutes for the existing Form 65.2 a new, more detailed version of the form. Parties using the new form are required to have regard to the Court of Justice's guidance on the making of a reference (which is incorporated in the Rules as an annex).

The Act amends rule 62.18(1) in consequence of the renumbering of Articles 187 and 192 of the E.E.C. Treaty (now respectively Articles 244 and 256) effected by the Treaty of Amsterdam.