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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 316**

**COURT OF SESSION**

**Act of Sederunt (Rules of the Court of Session  
Amendment No. 6) (Human Rights Act 1998) 2000**

*Made* - - - - *7th September 2000*

*Coming into force* - - *2nd October 2000*

The Lords of Council and Session, in exercise of the powers conferred upon them by section 5 of the Court of Session Act 1988<sup>(1)</sup> and sections 2 and 5 of the Human Rights Act 1998<sup>(2)</sup> and of all other powers enabling them in that behalf, do hereby enact and declare:

**Citation and commencement**

1. This Act of Sederunt—
  - (a) may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Human Rights Act 1998) 2000;
  - (b) shall come into force on 2nd October 2000; and
  - (c) shall be inserted in the Books of Sederunt.

**Procedure in matters arising out of the Human Rights Act 1998**

2. After Chapter 81 of the Rules of the Court of Session (3) there is inserted—

**“CHAPTER 82**

**THE HUMAN RIGHTS ACT 1998**

**Application and interpretation**

**82.1.**—(1) This Chapter deals with various matters relating to the Human Rights Act 1998.

(2) In this Chapter—

“the 1998 Act” means the Human Rights Act 1998;

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(1) 1988 c. 36.  
(2) 1998 c. 42.  
(3) S.I.1994/1443.

“declaration of incompatibility” has the meaning given by section 4 of the 1998 Act.

### **Evidence of judgments etc**

**82.2.**—(1) Evidence of any judgment, decision, declaration or opinion of which account has to be taken by the court under section 2 of the 1998 Act shall be given by reference to any authoritative and complete report of the said judgment, decision, declaration or opinion and may be given in any manner.

(2) Evidence given in accordance with paragraph (1) shall be sufficient evidence of that judgment, decision, declaration or opinion.

### **Declaration of incompatibility**

**82.3.**—(1) Where in any proceedings the court is considering whether to make a declaration of incompatibility it shall give notice of this in Form 82.3—A to such persons as the Lord President may from time to time direct.

(2) Where any—

- (a) Minister of the Crown (or person nominated by him);
- (b) member of the Scottish Executive;
- (c) Northern Ireland Minister;
- (d) Northern Ireland department,

wishes to be joined as a party to proceedings in relation to which the Crown is entitled to receive notice under section 5 of the 1998 Act he or, as the case may be, it shall serve notice in Form 82.3—B to that effect on the Deputy Principal Clerk of Session and shall serve a copy of the notice on all other parties to the proceedings.

**82.4.** Within 14 days after the date of service of the notice under rule 82.3(2), the person serving the notice shall lodge a minute in the proceedings in Form 82.4 and shall serve a copy of that minute on all other parties to the proceedings.

**82.5.** The court may fix a diet for a hearing on the question of incompatibility as a separate hearing from any other hearing in the proceedings and may sist the proceedings if it considers it necessary to do so while the question of incompatibility is being determined.”.

### **Forms**

3. After Form 81.12 there is inserted—

**“FORM 82.3—A Form of notice to Crown under section 5(1) of the 1998 Act**

IN THE COURT OF SESSION

*in causa*

[A.B.] (*designation and address*)

Pursuer [*or* Petitioner]

against

[C.D.] (*designation and address*)

Defender [*or* Respondent]

Date: (*date of posting or other method of service*)

To: (*specify Minister or other person on whom notice is to be served*)

TAKE NOTICE

That the court is considering whether or not to make a declaration under section (*specify section 4(2), in relation to primary legislation or section 4(4) in relation to subordinate legislation*) of the Human Rights Act 1998 that (*specify the primary or subordinate legislation which is the subject of the proposed declaration*) is incompatible with (*specify the Convention right*) for the following reasons:

(*set out the reasons in summary*).

You may apply to become a party to the proceedings. If you wish to do so you should notify the Deputy Principal Clerk of Session in Form 82.3—B.

(*Signed*)

Deputy Principal Clerk of Session

**FORM 82.3—B Form of notice to court under section 5(2) of the 1998 Act**

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Statutory Instruments are not carried in their revised form on this site.*

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IN THE COURT OF SESSION

*in causa*

[A.B.] (*designation and address*)

Pursuer [*or* Petitioner]

against

[C.D.] (*designation and address*)

Defender [*or* Respondent]

To the Deputy Principal Clerk of Session

The (*specify Minister or other person*) intends to join as a party to these proceedings.

*(Signed)*

Solicitor for (*specify Minister or other person*)  
(*Address*)

**FORM 82.4 Form of minute under Rule 82.4**

IN THE COURT OF SESSION

*in causa*

[A.B.] (*designation and address*)

Pursuer [*or* Petitioner]

against

[C.D.] (*designation and address*)

Defender [*or* Respondent]

To the Deputy Principal Clerk of Session

*(set out the basis on which the court is considering whether or not to make a declaration of incompatibility including where appropriate a summary of any facts on which it proposes to rely, of any proposition of law which it proposes to enforce, and of any argument which it proposes to make)*

*(Signed)*

Solicitor for (*specify Minister or other person*)

Edinburgh  
7th September 2000

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

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## EXPLANATORY NOTE

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

This Act of Sederunt adds new rules and Forms to the Rules of the Court of Session to deal with matters arising out of the Human Rights Act 1998.

New rule 82.2 makes provision for the citing of evidence of judgments, opinions etc of the European Court of Human Rights, the European Commission of Human Rights and the Committee of Ministers.

New rules 82.3 to 82.5 make provision for proceedings related to declarations of incompatibility under section 4 of the 1998 Act.

Forms 82.3—A to 82.4 are Forms related to these new rules.