
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 288

**Act of Sederunt (Rules of the Court of Session
Amendment No. 4) (Miscellaneous) 2011**

Citation, commencement etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Miscellaneous) 2011 and, subject to subparagraph (2), comes into force on 21st July 2011.

(2) Paragraph 4 comes into force on 7th July 2011.

(3) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(4) In this Act of Sederunt, “the Rules” means the Rules of the Court of Session 1994⁽¹⁾.

Restriction as to caveats

2.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In rule 5.1A (further restriction as to caveats)⁽²⁾, omit paragraph (1).

Charges for witnesses and skilled persons

3.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) For rule 42.13 (charges for witnesses)⁽³⁾ substitute—

“Charges for witnesses

42.13. Charges for the attendance at a proof or jury trial of a witness present but not called to give evidence may be allowed if the court has, at any time before the diet of taxation, granted a motion for the name of that witness to be noted in the minute of proceedings in the cause.

Charges for skilled persons

42.13A.—(1) If, at any time before the diet of taxation, the court has granted a motion for the certification of a person as skilled, charges shall be allowed for any work done or expenses reasonably incurred by that person which were reasonably required for a purpose in connection with the action or in contemplation of the action.

(2) A motion under paragraph (1) may be granted only if the court is satisfied that—

(a) the person was a skilled person; and

(b) it was reasonable to employ the person.

(3) Where a motion under paragraph (1) is enrolled after the court has awarded expenses, the expenses of the motion shall be borne by the party enrolling it.

(1) S.I. 1994/1443, last amended by S.S.I. 2011/190.

(2) Rule 5.1A was inserted by S.S.I. 2001/92 and amended by S.S.I. 2001/305 and 2009/63.

(3) Rule 42.13 was amended by S.I. 1995/1396 and 1996/1756 and S.S.I. 2001/305 and 2006/294.

(4) The charges which shall be allowed under paragraph (1) shall be such as the Auditor determines are reasonable.

(5) Where the court grants a motion under paragraph (1), it shall record the name of the skilled person in its interlocutor.”

(3) In the table of fees in rule 42.16(4)—

(a) in Chapter II (witnesses’ fees)—

(i) for the heading, substitute “SKILLED PERSONS’ AND WITNESSES’ FEES”;

(ii) for paragraph 1, substitute—

“1. Skilled persons

Where it was reasonable to employ a skilled person to carry out work for any purpose, any charges for such work and for any attendance at any proof or jury trial shall be allowed at such a rate which the Auditor of Court shall determine is fair and reasonable.”;

(b) for the heading to Part VII of Chapter III substitute “ADMIRALTY, MERCANTILE SEQUESTRATIONS AND APPLICATIONS FOR SUMMARY TRIAL UNDER SECTION 26 OF THE ACT OF 1988 AND CAUSES REMITTED FROM THE SHERIFF COURT”.

Damages (Scotland) Act 2011

4.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) In rule 43.1 (application and interpretation of Chapter 43)(5), for the definition of “relative” substitute—

““relative” has the meaning assigned to it by section 14(1) of the Damages (Scotland) Act 2011.”(6).

(3) In rule 43.14 (actions by connected persons)(7)—

(a) for paragraph (1) substitute—

“(1) This rule applies in an action of damages in which, following the death of any person from personal injuries, damages are claimed—

(a) in respect of the injuries from which the deceased died; or

(b) in respect of the death of the deceased.”;

(b) in paragraph (2), omit “in an action to which paragraph (1) applies”.

(4) In rule 43.20 (mesothelioma actions: special provisions), for “section 1(2A) and (2B) of the Damages (Scotland) Act 1976 (liability where the personal injury in consequence of which the deceased died is mesothelioma)” substitute “section 5 of the Damages (Scotland) Act 2011 (discharge of liability to pay damages: exception for mesothelioma)”.

(5) In relation to any action raised in respect of any death occurring before 7th July 2011, rule 43.20 and the definition of “relative” in rule 43.1 shall be construed in accordance with article 4 of the Damages (Scotland) Act 2011 (Commencement, Transitional Provisions and Savings) Order 2011(8).

(4) The table of fees was last amended by [S.S.I. 2011/87](#).

(5) Chapter 43 and rule 43.1 were substituted by [S.S.I. 2002/570](#). Rule 43.1 was amended by [S.S.I. 2004/291](#), [2007/282](#) and [2009/63](#).

(6) [2011 asp 7](#).

(7) Rule 43.14 was substituted by [S.S.I. 2002/570](#).

(8) [S.S.I. 2011/268](#).

Personal injuries actions

5.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In rule 43.4 (inspection and recovery of documents)(9), in paragraph (4), for “rules” substitute “rule”.

Admiralty actions: actions *in rem*

6.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In rule 46.3 (actions *in rem*)(10), for paragraph (1) substitute—

“(1) In an Admiralty action *in rem*—

(a) where the owners or demise charterers of, or other parties interested in, the ship or the owners of the cargo against which the action is directed are known to the pursuer, they shall be called as defenders by name;

(b) where such owners or demise charterers or other parties are unknown to the pursuer—

(i) the pursuer may call them as defenders as “the owners or demise charterers of, or other parties interested in the ship (*name and identify by its port of registry*) [*or the owners of the cargo*]”; and

(ii) the master, if known, shall also be called as a defender representing the owners or demise charterers.”.

Treaty of Lisbon terminology

7.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) The heading to Part IV of Chapter 62 becomes “**EU JUDGMENTS**”.

(3) In rule 62.18(1) (interpretation of Part IV of Chapter 62)(11) in the definitions of “Community judgment” and “order for enforcement”, for “Community judgment” substitute “EU judgment”.

(4) In rule 62.19 (register of European Community judgments), for “Community judgment” where it twice appears substitute “EU judgment”.

(5) The heading to rule 62.19 becomes “**Register of EU judgments**”.

(6) In rule 62.20 (applications for registration of European Community judgments)—

(a) in paragraphs (1) and (2), for “a Community judgment” substitute “an EU judgment”;

(b) in paragraph (3), for “Community judgment” substitute “EU judgment”.

(7) The heading to rule 62.20 becomes “**Applications for registration of EU judgments**”.

(8) In rule 62.21 (warrant for registration of European Community judgments)—

(a) in paragraph (1), for “any Community judgment” substitute “any EU judgment”;

(b) in paragraph (1)(a) and (2), for “a Community judgment” substitute “an EU judgment”.

(9) The heading to rule 62.21 becomes “**Warrant for registration of EU judgments**”.

(10) In rule 62.22 (registration of European Community judgments)(12), for “Community judgment” (where it twice appears) substitute “EU judgment”.

(11) The heading to rule 62.22 becomes “**Registration of EU judgments**”.

(9) Rule 43.4(4) was amended by [S.S.I. 2011/190](#).

(10) Rule 46.3 was amended by [S.S.I. 2010/205](#).

(11) Rule 62.18(1) was amended by [S.I. 1998/2637](#) and [1999/1281](#).

(12) Rule 62.22 was amended by [S.I. 1996/2168](#).

(12) In rule 62.23 (service on judgment debtor of European Community judgment), for “Community judgment” substitute “EU judgment”.

(13) The heading to rule 62.23 becomes “**Service on judgment debtor of EU judgment**”.

(14) In rule 62.24 (variation or cancellation of registration), in paragraph (2), for “a Community judgment” substitute “an EU judgment”.

(15) In rule 62.25 (suspension of enforcement of Community judgments), in paragraph (1), for “Community judgment” substitute “EU judgment”.

(16) The heading to rule 62.25 becomes “**Suspension of enforcement of EU judgments**”.

Application for refusal of recognition or enforcement of foreign arbitral awards

8.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In rule 62.60 (application for refusal of recognition or enforcement of a Convention award)(13), in paragraph (4), for “rule 62.59(1)” substitute “rule 62.58(1)”.

Applications under section 1 of the Administration of Justice (Scotland) Act 1972

9.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In the appendix, in Form 64.6 (form of order of court in procedure for recovery of documents under Chapter 64)(14), in the paragraph beginning “**ORDERS** the haver”, in subparagraph (2), at the beginning insert “(if appropriate)”.

Applications under the Adoption and Children (Scotland) Act 2007

10.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) In rule 67.6 (intimation to Principal Reporter)(15), for “intimate” substitute “give written intimation of”.

(3) In rule 67.11 (appointment of curator *ad litem* and reporting officer)(16), in paragraph (6), for “intimate” substitute “give written intimation of”.

(4) In rule 67.14 (intimation and hearing of adoption petition)(17), in paragraph (1)(e), for “intimate” substitute “give written intimation of”.

Domestic Abuse (Scotland) Act 2011

11.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) After rule 85.2(3)(d) (delivery of certain documents to the chief constable)(18) insert—

“(e) where a determination has previously been made in respect of such interdict under section 3(1) of the Domestic Abuse (Scotland) Act 2011(19), a copy of the interlocutor making the determination.”.

(3) After Chapter 85 (applications under the Protection from Abuse (Scotland) Act 2001)(20) insert—

(13) Rule 62.60 was substituted by [S.S.I. 2010/205](#).

(14) Form 64.6 was inserted by [S.S.I. 2000/319](#) as Form 64-A. It was renumbered by [S.S.I. 2004/52](#) and amended by [S.S.I. 2009/450](#) and then substituted by [S.S.I. 2011/190](#).

(15) Rule 67.6 was substituted by [S.S.I. 2009/283](#).

(16) Rule 67.11 was substituted by [S.S.I. 2009/283](#).

(17) Rule 67.14 was substituted by [S.S.I. 2009/283](#).

(18) Rule 85.2 was inserted by [S.S.I. 2002/514](#) and amended by [S.S.I. 2006/206](#).

(19) [2011 asp 13](#).

(20) Chapter 85 was inserted by [S.S.I. 2002/514](#).

“CHAPTER 85A DOMESTIC ABUSE INTERDICTS

Interpretation and application of this Chapter

85A.1.—(1) In this Chapter—

“the 2011 Act” means the Domestic Abuse (Scotland) Act 2011; and

“interdict” includes interim interdict.

(2) This Chapter applies to an application for a determination under section 3(1) of the 2011 Act that an interdict is a domestic abuse interdict.

Applications for determination that an interdict is a domestic abuse interdict

85A.2.—(1) An application made before the interdict is obtained must be made by a conclusion of the summons, the prayer of the petition, the defences, answers or counterclaim in which the interdict is sought.

(2) An application made after the interdict is obtained must be—

(a) made by motion in process; and

(b) intimated to the person against whom the interdict was obtained.

(3) In respect of a determination of an application under paragraph (2), the following documents must be served along with the interlocutor in accordance with section 3(4) of the 2011 Act—

(a) a copy of the application for interdict;

(b) a copy of the interlocutor granting interdict; and

(c) a copy of the certificate of service of the interdict.

(4) Paragraph (5) applies where, in respect of the same interdict—

(a) a power of arrest under section 1 of the Protection from Abuse (Scotland) Act 2001(21) is in effect; and

(b) a determination under section 3(1) of the 2011 Act is made.

(5) As soon as possible after the determination has been served under section 3(4) of the 2011 Act, the documents specified in paragraph (6) must be sent by the person who obtained the determination to such chief constable as the court sees fit.

(6) The documents are—

(a) a copy of the application for interdict;

(b) a copy of the interlocutor granting interdict;

(c) a copy of the certificate of service of the interdict; and

(d) where the application for a determination was made after the interdict was granted—

(i) a copy of the application for the determination;

(ii) a copy of the interlocutor granting it; and

(iii) a copy of the certificate of service of the determination.

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(7) Where paragraph (5) applies and the determination is recalled under section 3(5) of the 2011 Act, the court must appoint a person to send a copy of the interlocutor recalling the determination to such chief constable as the court sees fit.

(8) Where a person is required by virtue of this Chapter to send documents to a chief constable, such person must, after such compliance, lodge in process a certificate of sending documents in Form 85A.2.”.

(4) In Appendix 1, after Form 85.5(22) insert the Form 85A.2 set out in the Schedule to this Act of Sederunt.

Edinburgh
28th June 2011

A.C. HAMILTON
Lord President
I.P.D.