

1972 No. 2021 (S. 160)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 7) 1972

Made - - - - 19th December 1972

Coming into Operation 16th January 1973

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 section 1 of the Administration of Justice (Scotland) Act, 1972(b) and of all other powers competent to them in that behalf, do hereby enact and declare as follows:—

1. The Rules of Court (c) are hereby amended as follows:—

By adding after Rule 95(b) a new Rule 95A: “Application for an order under section 1 of the Administration of Justice (Scotland) Act 1972”.

“(a) Any application for an order for the inspection, photographing, preservation, custody, and detention of documents and other property (including, where appropriate, land) or for the production, recovery or the taking of samples thereof or the carrying out of any experiment thereon made in a cause before calling shall be made by letter addressed to the Deputy Principal Clerk craving that the Court should grant such an order and specifying the order sought. The letter shall at the same time be intimated to the other party, to any third party haver and where necessary to the Lord Advocate, and the Deputy Principal Clerk, or a clerk instructed by him, shall forthwith bring the application before a Lord Ordinary in chambers, making intimation to the parties of place and hour. The applicant’s solicitor shall attend along with the said clerk and shall produce to the Lord Ordinary the principal Summons bearing the signet; and the solicitor of the other party, or the Lord Advocate if he or they desire to oppose the application, shall also appear. After hearing parties’ explanations, the Lord Ordinary may either grant or refuse the order sought, in whole or in part, or as amended and may order the applicant to find such caution as the Lord Ordinary thinks fit. The Lord Ordinary’s interlocutor shall be final.”

“(b) Any application for such an order as is referred to in the immediately preceding paragraph made after calling shall be made by motion. A detailed and articulate specification of the documents and other property (including, where appropriate, land) sought to be inspected, photographed, preserved, taken into custody, detained, produced, recovered, sampled or experimented upon, shall be lodged in the General Department at the time of enrolling such motion as aforesaid, and a copy or copies of such specification shall be sent to the Solicitor or Solicitors of the other party or parties, to any third party haver and where necessary to the Lord Advocate, along with the intimation of the enrolment. In granting such an order the Court may order the applicant to find such caution as it thinks fit.”

(a) 1933 c. 41.

(b) 1972 c. 59.

(c) S.I. 1965/321 (1965 1 p.803).

“(c) Any application for such an order as is referred to in paragraph (a) hereof, made where proceedings have not been commenced, by any person who appears to the Court to be likely to be a party to or Minuter in proceedings which are likely to be brought, shall be made by Petition presented to the Outer House, and the provisions of Rules 191 to 198 shall apply thereto, provided, however that the Court may make an order for such intimation to third party havers as it thinks fit, and may order the Petitioner to find such caution as it thinks fit.”

Rule of Court 96 shall be amended by adding after paragraph (f) a new paragraph (g):—

“(g) Any party who has obtained an order for inspection, photographing, preservation, custody or detention of documents or other property in terms of Rule of Court 95A shall serve by registered or recorded delivery letter a certified copy of the Interlocutor granting such order, upon any other party or parties to the cause, or, as appropriate, upon any haver of said documents or upon any party with an interest in said property, and such order shall be obtempered by the party or parties to whom it is directed in the manner and within the time specified therein”.

Rule of Court 276 is hereby amended by inserting in the fourth line thereof between the words “Tribunal” and “and” “and all stated cases by an arbiter”.

2. This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 7) 1972, and shall come into operation on 16th January 1973.

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

G. C. Emslie
I.P.D.

Edinburgh.
19th December 1972.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of Court by prescribing the procedure to be followed when an order for inspection of documents and other property etc., is sought under the Administration of Justice (Scotland) Act 1972. It further amends the Rules of Court by providing that stated cases from an arbiter shall be regulated by the rules provided in Rule of Court 276.

SI 1972/2021
ISBN 0-11-022021-8



780110 220215