

1989 No. 435 (S.53)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of the Court of Session
Amendment No.1) (Written Statements) 1989

Made - - - - 7th March 1989

Coming into force 3rd April 1989

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(a) 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.1) (Written Statements) 1989 and shall come into force on 3rd April 1989.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Conditions for receiving written statements in evidence without being spoken to by a witness

2. In the Rules of the Rules of the Court of Session(b), after rule 108, insert the following rule:—

“108A. Conditions for receiving written statements in evidence without being spoken to by a witness

(1) Any written statement (including an affidavit) or report, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988(c) may be received in evidence in any category of civil proceedings without being spoken to by a witness subject to the provisions of this rule.

(2) The following provisions of this rule do not apply to any such written statement or report in respect of which express provision is made in these rules for its admissibility in evidence in relation to a particular category of civil proceedings.

(3) Application to the court to receive any such written statement or report in evidence without being spoken to by a witness shall be made by way of motion.

(4) Subject to paragraph (5), on enrolling any such motion, the applicant shall lodge—

(a) the written statement or report as a production;

(b) in any case where the other party or parties have not agreed to the written statement or report in question being received in evidence without being spoken to by a witness, an affidavit or affidavits in support of the motion stating—

(i) the name, designation, and qualifications (if any) of the author of the statement or report in question;

(ii) the circumstances in which it was written; and

(a) 1988 c.36, as amended by section 2(3) of the Civil Evidence (Scotland) Act 1988 (c.32).
(b) S.I. 1965/321; the relevant amending instrument is S.I. 1986/1955.
(c) 1988 c.32.

(iii) the reasons for the application.

(5) Paragraph (4) does not apply to an application made in respect of a written statement or report in the form of an affidavit which includes the information specified in sub-paragraph (b) of paragraph (4).

(6) Any such motion which is unopposed may be granted by the court without a hearing.

(7) On the hearing of any such motion, the court may grant the motion, with or without conditions, or may refuse it, or may continue the motion to enable such further information to be obtained as it may require for the purpose of determining the application.

(8) Expressions used in this rule and in the Civil Evidence (Scotland) Act 1988 shall have the meaning they have in that Act.”.

Edinburgh
7th March 1989

Emslie
Lord President, I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session to make provision for the procedure for receiving written hearsay evidence admissible under section 2 of the Civil Evidence (Scotland) Act 1988.

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