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STATUTORY INSTRUMENTS

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**1989 No. 436 (S.54)**

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Amendment of Ordinary Cause and  
Summary Cause Rules) (Written Statements) 1989**

*Made* - - - - 8th March 1989  
*Coming into force* - - 3rd April 1989

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 32 of the Sheriff Courts (Scotland) Act 1971( **(1)**) and of all other powers competent to 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 (Amendment of Ordinary Cause and Summary Cause Rules) (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.

**Amendment of Ordinary Cause Rules**

**2.** In the First Schedule to the Sheriff Courts (Scotland) Act 1907( **(2)**) (Ordinary Cause Rules), after rule 72, insert the following rule:—

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

**72A.**—(1) Any written statement (including an affidavit) or report, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988( **(3)**) may be received in evidence in any ordinary cause 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 ordinary cause.

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(1) 1971 c. 58; paragraph (e) of section 32(1) was substituted by section 2(4) of the Civil Evidence (Scotland) Act 1988 (c. 32)  
(2) 1907 c. 51; First Schedule substituted by S.I.1983/747  
(3) 1988 c. 32

- (3) Application to the sheriff 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
    - (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 subparagraph (b) of paragraph (4).
- (6) On the hearing of any such motion, the sheriff 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 he may require for the purpose of determining the application.
- (7) For the purpose of this rule—
- (a) expressions used in this rule and in the Civil Evidence (Scotland) Act 1988 shall have the meaning they have in that Act;
  - (b) “affidavit” includes affirmation and statutory or other declaration;
  - (c) an affidavit shall be treated as admissible if it is duly emitted before a notary public or any other competent authority. ” .

### **Amendment of the Summary Cause Rules**

**3.** In paragraph 3(2) of the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976( **(4)**) after “60” insert “72A” .

8th March 1989

*Emslie*  
Lord President, IPD Edinburgh

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(4) S.I. 1976/476; relevant amending instruments are S.I. 1983/747 and 1986/1966

## **EXPLANATORY NOTE**

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

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