

1990 No. 2118 (S.186)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of the Court of Session
Amendment No.5) (Miscellaneous) 1990

Made - - - - - 25th October 1990

Coming into force 19th November 1990

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.5) (Miscellaneous) 1990 and shall come into force on 19th November 1990.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session(b) shall be amended in accordance with the following sub-paragraphs.

(2) After rule 68G (exercise of powers of Lord President by Lord Justice Clerk)(c), insert the following section and rules:—

“SECTION 12
CAVEATS

68H. Orders against which caveats may be lodged

A person may lodge a caveat against—

- (a) *interim* interdict sought in an action before he has lodged defences;
- (b) any other *interim* order sought in any action before the time within which appearance may be entered has expired;
- (c) any *interim* order sought in a petition before he has lodged answers; provided that, for the purposes of this rule, an order under section 1 of the Administration of Justice (Scotland) Act 1972 granted in terms of the prayer, or part of the prayer, of a petition shall not be regarded as an *interim* order;
- (d) an order for intimation, service and advertisement of a petition to wind up a company or for the appointment of an administrator to a company; or
- (e) an order for intimation, service and advertisement of a petition for his sequestration.

(a) 1988 c.36.

(b) S.I. 1965/321; relevant amending instruments are S.I. 1974/845, 1978/955, 1984/499, 1985/227, 1986/515, 2298, 1987/1206, 2160, 1988/615, 1521 and 1990/705.

(c) Rule 68G was inserted by S.I. 1987/2160.

68I. Form, lodging and renewal of caveats

- (1) A caveat shall be in Form 72 and shall be lodged in the Petition Department.
- (2) A caveat shall remain in force for a period of one year from the date of lodging, and may be renewed on its expiry for a further period of a year and yearly thereafter.”.
- (3) In rule 79 (motions for *interim* orders)(a) omit paragraph (3).
- (4) In rule 91C (fixing and allocation of diets)(b)–
 - (a) omit paragraph (4);
 - (b) in paragraph (5), omit the words “or (4)”; and
 - (c) in paragraphs (6), (7) and (8), omit the words “or 64” wherever they occur.
- (5) After rule 117 (objections to issues as adjusted), insert the following rule:–

“117A. Jury precept

 - (1) Not less than 14 days before the diet for jury trial, the pursuer shall attend at the General Department and request the issue of a jury precept.
 - (2) Where a jury precept is issued, it shall be transmitted by a clerk of session to the sheriff clerk at Edinburgh who shall prepare in accordance with such precept a list of jurors composed of an equal number of men and women.”.
- (6) In rule 148 (application of commercial cause rules)(c), for paragraph (2), substitute the following paragraph:–

“(2) This Section applies to–
 - (a) an action relating to–
 - (i) the construction of a commercial or mercantile document;
 - (ii) the sale or hire purchase of goods;
 - (iii) the export or import of merchandise;
 - (iv) the carriage of goods by land, air or sea (other than an Admiralty action);
 - (v) a building, engineering or construction contract;
 - (vi) a commercial lease;
 - (vii) insurance;
 - (viii) banking;
 - (ix) the provision of financial services;
 - (x) mercantile agency;
 - (xi) mercantile usage or custom of trade; and
 - (b) an action not falling within sub-paragraph (a) but relating to a dispute of a business or commercial nature,and any such action in which an election has been made under paragraph (1) may be referred to as a commercial action.”.
- (7) In rule 188J (diet roll)(d), in paragraph (8), for “(7)” substitute “(6)”.
- (8) In rule 189(a)(v) (Outer House petitions)(e), after the word “Acts”, insert the words “(including applications under section 245B of the Companies Act 1985)”.
- (9) In rule 218A (lodging of caveats in respect of winding up petitions)(f), omit paragraph (2).
- (10) In rule 236 (*interim* orders and intimations in certain petitions)(g), omit paragraph (f).

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- (a) Rule 79(3) was inserted by S.I. 1984/499.
 - (b) Rule 91C was inserted by S.I. 1987/1206.
 - (c) Rule 148(2) was inserted by S.I. 1988/1521.
 - (d) Rule 188J was inserted by S.I. 1985/227.
 - (e) Rule 189(a)(v) was substituted by S.I. 1987/1206.
 - (f) Rule 218A was inserted by S.I. 1986/2298.
 - (g) Rule 236(f) was inserted by S.I. 1984/499.

(11) In rule 251 (assignment of patent etc proceedings)(a), after the word "1961" where it second occurs, insert the words ", the Trade Marks Act 1938(b), the Copyright, Designs and Patents Act 1988(c)".

(12) In rule 257E (proceedings for determination of certain disputes)(d), omit the words from "and any such reference" to "Rule 148".

(13) In rule 260P(1) (registration and enforcement of custody orders under the Family Law Act 1986: interpretation)(e)–

(i) in the definition of "appropriate court" after the words "Northern Ireland", insert the words "or, in relation to a specified dependent territory, the corresponding court in that territory,";

(ii) after the definition of "custody order", insert the following definition:–

““dependent territory” means a territory in respect of which provision has been made by Order in Council under section 43 of the Act of 1986;” and

(iii) in the definition of "proper officer", after the words "Northern Ireland", insert the words "or, in relation to a dependent territory, the corresponding officer of the appropriate court in that territory".

(14) In rules 260R(1), 260T(2) and 260U(3) (registration and enforcement of custody orders under the Family Law Act 1986)(f), omit the words "in England and Wales or Northern Ireland" wherever they occur.

(15) In rule 268 (time and mode of appeals from inferior courts)(g)–

(a) for paragraph (a), substitute the following paragraphs:–

“(1) Except as otherwise provided in any other enactment, an appeal from an inferior court shall be marked not later than 21 days after the date of the interlocutor, judgment or determination appealed against; and shall be by note of appeal written by the appellant or his solicitor on the interlocutor sheet, minute of court, or other written record containing the interlocutor, judgment or determination appealed against, or on a separate sheet lodged with the clerk of the inferior court; and such note of appeal shall be as nearly as may be in the following terms:–“The (*pursuer, applicant, claimant, defender, respondent, or other party*) appeals to the Court of Session’; and shall be signed by the appellant or his solicitor, bear the date on which it is signed and specify the name and address of the solicitors in Edinburgh who will be acting for the appellant in the appeal.

(2) Where a person fails to mark an appeal within the time specified under paragraph (1) or any other enactment, as the case may be, that person shall include, in a note of appeal made in accordance with paragraph (1), an application for leave to appeal out of time; and a Division of the Inner House may, on the motion of that person in the Single Bills, grant leave to appeal out of time on such conditions, if any, as to expenses or otherwise as the court considers appropriate.”; and

(b) paragraphs (b) and (c) shall be numbered as paragraphs (3) and (4) respectively.

(16) In the Appendix–

(a) omit Form 64 (form of confirmation of diet)(h);

(b) in Form 69(i), in the heading, after the word "parent" insert the words ", tutor, curator"; and

(c) after Form 71(j), insert Form 72 in Schedule 1 to this Act of Sederunt.

(a) Rule 251 was substituted by S.I. 1978/955.

(b) 1938 c.22.

(c) 1988 c.48.

(d) Rule 257E was inserted by S.I. 1978/955.

(e) Rule 260P was inserted by S.I. 1988/615.

(f) Rules 260R, 260T, 260U were inserted by S.I. 1988/615.

(g) Rule 268(a) was amended by S.I. 1974/845.

(h) Form 64 was inserted by S.I. 1987/1206.

(i) Form 69 was inserted by S.I. 1986/515 and renumbered by S.I. 1990/705.

(j) Form 71 was inserted by S.I. 1990/705.

Revocation of Acts of Sederunt

3. The Acts of Sederunt in Schedule 2 to this Act of Sederunt are hereby revoked.

Edinburgh
25th October 1990

J.A.D. Hope
Lord President
IPD

SCHEDULE 1

paragraph 2(16)(c)

FORM 72

rule 68I(1)

FORM OF CAVEAT

CAVEAT

for

[AB] (*design**)

Should any application be made to the court for (*here specify the nature of the application(s) to which this caveat is to apply*) against [*or by CD (design)*], it is requested that intimation be made to the undernoted before any order is pronounced.

(*Signed*)

[AB] [or Solicitor for [AB]]

Caveator's telephone number

(only when caveat not lodged by a solicitor).....

Solicitor

Name

Address

Tel No.....

Reference

Out of hours contacts

Name and telephone number 1.....

2.....

*State whether the caveat is lodged in an individual capacity, a specified representative capacity (e.g. as trustee of a named trust) or both such capacities.

*Where appropriate, state also the nature of the caveator's interest (e.g. shareholder; debenture holder).

SCHEDULE 2

paragraph 3

REVOCATIONS

| <i>Act of Sederunt revoked</i> | <i>Reference</i> |
|---|---------------------|
| Act of Sederunt to regulate proceedings under the Workmen's Compensation (Transfer of Funds) Act 1927 | S.R. & O. 1935/1251 |
| Act of Sederunt to regulate proceedings under the Workmen's Compensation (Transfer of Funds) Act 1927 | S.R. & O. 1936/114 |
| Act of Sederunt to regulate proceedings under the Workmen's Compensation (Transfer of Funds) Act 1927 | S.R. & O. 1937/50 |
| Act of Sederunt to regulate proceedings under the Workmen's Compensation (Transfer of Funds) Act 1927 | S.R. & O. 1938/1345 |
| Act of Sederunt to regulate proceedings under the Workmen's Compensation (Transfer of Funds) Act 1927 | S.R. & O. 1939/1517 |

EXPLANATORY NOTE

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

This Act of Sederunt—

- (1) amends the Rules of the Court of Session by—
 - (a) making new provision for the lodging of caveats (and consequential amendments) (paragraph 2(2), (3), (9), (10) and (16)(c));
 - (b) removing the requirement in rule 91C to lodge Form 64 and omitting that Form from the Appendix (paragraph 2(4) and (16)(a));
 - (c) inserting a rule in relation to the issue of a jury precept where a diet for a jury trial has been fixed (paragraph 2(5));
 - (d) altering the definition of commercial cause (paragraph 2(6));
 - (e) altering the reference in rule 188J(8) to paragraph (7) of rule 91 to that of paragraph (6) of rule 91 (paragraph 2(7));
 - (f) providing for applications under section 245B of the Companies Act 1985 (c.6) to be by petition presented to the Outer House (paragraph 2(8));
 - (g) inserting references to the Trade Marks Act 1938 (c.22) and the Copyright, Designs and Patents Act 1988 (c.48) in rule 251 (paragraphs 2(11));
 - (h) removing the provision for application to treat as commercial causes certain applications and references under certain patent, designs and defence contracts legislation under rule 257E (paragraph 2(12));
 - (i) inserting a reference in rule 260P (1) to dependent territories in the definition of “appropriate court” in relation to registration and enforcement of custody orders under the Family Law Act 1986 (c.55), and making consequential amendments (paragraph 2(13) and (14));
 - (j) making minor drafting amendments to rule 268 and introducing a procedure for applying for leave to appeal from an inferior court out of time (paragraph 2(15));
 - (k) making a minor amendment in the heading of Form 69 in the Appendix to include a reference to a tutor and a curator (paragraph 2(16)); and
- (2) revokes the Act of Sederunt to regulate proceedings under the Workmen’s Compensation (Transfer of Funds) Act 1927, 1935 and the Acts of Sederunt which amended it following the repeal of the Workmen’s Compensation (Transfer of Funds) Acts 1927 (c.15) and 1943 (c.6) by the Statute Law (Repeals) Act 1989 (c.43), section 1 and Schedule 1, Part II (paragraph 3 and Schedule 2).

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