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STATUTORY INSTRUMENTS

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**1990 No. 380 (S.37)**

**SHERIFF COURT, SCOTLAND**

**Act of Sederunt (Copyright, Designs and Patents) 1990**

*Made* - - - - - *27th February 1990*

*Coming into force* - - - - - *26th March 1990*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971<sup>(1)</sup>, section 58C of the Trade Marks Act 1938<sup>(2)</sup> and sections 114, 204 and 231 of the Copyright, Designs and Patents Act 1988<sup>(3)</sup>, and of all other powers enabling them in that behalf, do hereby enact the following Act of Sederunt which embodies, with modifications, draft rules submitted by the Sheriff Court Rules Council under section 39 of the said Act of 1971:

**Citation and commencement**

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Copyright, Designs and Patents) 1990 and shall come into force on 26th March 1990.

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

(3) In this Act of Sederunt—

“the 1938 Act” means the Trade Marks Act 1938; and

“the 1988 Act” means the Copyright, Designs and Patents Act 1988.

**Orders for delivery up, forfeiture, destruction or other disposal**

2.—(1) An application to the sheriff made under section 58C of the 1938 Act shall be made by summary application.

(2) An application to the sheriff made under section 99, 114, 195, 204, 230, 231 or 298 of the 1988 Act shall be made—

(a) by motion or incidental application, as the case may be, where proceedings have been commenced; or

(b) by summary application where no proceedings have been commenced.

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(1) 1971 c. 58.

(2) 1938 c. 22; section 58C was inserted by the Copyright, Designs and Patents Act 1988 (c. 48), section 300.

(3) 1988 c. 48.

### **Service of notice on interested persons**

3.—(1) Where an application has been made to the sheriff under section 58C of the 1938 Act or section 114, 204 or 231 of the 1988 Act, the sheriff shall order that there be intimated to any person who has an interest in the goods, material, copy, recording, article or other thing which forms the subject matter of the application—

- (a) a copy of the pleadings in the principal proceedings and a copy of the motion or incidental application; or
- (b) the summary application,

as the case may be.

(2) In any such application the applicant shall—

- (a) specify the name and address of any person known or believed by him to have such an interest; or
- (b) state that to the best of his knowledge and belief no other person has any such interest.

### **Leave of the court for certain actions to proceed**

4.—(1) Where, in an action for infringement of copyright or for infringement of design right, leave of the sheriff is required before the action may proceed the pursuer shall lodge along with the initial writ or summons a written motion or incidental application, as the case may be, seeking such leave and stating the grounds upon which it is sought.

(2) The sheriff may hear the pursuer on the motion or incidental application and may grant or refuse it or may make such other order in relation to it as he considers appropriate prior to such determination.

(3) Where such a motion or application is granted, a copy of the sheriff's interlocutor shall be served upon the defender along with the warrant of citation.

Edinburgh  
27th February 1990

*J.A.D. Hope*  
Lord President, IPD

## **EXPLANATORY NOTE**

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

This Act of Sederunt gives effect to certain applications to the sheriff court under the Copyright, Designs and Patents Act 1988 and to the Trade Marks Act 1938 as amended by the 1988 Act by making provision for regulating—

- (a) the manner in which certain applications may be made to the sheriff;
- (b) the service of notice on interested parties in specified applications; and
- (c) the manner in which leave of the court to allow certain actions for infringement to proceed may be obtained.