

**1990 No. 705 (S.86)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of the Court of Session  
Amendment No.1) (Miscellaneous) 1990**

*Made* - - - - *16th March 1990*

*Coming into force* *9th April 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.1) (Miscellaneous) 1990 and shall come into force on 9th April 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) In rule 74 (signeting; service; diligence etc)—

(a) in paragraph (g)—

- (i) after the words “on the dependence of an action”, insert the words “or for authority to move an arrested vessel”;
- (ii) for the words from “letter addressed” to “pursuer”, substitute the word “motion”; and
- (iii) omit the words “, and his interlocutor shall be written on the principal summons”; and

(b) in paragraph (h), after the words “on the dependence of an action”, insert the words “or for authority to move an arrested vessel”.

(3) In rule 74A (citation and service)(c)—

- (a) in paragraph (1)(b)(i), for the words “resident at, or depositing it in, the dwelling place”, substitute the words “person, or depositing it, in the dwelling place”;
- (b) in paragraph (1)(b)(ii), for the words from “in the hands of a responsible employee” to “of the defender at”, substitute the words “at, or depositing it in,”;
- (c) in paragraph (1)(b)(iii), for the words “depositing the citation in that place”, substitute the words “leaving the citation at, or depositing it in, that place”;
- (d) in paragraph (4)(a)—
  - (i) after the words “dwelling place” insert the words “, registered office”; and

---

(a) 1988 c.36.

(b) S.I. 1965/321; relevant amendments are S.I. 1971/1809; 1976/283, 1849, 1994; 1978/955; 1980/1144, 1803; 1982/1825; 1983/826; 1984/472, 499, 919; 1985/500, 1600; 1986/514, 515, 1231, 1941, 1955, 2298; 1987/12, 1206, 2160; 1988/615.

(c) Rule 74A was inserted by S.I. 1984/472; relevant amending instruments are S.I. 1985/1600 and 1986/1941.

- (ii) at the end, insert the words "whose name and designation he shall ascertain and enter in the execution"; and
- (e) after paragraph (4)(b), insert the following sub-paragraph:-
  - "(c) where left with a person other than the defender, be placed in a sealed envelope (bearing the notice in paragraph (6)) the messenger-at-arms together with the summons or other document served."
- (4) In rule 78(d) (calling of summons), omit the words from "; and along with" to "a later date".
- (5) In rule 83 (defences), omit paragraph (c).
- (6) In rule 89 (decree in absence)(a), omit paragraphs (g) and (h).
- (7) In rule 89B(1) (summary decree)(b), omit sub-paragraph (b).
- (8) In rule 102A (letters of request)(c), at the end, insert the following paragraph-
  - "(5) A person who is served with an order requiring him to give evidence, or is cited to attend to give evidence by virtue of such an order, may apply to the court by motion in the Single Bills to have the order varied or recalled."
- (9) After rule 134D (appeal in claim for provisional damages)(d) insert the following section and rule:-

## "SECTION 12

### *LODGING OF DOCUMENTS FOUNDED ON*

#### **134E. Lodging of documents founded on**

- (1) Any deed, writing or other document founded on by a party in his pleadings shall, so far as in his possession or within his control, be lodged in process by that party-
  - (a) when founded on in the summons or condescendence annexed thereto, at the time of lodging the summons for calling;
  - (b) when founded on in defences, at the time of lodging the defences;
  - (c) when founded on in an adjustment to the pleadings, at the time when such an adjustment is intimated; and
  - (d) when founded on in any minute, answers thereto or adjustments on such a minute and answers, at the time of lodging the minute or answers or intimating the adjustments, as the case may be.
- (2) Paragraph (1) shall be without prejudice to any power of the court to order production of any document or grant a commission and diligence for recovery of it.
- (3) Where a party fails to lodge a deed, writing or other document in accordance with paragraph (1), he may be found liable in the expenses of any order for production or for commission and diligence for recovery of it obtained by another party to the action."
- (10) In rule 140-
  - (a) in paragraph (d) (recall of arrestment in admiralty causes)-
    - (i) after the words "such arrestment recalled", insert the words "or to seek authority to move an arrested vessel";
    - (ii) for the words from "letter addressed" to "recall of the arrestment", substitute the word "motion"; and
    - (iii) omit the words from "; and the interlocutor recalling" to "the principal summons".
  - (b) after paragraph (d), insert the following paragraph:-
    - "(dd) Rule 74(h) shall apply to an application for recall of an arrestment on the dependence of an action or for authority to move an arrested vessel made after calling in an action *in rem*."

---

(a) Paragraphs (g) and (h) of rule 89 were inserted by S.I. 1984/472.

(b) Rule 89B was inserted by S.I. 1984/499.

(c) Rule 102A was inserted by S.I. 1976/283; relevant amending instruments are S.I. 1978/955 and 1982/1825.

(d) Rule 134D was inserted by S.I. 1984/919.

- (11) In rule 168A (defended consistorial actions)(a), omit paragraph (4).
- (12) In rule 170B (parental rights etc in consistorial causes)(b)–
- (a) in paragraphs (6)(a)(iii) (intimation to third parties), for the words “parental rights” where it second occurs, substitute the word “custody”;
  - (b) for paragraph (8), substitute the following paragraph:–
 

“(8) *Applications after decree in relation to children.* An application made after decree for, or for the variation or recall of, an order–

    - (a) relating to the parental rights of a child;
    - (b) under Part II of the Act of 1958; or
    - (c) for aliment for a child under 18 years of age,

shall be made in the process of the original action.”;
  - (c) for paragraph (9), substitute the following paragraph:–
 

“(9) *Interim extract.* A final decree in an action in which an application may be made under paragraph (8) shall be capable only of interim extract.”;
  - (d) after paragraph (13) (application for interdict under the Family Law Act 1986(c)), insert the following paragraphs:–
 

“(14) *Applications for custody to which Part II of the Children Act 1975 applies*–

    - (a) Where in an action a person (“the minuter”) applies by minute for custody of a child, the court shall on granting leave to the minuter to be sisted as a party, order the minuter to give notice–
      - (i) at the same time to each known parent of the child in Form 68 together with, where the minuter is not a parent, tutor, curator, or guardian of the child, a consent form in Form 69; and
      - (ii) where the minuter is not a parent of the child and he resides in Scotland when the minute is presented, within seven days to the local authority within whose area the minuter resides in Form 70; or
      - (iii) where the minuter is not a parent of the child and he does not reside in Scotland when the minute is presented, in Form 70 within such time as the court shall determine to such local authority as the court shall specify.
    - (b) Where a parent, tutor, curator or guardian consents to the minuter being granted custody of a child, he shall–
      - (i) complete and sign a consent form in Form 69;
      - (ii) have his signature witnessed; and
      - (iii) return the form to the minuter.
    - (c) At any stage of the cause, where it appears to the court to be desirable in the circumstances of the case in order to safeguard the interests of a child, the court shall appoint a curator *ad litem*.
    - (d) A curator *ad litem* appointed under sub-paragraph (c) shall have the following duties:–
      - (i) to enquire into, so far as he considers necessary the matters averred in the minute and in any report by a local authority under sub-paragraph (e);
      - (ii) to enquire into any other matters which appear to him to be relevant;
      - (iii) to consider whether the granting of custody to the minuter is in the interests of the child;
      - (iv) to perform such other duties as appear to him to be necessary or as the court may require; and
      - (v) to prepare a report in relation to the exercise of the above duties.

---

(a) Rule 168A was inserted by S.I. 1980/1144.

(b) Rule 170B was inserted by S.I. 1976/1994; relevant amending instruments are S.I. 1986/1955 and 1988/615.

(c) 1986 c.55.

- (e) On completion of a report under section 49(2) of the Children Act 1975(a), the local authority shall—
  - (i) lodge three copies of the report in process; and
  - (ii) where a curator *ad litem* has been appointed, send a copy of the report to him.
- (f) The curator *ad litem* shall, on completion of his report, lodge three copies of it in process.
- (g) On receipt of the report of the local authority, and, where a curator *ad litem* has been appointed, the report of the curator *ad litem*, the General Department shall—
  - (i) inform the minuter that a report has been lodged; and
  - (ii) make available to the minuter, and to every other party, a copy of each report.
- (h) This paragraph shall, with the necessary modifications apply to a pursuer or defender who is not a parent of a child in respect of whom custody is sought as it applies to a person who applies by minute.

(15) *Referral to family conciliation service.* In any action where the custody of, or access to, a child is in dispute, the court may, at any stage of the action where it considers it appropriate to do so and the parties to the dispute agree, refer that dispute to a specified Family Conciliation Service.”.

(13) In rule 170D (applications for financial provision)(b)–

- (a) in paragraph (2) (application by defender for financial provision in divorce action), after the word “seeks”, insert the following words “; and, where a defender makes such a claim, he may apply in his defences for a warrant to use any form of diligence which would be competent on the dependence had the claim been concluded for in a summons, and the application shall be made and dealt with as in like manner as, and any warrant granted shall have effect as if granted under, rule 84(c)”;
- (b) at the end, insert the following paragraph:–

“(12) *Subsequent applications for incidental orders.* An application for an incidental order (within the meaning of section 14(2) of the Act of 1985) after the grant or refusal of decree shall be made by motion; and rule 170B(10) shall apply to a motion under this paragraph as it applies to a motion under that paragraph.”.

(14) In rule 189 (Outer House petitions), after sub-paragraph (xxxvi)(c), insert the following sub-paragraph:–

“(xxxvii) Applications under any enactment unless otherwise provided in these rules or any other enactment,”.

(15) In rule 194–

- (a) in the heading, for the words “lodged along with the petition”, substitute the word “marked”; and
- (b) omit the words from “; and, along with the petition” to “at a later date”.

(16) After rule 194, insert the following rule:–

**“194A. Lodging of documents founded on**

(1) Any deed, writing or other document founded on by a party in his pleadings shall so far as in his possession or within his control, be lodged by that party–

- (a) when founded on in an adjustment to the pleadings, at the time when such an adjustment is intimated; or
- (b) in any other case, when the paper in which the document is founded on is lodged.

(2) Paragraph (1) shall be without prejudice to any power of the court to order production of any document or grant a commission and diligence for recovery of it.

(a) 1975 c.72.

(b) Rule 170D was inserted by S.I. 1976/1994; the relevant amending instrument is S.I. 1986/1231.

(c) Rule 189 (xxxvi) was inserted by S.I. 1987/2160.

(3) Where a party fails to lodge a deed, writing or other document in accordance with paragraph (1), he may be found liable in the expenses of any order for production or for commission and diligence for recovery of it obtained by another party to the petition.”.

(17) After rule 200A (applications by judicial factors to Accountant of Court)(a), insert the following rule:-

**“200B. Applications to encroach on capital**

(1) In any case where the income from the estate of a ward is insufficient for the maintenance of the ward, the judicial factor may apply to the Accountant of Court for his consent to encroach on the capital of the estate for the purpose of maintaining the ward.

(2) An application under paragraph (1) shall be made by letter and shall be supported by such information as the Accountant of Court may require.

(3) The Accountant of Court shall-

- (a) appoint the judicial factor to intimate the making of the application in accordance with paragraphs (4) and (5); or
- (b) require him to apply by note to the court for special powers.

(4) Where the Accountant of Court appoints intimation to be given under paragraph (3)(a), the judicial factor shall send by registered post or first class recorded delivery service to the persons specified in paragraph (5)-

- (a) a copy of the letter of application; and
- (b) a notice setting out-
  - (i) the right of the person receiving the notice to object to the proposed encroachment by lodging any objections in writing with the Accountant of Court, and intimating a copy thereof to the judicial factor, within 28 days of the date on which the notice was posted; and
  - (ii) that, in the absence of any such objection, the Accountant of Court may consent to the encroachment sought.

(5) The persons to whom notice is to be given under paragraph (4) are-

- (a) the cautioner of the judicial factor;
- (b) the petitioner for the appointment of the judicial factor;
- (c) the ward, unless the circumstances of the ward are such that would warrant service on him of a petition for the appointment of his judicial factor being dispensed with;
- (d) the persons upon whom the petition for appointment of the judicial factor was served and whose whereabouts are known to the judicial factor; and
- (e) all other persons who have an interest in the estate and whose identity and whereabouts are known to the judicial factor.

(6) The judicial factor shall, on serving a notice on any person under paragraph (4), send to the Accountant of Court a duly completed execution of service with a copy of the notice sent appended to it.

(7) On the expiry of the period for lodging objections, where no objections have been lodged, the Accountant of Court may consent to the encroachment sought (subject to such conditions as he thinks fit) or require the judicial factor to apply to the court for special powers.

(8) On the expiry of the period for lodging objections where objections have been lodged, the judicial factor shall apply to the court for special powers.”.

(18) After rule 201B(b), insert the following section and rules:-

---

(a) Rule 200A was inserted by S.I. 1980/1803.

(b) Rule 201B was inserted by S.I. 1986/514.

## “SECTION 2A

### *CAUSES UNDER THE CRIMINAL JUSTICE (SCOTLAND) ACT 1987*

#### **201C. Interpretation**

(1) In this section, “the Act of 1987” means the Criminal Justice (Scotland) Act 1987(a).

(2) Words and expressions used in this section which are also used in the Act of 1987 have the same meaning as in that Act unless the context otherwise requires.

#### **201D. Remits from the High Court of Justiciary**

(1) This rule applies where the High Court of Justiciary remits a case to the Court of Session under section 3(5) of the Act of 1987 for a decision on a question of fact or law as regards the assessment of the proceeds of drug trafficking.

(2) The Deputy Principal Clerk, on receiving a case remitted from the High Court of Justiciary, shall have the case put out on the By Order Roll before a Division of the Inner House at the earliest opportunity for an order for further procedure and shall intimate the diet to the prosecutor and the accused.

(3) Before the hearing on the By Order Roll, the prosecutor shall lodge in the Petition Department—

(a) a process (consisting of an inventory of process, and interlocutor sheet, a duplicate inventory of process, a motion sheet and a minute of proceedings);

(b) four copies of the relevant indictment; and

(c) four copies of all other documents to be used at that hearing.

(4) Not later than 48 hours before any subsequent hearing, parties shall lodge four copies of any further documents to be used at such a hearing.

(5) After the court has decided the question in the case remitted to it, the Deputy Principal Clerk shall transmit the decision of the court to the Deputy Principal Clerk of Justiciary.

#### **201E. Applications for restraint orders**

(1) An application under section 8(1) of the Act of 1987 for a restraint order, shall be made by petition presented to the Outer House and shall not be intimated.

(2) Rules 191(aa), (b) and (c), 192 and 195 to 197 shall not apply to a petition to which this rule applies.

#### **201F. General provisions in relation to restraint orders**

(1) The period within which an application other than an application by the Lord Advocate under section 8(2)(b) of the Act of 1987 to vary or recall a restraint order is to be made shall be 21 days of the applicant receiving notice of the restraint order.

(2) Where a restraint order is made, the Lord Advocate shall serve a copy of it and of the petition on all persons named in the interlocutor as restrained by the order and give notice of it to all persons affected by the restraint order.

(3) Rules 74A, 74B and 75 shall apply to the service of a copy of an order under paragraph (2) of this rule as they apply to citation and service of a summons.

#### **201G. Miscellaneous applications**

(1) An application under section 8(2) (variation or recall of restraint order), 8(5) (recall of restraint order) or 11(1) or (5) (recall or restriction of arrestment or inhibition), of the Act of 1987 shall be made by motion in the process of the petition to which the application relates.

---

(a) 1987 c.41.

(2) A motion under paragraph (1) shall include a brief statement of the reasons for the application; and the court may, at the hearing of the motion, order that the application be made by note.

(3) A motion under paragraph (1) for an order under section 8(2)(b) of the Act of 1987 shall be intimated by recorded delivery letter on an *induciae* of 14 days and the applicant shall lodge in process a copy of the letter of intimation and the Post Office receipt of posting of the letter.

(4) A motion under paragraph (1) by the Lord Advocate in relation to an application to extend a restraint order under section 8(2) of the Act of 1987 shall not be intimated.

(5) An application under section 11(1) of the Act of 1987 (warrant for arrestment or inhibition) may be made in the prayer of the petition for a restraint order under section 8(1) of the Act of 1987 or, if made after presentation of the petition, by motion in that process and shall not be intimated.

(6) An application under section 12 of the Act of 1987 (interdict) may be made in the prayer of the petition for a restraint order under section 8(1) of the Act of 1987 or, if made after presentation of the petition, by note in that process; and rule 201F(2) and (3) shall apply to the service of an interdict as it applies to the service of a restraint order.

(7) An application under section 25(1) (variation of confiscation order) or 26(1) (compensation) of the Act of 1987 shall be made by petition presented to the Outer House.

(8) An application by the Lord Advocate under section 41 of the Act of 1987 (disclosure of information by Government departments) may be made—

- (a) by petition presented to the Outer House;
- (b) where there is a restraint order in force, by note in the process of the application for the restraint order; or
- (c) where an administrator has been appointed, by note in that process.

#### **201H. Applications for appointment of administrators**

(1) An application under section 13(1) of the Act of 1987 for the appointment of an administrator shall be made—

- (a) where a restraint order has been made, by note in the process of the application for the restraint order; or
- (b) in any other case, by petition presented to the Outer House.

(2) Rules 191(aa), (b) and (c), 192 and 195 to 197 shall not apply to a petition to which this rule applies.

#### **201J. Incidental applications in an administration**

(1) An application under section 13(1) (which is not made in the petition for appointment of an administrator) or 13(4) (making or altering a requirement or removal of administrator), 13(5) (appointment of new administrator on death, resignation or removal of administrator), 14(1)(n) (directions as to functions of administrator), or 16 (directions for application of proceeds) of the Act of 1987 shall be made by note in the process of the petition for appointment of the administrator under section 13(1) of the Act of 1987.

(2) An application under section 14(1)(o) (special powers of administrator), 14(3) (vesting of property in administrator) or 24 (orders of realisation of property) of the Act of 1987 may be made in the prayer of the petition for appointment of an administrator under section 13(1) of the Act of 1987 or, if made after presentation of the petition, by note in that process.

#### **201K. General provisions in relation to an administration**

(1) Notification by a clerk of court under section 13(3)(a) of the Act of 1987 to a person of a requirement to give possession of property to an administrator shall be made by intimation of a certified copy of the interlocutor making the requirement.

(2) Where the court considers making an order under section 24(1) of the Act of 1987 to facilitate the realisation of property, it shall fix a date for a hearing on the Motion Roll (in the first instance) and the petitioner or noter, as the case may be, shall serve a notice in Form 71 on any person who has an interest in that property that such person may appear and make representations to the court at that hearing.

**201L. Papers for Accountant of Court in an administration**

(1) A copy of the petition, answers and any other paper or document relative to the appointment of an administrator appointed under section 13(1) of the Act of 1987 shall, at the same time as they are lodged in the Petition Department, be supplied to the Accountant of Court by the petitioner, and copies of all interlocutors granting or refusing applications for special powers or directions shall be supplied, within two days of issue, to the Accountant of Court by the party making the application.

(2) The clerks of the Petition Department shall transmit to the Accountant of Court, at any time at his request, the process or such part as he may require in an administration under Part I of the Act of 1987 which is in dependence before the court, in so far as such process may not be required at the time for the use of the court.

**201M. Caution for administrator**

A certified copy interlocutor of the appointment of an administrator appointed under section 13(1) of the Act of 1987 shall not be issued until the Accountant of Court has given written intimation to the Petition Department that he is satisfied with the caution found by the administrator.

**201N. Duties of administrator**

(1) As soon as possible, but not later than three months, after the date of his appointment, the administrator shall lodge with the Accountant of Court—

- (a) an inventory of the property in respect of which he has been appointed;
- (b) all vouchers, securities and other documents which are in his possession; and
- (c) a statement of that property which he has in his possession or intends to realise.

(2) An administrator shall maintain accounts of his intromissions with the property in his charge and shall—

- (a) lodge an account of his intromissions with the Accountant of Court in such form as the Accountant of Court may require—
  - (i) six months after the date of his appointment; and
  - (ii) at six monthly intervals after the first account during the subsistence of his appointment,

unless the Accountant of Court agrees to waive the lodging of an account where the administrator certifies that there have been no intromissions during a particular accounting period; and

- (b) lodge, with the account of his intromissions, all supporting vouchers and other documents as the Accountant of Court may require.

**201P. State of funds and scheme of division**

(1) The administrator shall—

- (a) where there are funds available for division, prepare a state of funds after application of sums in accordance with section 16(1) of the Act of 1987 and a scheme of division amongst those who held property which has been realised under that Act and lodge them with the Accountant of Court, along with all relevant documents; or
- (b) where there are no funds available for division, prepare such a state of funds only and lodge it with the Accountant of Court; and
- (c) give to the Accountant of Court all explanations which may be required by him.

(2) The Accountant of Court shall make a report in writing on the state of funds and scheme of division, containing such observations as he shall think fit and proper to be



submitted to the court, and shall return the state of funds and scheme of division to the administrator together with a principal copy of his report.

- (3) The administrator shall, on receiving the report of the Accountant of Court—
- (a) lodge it in process together with the state of funds and scheme of division;
  - (b) send a copy of the report of the state of funds and scheme of division to the Lord Advocate; and
  - (c) send to each person who held property which has been realised under the Act of 1987 a notice by post intimating that the state of funds and scheme of division (or state of funds only, as the case may be), and the report of the Accountant of Court, have been lodged in court; stating the amount for which that person has been ranked, and whether he is to be paid in full, or by a dividend, and the amount thereof, or that no funds are available for payment.

#### **201Q. Objections to scheme of division**

(1) A person wishing to be heard by the court in relation to the distribution of property under section 16(2) of the Act of 1987 shall lodge a note of objections signed by counsel in the process in which the scheme of division relates within 21 days of the date on which the notice under rule 201P(3)(c) was sent.

(2) After the period for lodging a notice of objections has expired and no notice has been lodged, the administrator may enrol a motion for approval of the scheme of division.

(3) After the period for lodging a notice of objections has expired and a notice of objections has been lodged, the court shall put the cause out for a hearing to approve, and if necessary adjust, the scheme of division.

#### **201R. Appeals against determination of outlays and remuneration**

(1) An appeal under section 18(2) of the Act of 1987 against a determination by the Accountant of Court shall be by note in the process of the petition for appointment of the administrator.

(2) Where a note is lodged under paragraph (1), the appeal shall be put out by order by the Keeper of the Rolls for a hearing before a Lord Ordinary as soon as convenient.”.

(19) In rule 218N (applications for disqualification of company directors)(a), for paragraph (3), substitute the following paragraph:—

“(3) Rules 191 to 198 and 218 (except paragraphs (6) to (8)) shall apply to a petition under this rule; and the petition shall be intimated to the Secretary of State for Trade and Industry unless presented by him.”.

(20) After rule 249A (registration of awards under the Arbitration (International Investment Disputes) Act 1966)(b), insert the following section and rule:—

#### **“SECTION 8A**

##### **249AA. Registration of awards under the Multilateral Investment Guarantee Agency Act 1988**

Paragraphs 2, 3 and 5 to 9 of rule 249A shall apply, with the necessary modifications, to an award rendered under Article 4 of Annexe II to the convention referred to in section 1(1) of the Multilateral Investment Guarantee Agency Act 1988(c) as they apply to an award rendered under the convention referred to in section 1(1) of the Arbitration (International Investment Disputes) Act 1966(d).”.

(21) In section 8D(e)—

- (a) for the cross-heading, substitute “*RECIPROCAL ENFORCEMENT OF ORDERS IN RELATION TO CONFISCATION OF PROCEEDS OF CRIME*”;

---

(a) Rule 218N was inserted by S.I. 1986/2298.

(b) Rule 249A was inserted by S.I. 1971/1809.

(c) 1988 c.8.

(d) 1966 c.41.

(e) Section 8D was inserted by S.I. 1987/12.

- (b) in rule 249S (interpretation), for the words ““the Act of 1986” means the Drug Trafficking Offences Act 1986”, substitute the words—  
 ““the Act of 1987” means the Criminal Justice (Scotland Act 1987(a);  
 “the Act of 1988” means the Criminal Justice Act 1988(b);”;
- (c) in rule 249T(1) (application for registration)—  
 (i) for the words “21(1) of the Act of 1986”, substitute the words “28(1) or 30(3) of the Act of 1987 or 91(1) of the Act of 1988”;  
 (ii) for the words “section 20” substitute the words “section 27 of the Act of 1987 or section 90 of the Act of 1988”;
- (d) in rule 249U(1) and (2) (registration), for the words “Act of 1986” where they occur, substitute the words “Act of 1987 or the Act of 1988, as the case may be.”;
- (e) in rule 249W (suspension of enforcement), for the words “High Court in England and Wales”, substitute the words “court which made the order”;
- (f) in rule 249Y (applications for inhibition and arrestment), for the words “22(1) of the Act of 1986”, substitute the words “11(1) of the Act of 1987 as applied by sub-section (6) of that section or section 92(1) of the Act of 1988”.
- (22) After rule 257H (general power of court to direct procedure in patent actions)(c), insert the following section and rules:—

#### “SECTION 9A

#### *APPLICATIONS UNDER THE TRADE MARKS ACT 1938 AND THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988*

##### **257I. Applications under the Trade Marks Act 1938 and the Copyright, Designs and Patents Act 1988**

(1) An application under section 99, 195 or 230 of the Copyright, Designs and Patents Act 1988 (“the Act of 1988”)(d) shall be—

- (a) by motion in a cause in dependence; or  
 (b) by petition presented to the Outer House where there is no cause in dependence.

(2) An application under section 114, 204 or 231 of the Act of 1988 shall be made—

- (a) by motion in a cause in dependence; or  
 (b) by petition presented to the Outer House where there is no cause in dependence;  
 and

the applicant shall intimate the application to all persons so far as reasonably ascertainable having an interest in the copy, article, recording or other thing which is the subject of the application, including any person in whose favour an order could be made in respect of the copy, article, recording or other thing under any of the said sections of the Act of 1988 or section 58C of the Trade Marks Act 1938(e).

(3) An application under section 58C of the Trade Marks Act 1938 shall be made by petition presented to the Outer House; and the petitioner shall intimate the petition to all persons so far as reasonably ascertainable having an interest in the goods or material which are the subject of the application, including any person in whose favour an order could be made in respect of the goods or material under that section or section 114, 204 or 231 of the Act of 1988.

##### **257J. Applications for leave to proceed**

(1) Where leave of the court is required before a cause may proceed, the pursuer shall apply by motion for leave to proceed before the summons is signed.

(2) A motion under paragraph (1) shall be heard in chambers at which the solicitor for the pursuer may appear.

---

(a) 1987 c.41.  
 (b) 1988 c.33.  
 (c) Rule 257H was inserted by S.I. 1978/955.  
 (d) 1988 c.48.  
 (e) 1938 c.22.

(3) Where leave is granted by the court, a copy of the interlocutor allowing leave shall be served on the defender together with a copy of the summons and citation.”.

(23) In rule 260B(5) (form of application for judicial review)(a), for the words “Form 39A”, substitute the words “Form 39D”.

(24) In rule 260D (procedure in petition for custody of child)(b)–

(a) in paragraph (2)–

- (i) for the words “Form 53” in sub-paragraph (a), substitute the words “Form 68”;
- (ii) for the words “a relative, step-parent or foster parent” in sub-paragraph (a), substitute the words “not a parent, tutor, curator or guardian”;
- (iii) for the words “Form 54” in sub-paragraph (a), substitute the words “Form 69”;
- (iv) for the words “a relative, step-parent or foster” where they occur in sub-paragraphs (b) and (c) substitute the words “not a”;
- (v) for the words “Form 55” where they occur in sub-paragraphs (b) and (c), substitute the words “Form 70”;

(b) in paragraph (3)–

- (i) after the word “parent”, insert the words “tutor, curator”;
- (ii) for the words “Form 54”, substitute the words “Form 69”; and

(c) after paragraph (9), insert the following paragraph:–

“(10) In a petition in which custody of, or access to, a child is in dispute, the court may, at any stage of the cause where it considers it appropriate and the parties to the dispute agree, refer that dispute to a specified Family Conciliation Service.”.

(25) For the cross-heading “SECTION 18” before rule 260P (registration and enforcement of custody orders under the Family Law Act 1986)(c), substitute the heading “SECTION 19”.

(26) For paragraph (a) of rule 264 (reclaiming days and leave to reclaim)(d), substitute the following rule–

“(a) An interlocutor disposing either by itself, or taken along with a previous interlocutor or interlocutors of–

- (i) the whole subject-matter of the cause; or
- (ii) the whole merits of the cause but reserving, or not disposing of, the question of expenses,

pronounced in any cause initiated in the Outer House either by summons or by petition may be reclaimed against, without leave, not later than 21 days (whether in session or vacation) after the day on which the interlocutor was pronounced. In the case of such an interlocutor containing an award of custody, access or aliment, the marking of a reclaiming motion shall not excuse obedience to or implement of the award of custody, access or aliment unless by order of the Lord Ordinary or one of the Divisions of the Inner House or the Vacation Judge.”.

(27) In rule 281(1) (revenue appeals)(e), after sub-paragraph (c), insert the following sub-paragraph:–

“(d) regulation 10 of the Stamp Duty Reserve Tax Regulations 1986(f).”.

(28) In rule 282(1)(b) (revenue appeals relating to penalties)(g), for “100(6)”, substitute “100C(4)”.

(29) In rule 283(h)–

(a) in the heading, at the end insert the words “**Inheritance Tax or Stamp Duty Reserve Tax**”;

- 
- (a) Rule 260B was inserted by S.I. 1985/500.
  - (b) Rule 260D was inserted by S.I. 1986/515.
  - (c) Rule 260P was inserted by S.I. 1988/615.
  - (d) Rule 264(a) was amended by S.I. 1982/1825
  - (e) Rule 281 was substituted by S.I. 1976/1849.
  - (f) S.I. 1986/1711.
  - (g) Rule 282 was substituted by S.I. 1976/1849.
  - (h) Rule 283 was substituted by S.I. 1976/1849.

- (b) in paragraph (1), for the words “paragraph 7(3) of Schedule 4 to the Finance Act 1975”, substitute the words “section 222(3) of the Inheritance Tax Act 1984(a) or regulation 8(3) of the Stamp Duty Reserve Tax Regulations 1986”;
- (c) in paragraph (2)–
- (i) omit the words “under the said paragraph 7(3)”;
  - (ii) for the words “paragraph 6 of the said Schedule 4” substitute the words “section 221 of the said Act or regulation 6 of the said Regulations”;
- (d) in paragraph (3)(a), omit the words “under paragraph 7(1) of the said Schedule”;
- (e) in paragraph (7), omit the words “under paragraph 6 of the said Schedule 4”; and
- (f) after paragraph (12), insert the following paragraph:–
- “(13) Where an appellant fails to comply with a time limit under this rule he shall be held to have abandoned his appeal.”.
- (30) In rule 347, in note 5 to Chapter II of the Table of Fees–
- (a) after the word “allowed”, insert the words “(whether or not the proof or trial proceeds)”;
  - (b) after the words “ensuing session”, insert the words “or, where the proof or trial does not proceed, within seven days after the date fixed for the proof or trial”.
- (31) In rule 348 (remit to Auditor of Court)(b), after paragraph (4), insert the following paragraph:–
- “(5) Paragraphs (2)(b), (3) and (4) of this rule shall not apply in the case of a non-compearing defender.”.
- (32) In the Appendix–
- (a) Form 39A (form of petition in application for judicial review)(c) shall be renumbered as Form 39D;
  - (b) Form 53 (notice to parent of presentation of petition for custody of a child)(d) shall be renumbered as Form 68;
  - (c) Form 54 (consent of a parent or guardian to the granting of custody of a child to the petitioner)(d) shall be renumbered as Form 69;
  - (d) Form 55 (notice to local authority of presentation of petition for custody of a child)(d) shall be renumbered as Form 70;
  - (e) in Form 62 (intimation of decree and warrant for registration)(e)–
    - (i) in the heading, for the words “of the High Court in England and Wales under the Drug Trafficking Offences Act 1986(f)”, substitute the words “under the Criminal Justice (Scotland) Act 1987(g) or the Criminal Justice Act 1988(h)”;
    - (ii) in the instance, for the words “21 of the Drug Trafficking Offences Act 1986 for registration of an order of the High Court in England and Wales”, substitute the words “28 of the Criminal Justice (Scotland) Act 1987 [or 91 of the Criminal Justice Act 1988] for registration of an order of (*name of court*)”;
    - (iii) in the second paragraph, for the words “High Court of Justice in England and Wales”, substitute the words “(*name of court*)”.
  - (f) in Form 68(i)–
    - (i) after the word “*parent*” wherever it occurs in italics, insert the words “, *tutor, curator*”;
    - (ii) for the words “[or guardian]” wherever they occur, substitute the words “[or *tutor, curator, guardian as the case may be*]”;

---

(a) 1984 c.51.  
 (b) Rule 348 was substituted by S.I. 1983/826.  
 (c) This form was inserted by S.I. 1985/500.  
 (d) This form was inserted by S.I. 1986/515.  
 (e) Form 62 was inserted by S.I. 1987/12.  
 (f) 1986 c.32.  
 (g) 1987 c.41.  
 (h) 1988 c.33.  
 (i) Renumbered in accordance with sub-paragraph 32(b) above.

- (g) in Form 69(a) for the words “[or guardian]”, substitute the words “[or tutor, curator, guardian as the case may be]”; and  
(h) at the end, insert Form 71 in the Schedule to this Act of Sederunt.

### Revocation

3. The Act of Sederunt (Computer Evidence in the Court of Session) 1969(b) is hereby revoked.

Edinburgh  
16th March 1990

J.A.D. Hope  
Lord President, IPD

---

## SCHEDULE

Paragraph 2(32)(h)

### FORM 71

Rule 201K(2)

**Notice to person with interest in property subject to an application for an order under section 24 of the Criminal Justice (Scotland) Act 1987.**

(Court Ref No.        )

IN THE COURT OF SESSION

in

Petition [or Note]

of

[AB] (address)

for an order under sections 13 and 24  
[or section 24] of the Criminal Justice  
(Scotland) Act 1987

in respect of the estate of  
[CD] (address)

To: (insert name and address of person to whom notice is to be given)

This Notice—

- (a) gives you warning that an application has been made to the Court of Session for an order which may affect your interest in property;
- (b) informs you that you have an opportunity to appear and make representations to the court before the application is determined.

### TAKE NOTICE

1. That on (insert date) in the High Court of Justiciary at (insert place) a confiscation order was made under section 1 of the Criminal Justice (Scotland) Act 1987 in respect of [CD] (insert address).
2. That on (insert date) the administrator appointed under section 13(1)(a) of the said Act of 1987 on (insert date) was empowered to realise property belonging to the said [CD].

---

(a) Renumbered in accordance with sub-paragraph 32(c) above.  
(b) S.I. 1969/1644.

or

2. That on (*insert date*) the administrator was appointed under section 13(1)(b) of the said Act of 1987 on (*insert date*) to realise property belonging to the said [CD].
3. That application has been made by petition [*or note*] for an order under section 24 of the said Act of 1987 (*here set out briefly the nature of the order sought*). A copy of the petition [*or note*] is attached.
4. That you have the right to appear before the court (in person or by counsel) and make such representations as you may have in respect of the order applied for. The court has fixed (*insert day and date fixed for hearing the application*) at 10 am within the Court of Session, Parliament Square, Edinburgh as the time when you should appear to do this.
5. That if you do not appear or are not represented by counsel on the above date, the order applied for may be made in your absence.

(*signed*)

Solicitor for Petitioner [*or Noter*]

(*address*)

---

IF YOU ARE NOT SURE WHAT TO DO, YOU SHOULD CONSULT A SOLICITOR OR A  
CITIZENS ADVICE BUREAU IMMEDIATELY

## 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 to—
  - (a) provide for applications in relation to the recall or restriction of an arrestment or an inhibition on the dependence of an action before calling to be by motion (paragraph 2(2));
  - (b) provide for service on a defender at his dwelling place or a place where he carries on business on persons at such a place or depositing there (paragraph 2(3));
  - (c) alter the procedure for dealing with expenses in decrees in absence (paragraph 2(6) and (31));
  - (d) provide for summary decree in commercial causes (paragraph 2(7));
  - (e) provide for a person to apply for the recall or variation of an order to give evidence following a letter of request under the Evidence (Proceedings in other Jurisdictions) Act 1975(c.34) (paragraph 2(8));
  - (f) provide for the lodging of documents founded on in pleadings in actions (paragraph 2(4), (5) and (9)) and petitions (paragraph 2(15) and (16));
  - (g) provide for recall of arrestments in admiralty causes to be by motion, and for motions to seek authority to move arrested ships (paragraph 2(10));
  - (h) provide for the cessure of the exclusion of vacation days from the adjustment period in consistorial actions (paragraph 2(11));
  - (i) provide for the procedure to be applied in applications by a person who is not a parent, tutor, curator or guardian of a child for custody of that child in a consistorial action and consequential amendments (paragraph 2(12)(a) and (d), (24)(b) and (32)(f) and (g));
  - (j) provide for applications to the court in relation to children after decree in consistorial actions (paragraph 2(12)(b) and (c));
  - (k) provide for the referral of custody or access disputes to the Family Conciliation Service (paragraph 2(12)(d) and 24(c));
  - (l) provide for the procedure for applying for diligence on the dependence in applications by a defender for financial provision in a divorce action (paragraph 2(13)(a));
  - (m) provide for certain applications for incidental orders under the Family Law (Scotland) Act 1985(c.37) (paragraph 2(13) (b));
  - (n) provide for applications under any enactment not otherwise provided for in the rules to be by petition to the Outer House (paragraph 2(14));
  - (o) provide for applications by judicial factors to encroach on capital of wards (paragraph 2(17));
  - (p) provide for causes under the Criminal Justice (Scotland) Act 1987 (paragraph 2(18) and (32)(h));
  - (q) provide for the *induciae* for service of, and the non-application of the requirement to advertise, a petition for the disqualification of a company director (paragraph 2(19));
  - (r) provide for applications under the Multilateral Investment Guarantee Agency Act 1988 (paragraph 2(20));
  - (s) provide for reciprocal enforcement of orders in relation to confiscation of the proceeds of crime under the Criminal Justice (Scotland) Act 1987 and the Criminal Justice Act 1988 (paragraph 2(21) and (32)(e));
  - (t) applications under the Trade Marks Act 1938 and the Copyright, Designs and Patents Act 1988 (paragraph 2(22));
  - (u) correct the cross-heading above rule 260P (registration and enforcement of custody orders under the Family Law Act 1986) (paragraph 2(25));
  - (v) provide for reclaiming, without leave, interlocutors which dispose of a cause other than the question of expenses (paragraph 2(26));
  - (w) provide for appeals under the Inheritance Tax Act 1984 and the Stamp Duty Reserve Tax Regulations 1986 and consequential amendments (paragraph 2(27) and (29));

- (x) provide for appeals relating to penalties under section 100C(4) of the Taxes Management Act 1970(c.9) (substituted for section 100(6) of that Act by section 167 of the Finance Act 1989(c.26) (paragraph 2 (28)));
  - (y) provide that a certificate of additional remuneration for a skilled witness may be obtained where the proof or trial does not proceed (paragraph 2(30));
  - (z) correct the numbering of forms relating to applications for judicial review and petitions for custody of children (paragraph 2(23), (24)(a) and (b) and (32)(a) to (d));
- (2) revokes the Act of Sederunt (Computer Evidence in the Court of Session) 1969.

£2.65 net

ISBN 0 11 003705 7