
STATUTORY INSTRUMENTS

1991 No. 1157 (S.114)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of the Court of Session
Amendment No.2) (Miscellaneous) 1991**

Made - - - - - *3rd May 1991*
Coming into force - - - - - *27th May 1991*

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(1) 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.2) (Miscellaneous) 1991 and shall come into force on 27th May 1991.

(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 Court of Session(2) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 74A(4)(c) (execution of citation)(3) after the words “paragraph (6)”, insert the word “by”.

(3) After rule 155 (warrants for intimation in consistorial actions)(4) insert the following rule—

“Warrants for diligence on the dependence

155A.—(1) An application for a warrant for inhibition, or arrestment, on the dependence of an action in which a claim to which section 19(1) of the Family Law (Scotland) Act 1985(5) applies is made shall not be endorsed on the summons but shall be made by motion.

(1) 1988 c. 36
(2) S.I.1965/321; relevant amending instruments are S.I. 1976/1994, 1983/826, 1984/472, 1986/2298, 1987/12 and 1206, 1986/1955 and 1990/705.
(3) Rule 74A(4) was inserted by S.I. 1984/472 and sub-paragraph (c) was inserted by S.I. 1990/705.
(4) Rule 155 was substituted by S.I. 1976/1994.
(5) 1985 c. 37.

- (2) A motion under paragraph (1) of this rule enrolled before the calling of the summons shall not require to be intimated to any other party.”
- (4) In rule 170D(2) (application by defender in consistorial action for financial provision)(6)–
- (a) for the words “apply in his defences”, substitute the words “apply by motion”; and
 - (b) omit the words from “and the application shall be made” to “rule 84(c)”.
- (5) In rule 211 (form of certain applications and appeals where administration order in force)(7)–
- (a) in the cross-heading, omit the words “*where administration order in force*”; and
 - (b) after paragraph (2), insert the following paragraphs:–
 - “(3) Where a petition for an administration order has been presented or an administration order has been made, any person showing an interest who wishes to apply to the court for an order under section 175(2) of the Companies Act 1989(8) shall apply by note in the process of the petition for the administration order.
 - (4) The court shall not make an order under section 175(2) of the Companies Act 1989 unless intimation has been made to such persons having an interest as the court considers necessary and any such person has had an opportunity to be heard.”
- (6) In rule 218M (other applications in winding up of companies)(9), after the words “that Act”, insert the words “, or under Part VII of the Companies Act 1989,”.
- (7) In rule 249S (enforcement of orders in confiscation of proceeds of crime: interpretation)(10), omit paragraph (2).
- (8) In rule 249T (enforcement of orders in confiscation of proceeds of crime: registration)(11), for paragraph (1) substitute the following paragraphs:–
- “(1) An application to which this rule applies shall be made by petition presented in the Outer House.
 - (1A) This rule applies to an application under–
 - (a) section 28(1) of the Act of 1987(12) for registration of an order to which section 27 of that Act applies;
 - (b) section 30A(1) of the Act of 1987(13) for registration of an external confiscation order; and
 - (c) section 91(1) of the Act of 1988(14) for registration of an order to which section 90 of that Act applies.”
- (9) In rule 249X (enforcement of orders in confiscation of proceeds of crime: modification and cancellation)(15)–
- (a) in paragraph (2), omit the word “the” where it second occurs and substitute the word “any”; and
 - (b) for paragraph (3), substitute the following paragraph:–
 - “(3) The court shall, on being satisfied–

(6) Rule 170D(2) was inserted by S.I. 1976/1994 and amended by S.I. 1986/1231 and 1990/705.

(7) Rule 211 was inserted by S.I. 1986/2298.

(8) 1989 c. 40.

(9) Rule 218M was inserted by S.I. 1986/2298.

(10) Rule 249(S)(2) was inserted by S.I. 1987/12.

(11) Rule 249T was inserted by S.I. 1987/12 and amended by S.I. 1990/705.

(12) The Criminal Justice (Scotland) Act 1987 (c. 41).

(13) Section 30A of the Criminal Justice (Scotland) Act 1987 was inserted by section 63 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

(14) The Criminal Justice Act 1988 (c. 33).

(15) Rule 249X was inserted by S.I. 1987/12.

- (a) that the registered order has been modified or revoked or has ceased to have effect; or
- (b) that the registration of an external confiscation order should be cancelled in terms of section 30A(3) of the Act of 1987,
- pronounce an interlocutor so modifying or cancelling the registration as the case may be.”.
- (10) In rule 260J (international child abduction)(**16**)–
- (a) in paragraph (1), for sub-paragraph (b), substitute the following sub-paragraph:–
- “**(b)** a certified or authorised copy of any relevant decision or agreement shall be produced with the petition.”;
- (b) in paragraph (5)–
- (i) sub-paragraph (d) shall become sub-paragraph (e); and
- (ii) after sub-paragraph (c), insert the following sub-paragraph:–
- “**(d)** the Chief Executive of the local authority, and the Reporter to the Children’s Panel in the local authority area, in which the child resides; and”.
- (11) In rule 260K(8) (recognition and enforcement of custody decisions)(**17**)–
- (a) sub-paragraph (d) shall become sub-paragraph (e); and
- (b) after sub-paragraph (c), insert the following sub-paragraph:–
- “**(d)** the Chief Executive of the local authority, and the Reporter to the Children’s Panel in the local authority area, in which the child resides; and”.
- (12) In rule 294(2)(b) (grounds of appeal)(**18**), after the word “review”, insert the words “or challenge the grounds on which the Lord Ordinary or court below has pronounced the interlocutor under review”.
- (13) In rule 349(3) (objections to Auditor’s report)(**19**) after the word “note” in sub-paragraph(b) (ii), insert the following:–
- “; and
- (c) intimate forthwith to the Auditor a copy of the interlocutor pronounced on a motion under sub-paragraph (b) ordaining the Auditor to state reasons for his decision.”.
- (14) In the Appendix, in Form 62 (intimation of decree for registration under the Criminal Justice (Scotland) Act 1987 or the Criminal Justice Act 1988)(**20**), in the instance, after the words “section 28”, insert the words “[or 30A]”.

Edinburgh
3rd May 1991

J.A.D. Hope
Lord President, IPD

(16) Rule 260J was inserted by S.I. [1986/1955](#).
(17) Rule 260K was inserted by S.I. [1986/1955](#).
(18) Rule 294B was inserted by S.I. [1987/1206](#).
(19) Rule 349 was substituted by S.I. [1983/826](#).
(20) Form 62 was inserted by S.I. [1987/12](#) and amended by S.I. [1990/705](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session by–

- (a) making a minor amendment in rule 74A(4)(c) in relation to the requirement to place a citation left with another person in a sealed envelope (paragraph 2(2));
- (b) providing for applications for warrants for inhibition and arrestment on the dependence of an action in which a claim to which section 19(1) of the Family Law (Scotland) Act 1985 (c. 37) applies is made, to be by motion (paragraph 2(3) and (4));
- (c) providing for applications under section 175(2) of the Companies Act 1989 (c. 40) to be by note and for intimation to interested persons (paragraph 2(5));
- (d) providing generally for applications under Part VII of the Companies Act 1989 in relation to a winding up of a company to be by note in the process of the petition to wind up the company (paragraph 2(6));
- (e) amending the rules in relation to reciprocal enforcement of orders in relation to confiscation of the proceeds of crime following the insertion of section 30A of the Criminal Justice (Scotland) Act 1987 (c. 41) (registration of external confiscation orders) by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 63 (paragraph 2(7) to (9) and (14));
- (f) omitting the requirement to lodge a certificate or affidavit about the relevant law of a State in an application for return of a child under Part I of the Child Abduction and Custody Act 1985 (c. 60) (paragraph 2(10));
- (g) providing for service on the Chief Executive of the local authority, and the Reporter to the Children’s Panel in the local authority area, in which a child resides and who is the subject of an application under Part I, or section 15, of the Child Abduction and Custody Act 1985 (c. 60) (paragraph 2(10) and (11));
- (h) providing for grounds of appeal to be lodged by a respondent who wishes to take advantage of a reclaiming motion in order to challenge the Lord Ordinary’s interlocutor in a case where the respondent is not reclaiming (paragraph 2(12)); and
- (i) providing for intimation by an objector to the Auditor of the Court of Session of an order ordaining the Auditor to state reasons for his decision (paragraph 2(13)).