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STATUTORY INSTRUMENTS

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**1991 No. 2483 (S.193)**

**COURT OF SESSION, SCOTLAND**

**Act of Sederunt (Rules of the Court of Session  
Amendment No.10) (Miscellaneous) 1991**

*Made* - - - - - *29th October 1991*

*Coming into force* - - - - - *25th November 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.10) (Miscellaneous) 1991 and shall come into force on 25th November 1991.

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

**Amendment of Rules of Court of Session**

**2. –**

(1) The Rules of the Court of Session(2) shall be amended in accordance with the following subparagraphs.

(2) In rule 28 (signature of papers)–

- (a) before the word “except”, insert “(1)”;
- (b) after the word “Rules”, insert the words “and subject to paragraph (2) below”;
- (c) after the word “advocate”, insert the words “or a solicitor who has a right of audience in the Court of Session”; and
- (d) after paragraph (1), insert the following paragraph:–

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(1) 1988 c. 36.

(2) S.I. 1965/321; relevant amending instruments are S.I. 1970/1746, 1972/2021, 1972/2022, 1973/360, 1974/845, 1974/1686, 1976/1994, 1978/947, 1980/1144, 1981/497, 1982/1381, 1982/1825, 1984/472, 1984/499, 1984/997, 1985/1600, 1986/514, 1986/1941, 1986/1955, 1987/1206, 1988/615, 1989/445, 1990/705, 1990/717, 1990/2118, 1990/1262 and 1991/846.

“(2) A minute of amendment, answers to a minute of amendment, a minute of sist, a minute of transference, a minute of objection to a minute of transference, and a note of objection to a report of the Auditor shall not require any signature.”

(3) After rule 68I (form, lodging and renewal of caveats)(3), insert the following section and rule:–

“SECTION 13

FIATS

**68J.** Application for fiats

(1) All applications for fiats shall be presented to the Outer House and lodged in the General Department and shall, subject to sub-paragraph (2) of this rule, be determined by the Deputy Principal Clerk or an officer delegated by him.

(2) Where a fiat is refused, the application may on request be placed before a Lord Ordinary who may authorise or refuse the granting of a fiat; and the decision of the Lord Ordinary shall be final and not subject to review.

(3) An application for a fiat on the dependence of an action in which a claim to which section 19 of the Family Law (Scotland) Act 1985(4) applies is made shall be placed before a Lord Ordinary; and the decision of the Lord Ordinary shall be final and not subject to review.”

(4) In rule 73 (signature of summons and letters), omit the words “in Edinburgh”.

(5) In rule 74(b) (defender accepting service and dispensing with induciae), omit the words “, being a solicitor entitled to practice before the Court of Session,”.

(6) In rule 74(g) (application for recall of diligence before calling(5), for the words from “The solicitors for the defenders” to the word “signet”, substitute the following words:–

“The clerk shall be accompanied by counsel, solicitor or both counsel and solicitor for each party. The solicitor or counsel for the pursuer shall produce to the Lord Ordinary the principal summons bearing the signet.”.

(7) In rule 74A(5)(b) (execution of citation by post by solicitor)(6), omit the words “entitled to practise in the Court of Session”.

(8) In rule 74B(3)(a)(ii) (execution of citation by post by solicitor)(7), omit the words “entitled to practise in the Court of Session”.

(9) In rule 75(3), (motions for edictal citation)(8), after the word “solicitor”, insert the words “or counsel”.

(10) In rule 76 (intimation to heritable creditors), omit the words “(being a solicitor entitled to practise in the Court of Session)”.

(11) In rule 81 (entering appearance)(9), for paragraph (1), substitute the following paragraphs:–

“(1) The defender may enter appearance within three days after the day on which the summons has called by requesting a clerk of session in the appropriate section in the General Department to mark on the summons the names of the counsel (or solicitor who has a right of audience in the Court of Session) and solicitor who are acting for him or that he appears for himself.

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(3) Rule 68I was inserted by S.I. 1990/2118.

(4) 1985 c. 37.

(5) Rule 74(g) was amended by S.I. 1990/705.

(6) Rule 74A was inserted by S.I. 1984/472 and amended by S.I. 1985/1600, 1986/1941 and 1990/705.

(7) Rule 74B was inserted by S.I. 1986/1941.

(8) Rule 75 was substituted by S.I. 1986/1941 and amended by S.I. 1987/1206.

(9) Rule 81 was amended by S.I. 1986/1941.

(1A) On receipt of the intimation referred to in paragraph (1), the clerk of session shall mark on the summons the names of the defender’s counsel (or solicitor who has a right of audience in the Court of Session) and solicitor or that he appears for himself.

(1B) On entering appearance, the defender shall give written intimation to the pursuer that appearance has been entered.”.

(12) In rule 94(c) (non-appearance of counsel at procedure roll), after the word “counsel”, insert the words “or solicitor who has a right of audience in the Court of Session”.

(13) In rule 94(d) (non-appearance of counsel at procedure roll)–

(a) after the word “counsel” where it first occurs, insert the words “or a solicitor who has a right of audience in the Court of Session”; and

(b) after the word “counsel” where it second and third occurs, insert the words “or solicitor who has a right of audience in the Court of Session”.

(14) In rule 95(a) (application for commission and diligence for recovery of documents), for the words from “The appellant’s solicitor” to the words “shall also appear”, substitute the following words:–

“The clerk shall be accompanied by counsel or solicitor or both counsel and solicitor for the applicant and for any party who wishes to oppose the application and for the Lord Advocate if he wishes to oppose the application. The solicitor or counsel for the applicant shall produce to the Lord Ordinary the principal summons bearing the signet.”.

(15) In rule 95A(a) (application for order under section 1 of the Administration of Justice (Scotland) Act 1972(10)), for the words from “The appellant’s solicitor” to the words “shall also appear”, substitute the following words:–

“The clerk shall be accompanied by counsel or solicitor or both counsel and solicitor for the applicant and for any party who wishes to oppose the application and for the Lord Advocate if he wishes to oppose the application. The solicitor or counsel for the applicant shall produce to the Lord Ordinary the principal summons bearing the signet”.

(16) In rule 140(d) (motions affecting arrestment in rem)(11)–

(a) for the words “said clerk”, substitute the words “Deputy Principal Clerk of Session”;

(b) for the words from “The solicitors of the parties” to the words “with the clerk”, substitute the following words:–

“The Lord Ordinary or Vacation Judge shall be attended by the clerk and counsel, solicitor or both counsel and solicitor for each party.”; and

(c) after the words “pursuer’s solicitor”, insert the words “or counsel”.

(17) In rule 159(3)(b) (execution of citation by post by solicitor)(12), omit the words “entitled to practise in the Court of Session”.

(18) In rule 188D(12) (applications under the Matrimonial Homes (Family Protection) (Scotland) Act 1981(13)), (14)–

(a) after the word “interdict” where it second occurs, insert the words “together with the attached power of arrest”; and

(b) after the words “of the interdict, and”, insert the words “, where the application to attach the power of arrest to the interdict was made after the interdict was granted, a copy of that

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(10) Rule 95A was inserted by S.I. 1972/2021 and amended by S.I. 1986/1955 and 1987/1206.

(11) Rule 140(d) was amended by S.I. 1990/705.

(12) Rule 159 was substituted by S.I. 1976/1994 and amended by S.I. 1980/1144, 1986/1941 and 1987/1206.

(13) 1981 c. 59.

(14) Rule 188D was inserted by S.I. 1982/1381.

application and of the interlocutor granting it and a certificate of service of the interdict together with the attached power of arrest, and in either case”.

(19) In rule 189 (Outer House petitions)–

- (a) omit paragraph (b);
- (b) in paragraph (c), for “(c)” substitute “(b)”.

(20) In rule 193 (signature of petitions)(**15**), after the word “counsel”, insert the words “or a solicitor who has a right of audience in the Court of Session”.

(21) In rule 231(c) (signature of petition for summary trial), after the word “counsel”, insert the words “or a solicitor who has a right of audience in the Court of Session”.

(22) In rule 249E(1)(b)(ii) (application for registration of judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982(**16**)), (**17**), omit the words “entitled to practise before the Court of Session”.

(23) In rule 260P(1) (interpretation of Section 19)(**18**)–

- (a) after the definition of “appropriate court”, insert the following definition:–
  - ““corresponding court” in relation to a specified dependent territory means the corresponding court specified in relation to that territory in Schedule 3 to the Family Law Act 1986 (Dependent Territories) Order 1991(**19**);”;
- (b) omit the definition of “dependent territory”;
- (c) in the definition of “proper officer”, before the word “dependent”, insert the word “specified”; and
- (d) after the words “Rule 260Q” insert the following:
  - “; and
  - “specified dependent territory” means a dependent territory specified in column 1 of Schedule 1 to the Family Law Act 1986 (Dependent Territories) Order 1991”.

(24) In rule 260Q (custody orders register)(**20**), after the words “United Kingdom” insert the words “or a specified dependent territory”.

(25) In rule 260R(3) (applications for registration of custody orders)(**21**), for sub-paragraph (d) substitute the following sub-paragraph:–

- “(d) whether the custody order is to be registered in England and Wales, Northern Ireland or a specified dependent territory and the court in which it is to be registered;”.

(26) In rule 268(1) (time and mode of appeal)(**22**), omit the words “in Edinburgh”.

(27) In rule 269(a) (entering appearance in appeals)(**23**), omit the word “Edinburgh”.

(28) In rule 275(1) (procedure on remit from Sheriff Court)(**24**), omit the word “Edinburgh”.

(29) In rule 299(a) (notice of solicitor’s name and address in election petitions), omit the words from “, and in either case” to the words “may be delivered”.

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(15) Rule 193 was amended by S.I. 1986/514.

(16) 1982 c. 27.

(17) Rule 249E was inserted by S.I. 1986/1941.

(18) Rule 260P was inserted by S.I. 1988/615 and amended by S.I. 1990/2118.

(19) S.I. 1991/1723.

(20) Rule 260Q was inserted by S.I. 1988/615.

(21) Rule 260R was inserted by S.I. 1988/615.

(22) Rule 268 was amended by S.I. 1990/2118.

(23) Rule 269 was amended by S.I. 1974/845.

(24) Rule 275 was substituted by S.I. 1982/1825.

(30) In Chapter III of the Table of Fees in rule 347 (taxation of accounts in judicial proceedings)(25)–

(a) in paragraph 1 of Part IIA–

- (i) omit the words “, in a case where he is an Edinburgh solicitor acting alone,”;
- (ii) for the words “, and in any other case, the inclusive fee specified in respect of that work in column 3 of that Table” substitute the words “. Where the pursuer has been represented in respect of work specified in column 1 of Table A by an Edinburgh solicitor and a solicitor outside Edinburgh, the Auditor may, where he is satisfied that it was appropriate for the pursuer to be so represented, allow the inclusive fee specified in column 3 instead of the inclusive fee specified in column 2 of that Table”;
- (iii) in column 2 of Table A, omit the words “Edinburgh solicitors only”; and
- (iv) in column 3 of the Table A, insert before the word “Inclusive” the word “Discretionary”;

(b) in paragraph 2 of Part IIA–

- (i) omit the words “in a case where he is an Edinburgh solicitor acting alone,”;
- (ii) for the words “, and, in any other case, the inclusive fee specified in respect of that work in column 3 of that Table”, substitute the words “. Where the pursuer has been represented in respect of work specified in column 1 of Table B by an Edinburgh solicitor and a solicitor outside Edinburgh, the Auditor may, where he is satisfied that it was appropriate for the pursuer to be so represented, allow the inclusive fee specified in respect of that work in column 3 instead of the inclusive fee specified in column 2 of that Table”;
- (iii) in column 2 of Table B omit the words “Edinburgh solicitors only”; and
- (iv) in column 3 of Table B insert before the word “Inclusive” the word “Discretionary”;

(c) in paragraph 3 of Part IIA–

- (i) omit the words “, being the same additional inclusive fee whether he is an Edinburgh solicitor acting alone or on the instructions of a solicitor outside Edinburgh”;
- (ii) omit the words “if Edinburgh solicitor only”; and
- (iii) for the words “Add session fee of 10% if Edinburgh solicitor and solicitor outside Edinburgh” substitute the words “Where the party has been represented by an Edinburgh solicitor and a solicitor outside Edinburgh the Auditor may, where he is satisfied that it was appropriate for the party to be so represented, allow an additional session fee of not more than 2½%”;

(d) in paragraph 1 of Part III–

- (i) omit the words “Edinburgh solicitors only”; and
- (ii) for the words “Edinburgh solicitors and solicitors outside Edinburgh” substitute the words “Where the party has been represented by an Edinburgh solicitor and a solicitor outside Edinburgh the Auditor may where he is satisfied that it was appropriate for the party to be so represented, allow a fee of”;

(e) for paragraph 21 of Part IV, substitute the following paragraph–

“**21. Session Fee**—to cover communications with client and counsel—7½% of total fees and copyings allowed on taxation, to be charged only on that part of the account charged under Chapter III. Where a correspondent has been involved, the Auditor may, where he is satisfied that it was appropriate for the correspondent to have been involved,

(25) Chapter III of the Table of Fees in rule 347 was substituted by S.I. 1989/445 and amended by S.I. 1990/717 and 1262 and 1991/846.

allow an additional session fee of not more than 2½% of total fees and copyings allowed on taxation charged only on that part of the account charged under Chapter III.”; and

- (f) after Part VI, insert the following new Part:–

## “PART VIA.

### SOLICITORS EXERCISING RIGHTS OF AUDIENCE UNDER S. 25A SOLICITORS (SCOTLAND) ACT 1980(26)

1. The Auditor shall allow to a solicitor who exercises rights of audience in the Court of Session under section 25A of the Solicitors (Scotland) Act 1980 such fee for each item of work done by the solicitor in the exercise of such rights as he would allow to counsel for an equivalent item of work.

2. Where a solicitor exercises rights of audience in the Court of Session under section 25A of the Solicitors (Scotland) Act 1980, and is assisted by another solicitor or a clerk, the Auditor may also allow attendance fees in accordance with Parts IV and V of this Chapter.”.

- (31) In the Appendix–

- (a) in Form 1 (summons), omit the word “Edinburgh” where it third occurs;
- (b) in Form 3 (citation and execution of citation by registered or recorded delivery letter), omit the word “Edinburgh” wherever it occurs;
- (c) in Form 4 (edictal citation), omit the word “Edinburgh”;
- (d) in Form 8 (example of enrolment in motion sheet, and of inserting therein) after the word “Counsel” wherever it occurs, insert the words “or solicitor who has a right of audience in the Court of Session”;
- (e) in Form 10 (form of minute for letters of request) after the word “Counsel”, insert the words “or solicitor who has a right of audience in the Court of Session”;
- (f) in Form 15 (form of preliminary act in ship collision cases) after the word “Counsel”, insert the words “or solicitor who has a right of audience in the Court of Session”;
- (g) in Form 15F (form of request for proof before answer in undefended actions)(27), after the word “Counsel”, insert the words “or solicitor who has a right of audience in the Court of Session”;
- (h) in Form 28 (form of petition and backing) after the word “Counsel”, insert the words “or solicitor who has a right of audience in the Court of Session”;
  - (i) in Form 29 (specimen of form 28 filled in for petition under section 11A of the Judicial Factors (Scotland) Act 1889), after the word “Counsel”, insert the words “or solicitor who has a right of audience in the Court of Session”;
- (j) in Form 36 (form of petition for adoption order under section 49(1) of the Adoption (Scotland) Act 1978)(28), after the word “Counsel”, insert the words “(or solicitor who has a right of audience in the Court of Session)”;
- (k) in Form 40 (form of joint minute consenting to a summary trial), for the words “for all parties” substitute the words “or solicitor who has a right of audience in the Court of Session for each party”;

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(26) 1980 c. 46; section 25A was inserted by section 24 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

(27) Form 15F was inserted by S.I. 1976/1994.

(28) Form 36 was substituted by S.I. 1984/997.

- (l) in Form 41 (forms of reclaiming and objection to competency), after the word “Counsel” wherever it occurs, insert the words “or solicitor who has a right of audience in the Court of Session”;
- (m) in Form 63 (form for information for fixing and allocation of diet for hearing)(**29**), after the word “counsel”, insert the words “or a solicitor who has a right of audience in the Court of Session”;
- (n) in Form 71 (form of notice to person with interest in property subject to an application for an order under section 24 of the Criminal Justice (Scotland) Act 1987(**30**)), after the word “counsel” wherever it occurs, insert the words “or by a solicitor who has a right of audience in the Court of Session”.

Edinburgh  
29th October 1991

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

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(29) Form 63 was inserted by S.I. [1987/1206](#).

(30) Form 71 was inserted 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.*

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## 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) removing remaining restrictions on solicitors outside Edinburgh practising in the Court of Session (paragraph 2(3), (4), (7), (8), (10), (17), (22), (26)–(29) and (31)–(33));
- (b) clarifying the rules relating to certain motions, by providing expressly that counsel may appear with or without a solicitor (paragraph 2(6), (8) and (14)–(16));
- (c) amending the procedure for entering appearance (paragraph 2(11));
- (d) providing that, where an Edinburgh solicitor and a solicitor outside Edinburgh are both involved in proceedings any additional amount allowed by way of expenses shall no longer be mandatory but shall be at the auditor’s discretion (paragraph 2(30));
- (e) amending rule 188D(12), following an amendment to section 15 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59) by section 64 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (paragraph 2(18));
- (f) amending rule 189 to provide for applications for a fiat on the dependence of certain consistorial actions (paragraph 2(3));
- (g) amending rules 260P, 260Q and 260R to take account of the Family Law Act 1986 (Dependent Territories) Order 1991 (S.I.1991/1723) (paragraph 2(23)–(25));
- (h) providing for the exercise of certain rights in terms of Rules of Court by solicitors who have rights of audience in the Court of Session and for the expenses allowable in respect of the exercise by such solicitors of those rights of audience (paragraph 2(2)(11), (12), (20), (21), (30) and (31)); and
  - (i) providing that certain documents no longer require to be signed (paragraph 2(2)(d)).