

2004 No. 331

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 5) (Miscellaneous) 2004**

Made - - - -

16th July 2004

Coming into force

6th August 2004

The Lords of Council and Session, under and by virtue of the powers conferred upon 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) 2004 and shall come into force on 6th August 2004.

(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 1994(b) shall be amended in accordance with the following sub-paragraphs.

(2) For rule 22.4 (orders for notes of argument) there shall be substituted the following:—

“Notes of argument

22.4.—(1) Where a cause has been appointed to the Procedure Roll, a party seeking to have a preliminary plea sustained shall—

- (a) lodge in process a concise note of argument consisting of numbered paragraphs stating the grounds on which he proposes to submit that the preliminary plea should be sustained,
- (b) lodge a copy of the note with the Keeper of the Rolls, and
- (c) send a copy of the note to every other party.

(2) The note shall be lodged and sent in accordance with paragraph (1) within 28 days after the date of the interlocutor appointing the cause to the Procedure Roll unless the court, at its own instance or on the motion of a party, orders that the note be lodged and sent within a different period.”.

(3) In rule 33.5. (cautioners and guarantors) for “obtained from an insurance company shall be given only by a company authorised under section 3 or 4 of the Insurance Companies Act 1982 to

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3) and by the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45.

(b) S.I. 1994/1443, last amended by S.S.I. 2004/291.

carry on insurance business of class 15 in Schedule 2 to that Act” there shall be substituted “shall be given only by a person authorised to carry on a regulated activity under section 31 of the Financial Services and Markets Act 2000”.

(4) In rule 39.1(3) (applications for new trial)–

- (a) for “or (b)” there shall be inserted “(b) or (c)”;
- (b) at the end of sub-paragraph (a) “or” shall be omitted;
- (c) after sub-paragraph (b) there shall be inserted the following:–

“; or

- (c) in the case of an application under section 29(1)(c) (verdict contrary to evidence) it sets out in brief specific numbered propositions the reasons the verdict is said to be contrary to the evidence.”.

(5) In rule 40.7A(b) (required application for early disposal of appeal against interlocutor other than final judgment) after “order made under” there shall be inserted “the Adoption Act 1978 or under”.

(6) After rule 41.3 (determination of applications for leave to appeal) there shall be inserted the following:–

“Competency of appeals

41.3A.—(1) Where the Deputy Principal Clerk considers that an appeal may be incompetent, he may, at any time before the cause is brought before the Inner House, refer it to a single judge in accordance with paragraph (2).

(2) Any referral by the Deputy Principal Clerk under paragraph (1) shall be made to a judge nominated for that purpose by the Lord President.

(3) Where a referral is made under paragraph (1), the judge may–

- (a) order any party to make representations to him in respect of the competency of the appeal;
- (b) refuse the appeal on the ground it is incompetent;
- (c) direct that the appeal is to proceed as if the referral had not been made;
- (d) make such order as to expenses or otherwise as he thinks fit.

(4) Any decision of a judge in respect of an appeal referred to him under paragraph (1) shall be final and not subject to review.”.

(7) In rule 41.4 (provisions to which Part II of Chapter 41 is subject) for “XI” there shall be substituted “XIII”.

(8) In rule 41.20(2) (period for lodging certain appeals) for sub-paragraph (c) there shall be substituted the following:–

- (c) section 103 of the Nationality, Immigration and Asylum Act 2002(a) (appeal on a point of law from a determination of the Immigration Appeal Tribunal with permission of the Tribunal).”.

(9) In Chapter 41 Part IXA (appeals under the Proceeds of Crime Act 2002) shall be numbered “XII”.

(10) Rules 41.43A and 41.43B shall be numbered “41.53” and “41.54” respectively.

(11) In rule 41.54 for “41.43A” there shall be substituted “41.53”.

(12) After rule 41.46 (application and interpretation of Part XI) there shall be inserted the following:–

“Disapplication of certain rules to this Part

41.46A.—(1) The following rules shall not apply to a petition to which this Part applies:–

(a) 2002 c.41.

- 14.4 (form of petitions),
- 14.5 (first order in petitions),
- 14.6 (period of notice for lodging answers),
- 14.7 (intimation and service of petitions),
- 14.8 (procedure where answers lodged),
- 14.9 (unopposed petitions).”.

(13) In rule 41.47 (application for review)–

- (a) in paragraph (3) (documents to accompany petition)–
 - (i) in sub-paragraph (a) before “decision” there shall be inserted “asylum and immigration”;
 - (ii) after sub-paragraph (f) there shall be inserted the following:–
 - “(g) a certificate of intimation under rule 41.49 in Form 16.7;
 - (h) a copy of any case report upon which the applicant wishes to rely.”; and
- (b) paragraph (5) (meaning of decision) shall be omitted.

(14) For rule 41.49 (service of petition) there shall be substituted the following:–

“Intimation of petition etc.

41.49.—(1) The petitioner shall intimate to the Tribunal a copy of the petition.

(2) Where a petition is for review of a decision by the Tribunal to grant permission to appeal, the petitioner shall intimate to the other party copies of–

- (a) the petition; and
- (b) all the documents lodged in support of the petition, except for documents that come from or have already been served on that party.”.

(15) Rule 41.50 (determining the petition) shall be omitted.

(16) After Part XII of Chapter 41 (appeals under the Proceeds of Crime Act 2002) there shall be inserted the following:–

“PART XIII

REFERENCES AND APPEALS UNDER AN ACAS ARBITRATION SCHEME

Definitions

41.55. In this Part, “an ACAS Scheme” means an arbitration scheme set out in an order under section 212A(7) of the Trade Union and Labour Relations (Consolidation) Act 1992(a).

References under an ACAS Scheme

41.56.—(1) A reference on a preliminary point under an ACAS Scheme shall be made to the Outer House in Form 41.56 and shall–

- (a) state in numbered paragraphs the facts and circumstances out of which the reference arises; and
- (b) set out the question for answer by the court.

(2) On a reference under paragraph (1) being lodged, the court shall, without a motion being enrolled for that purpose, pronounce an interlocutor for–

(a) 1992 c.52.

- (a) service of the reference on such persons as appears necessary; and
 - (b) any person on whom the reference has been served, to lodge answers, if so advised, within such period as is specified by the court.
- (3) Within 14 days after the expiry of the period allowed for the lodging of answers, the person making the reference shall apply by motion for such further procedure as he seeks, and the court shall make such order for further procedure as it thinks fit.

Reclaiming against decision of the Lord Ordinary

41.57. The decision of a Lord Ordinary on a reference on a preliminary point under rule 41.56 may be reclaimed against.

Appeals

41.58.—(1) Subject to paragraph (2), Part III (appeals in Form 41.19) shall apply to appeals under an ACAS Scheme.

(2) An appeal under an ACAS Scheme shall be made within the time limits specified in that scheme.”.

(17) In rule 43.11(5) (persons against whom orders for interim payment of damages may be made) after sub-paragraph (a) there shall be inserted the following:—

“(aa) a person who is not insured but in respect of whose liability the Motor Insurers’ Bureau will be liable to make payment;”.

(18) For rule 59.1(1)(b) (applications for letters of inhibition) there shall be substituted the following:—

“(b) Form 59.1-B (inhibition where decree granted, foreign judgment registered for execution or other document having the same force and effect as an extract of a decree of the Court of Session);”.

(19) In Chapter 76 Part 1A (applications under the Proceeds of Crime Act 2002) shall be numbered “III”.

(20) Rules 76A.1 to 76A.12 shall be numbered “76.27” to “76.38”.

(21) After Chapter 85 there shall be inserted the following:—

“CHAPTER 86

APPLICATIONS UNDER SECTION 28, 28A, 62, 62A, 63, 65G OR 65H OF THE
COMPETITION ACT 1998

Application and interpretation of this Chapter

86.1.—(1) This Chapter applies to applications for warrants under section 28, 28A, 62, 62A, 63, 65G or 65H of the Competition Act 1998.

(2) In this Chapter, “the Act of 1998” means the Competition Act 1998.

(3) Words and expressions used in this Chapter and in the Act of 1998 shall have the meanings given in the Act of 1998.

Disapplication of certain rules to this Chapter

86.2. The following rules shall not apply to a petition to which this Chapter applies:—

rule 4.3 (lodging of processes),

rule 4.4 (steps of process),

rule 4.5(1)(b) (copy inventory of productions to be sent to other parties),

rule 4.6 (intimation of steps of process),

- rule 4.11 (documents not to be borrowed),
- rule 4.12 (borrowing and returning documents),
- rule 14.4 (form of petitions),
- rule 14.5 (first order in petitions),
- rule 14.6 (period of notice for lodging answers),
- rule 14.7 (intimation and service of petitions),
- rule 14.8 (procedure where answers lodged),
- rule 14.9 (unopposed petitions).

Applications for warrants

86.3.—(1) An application for a warrant under section 28, 28A, 62, 62A, 63, 65G or 65H of the Act of 1998 shall be made by petition in Form 86.3.

(2) The petition shall state—

- (a) the address or other identification of the premises which are intended to be the subject of the warrant;
- (b) the name of the occupier of those premises;
- (c) the section of the Act of 1998 under which the application is being made;
- (d) the subject matter of the investigation to which the application relates;
- (e) a statement of the grounds for the application; and
- (f) a prayer indicating the warrant sought.

(3) There shall be lodged with the petition—

- (a) a draft warrant;
- (b) a signed witness statement in support of the application;
- (c) the written authorisation of the OFT containing the name of the officer who it is intended will be the named officer;
- (d) in the case of an application under section 62, 62A or 63 of the Act of 1998, the written authorisations of the European Commission containing the names of any of its officials and other persons authorised by it for any of the purposes set out in section 62(10), 62A(12) or 63(10) of the Act of 1998 as applicable who it is intended will accompany the named officer in executing the warrant; and
- (e) the written authorisation of the OFT containing the names of any other person who it is intended will accompany the named officer in executing the warrant.

(4) On lodging the petition, the petitioner shall provide the Deputy Principal Clerk with the draft warrant in electronic form compatible with the software used by the court.

(5) The petition and any documents lodged, sent or retained under these Rules in connection with the petition shall be treated as confidential and open only to the court unless the Lord Ordinary otherwise directs.

Hearing of petition

86.4.—(1) On the lodging of the petition, the Keeper of the Rolls shall appoint the petition to a hearing to determine the petition.

(2) The petition shall be heard and determined in private unless the Lord Ordinary otherwise directs.

Form of warrants

86.5.—(1) A warrant issued under section 28, 28A, 62, 62A, 63, 65G or 65H of the Act of 1998 shall indicate—

- (a) the address or other identification of the premises subject to the warrant;
- (b) the names of the named officer and any other persons authorised by the warrant to accompany the named officer in executing the warrant;
- (c) the date on which the warrant was issued; and
- (d) that the warrant continues in force until the end of the period of one month beginning with the day on which it is issued.

(2) Subject to paragraph (3), a warrant issued under section 28, 28A, 62, 62A, 63, 65G or 65H of the Act of 1998 may be borrowed by the petitioner.

(3) The petitioner shall give a receipt for any warrant borrowed under paragraph (2) and shall return the warrant to the Deputy Principal Clerk by the end of the period of one month referred to in paragraph (1)(d).

(4) Where a warrant is borrowed under paragraph (2), a certified copy of a warrant issued under section 28, 28A, 62, 62A, 63, 65G or 65H of the Act of 1998 shall be retained by the Deputy Principal Clerk.

Service of copy petition and interlocutor

86.6. Within 7 days after the date of first execution of a warrant which has been issued by the court under section 28, 28A, 62, 62A, 63, 65G or 65H of the Act of 1998, the petitioner shall serve on the occupier of the premises which are the subject of the warrant and such other persons as may be specified by the court in the interlocutor granting the prayer of the petition—

- (a) a copy of the petition; and
- (b) a certified copy of the interlocutor granting the prayer of the petition.”.

(22) In the appendix—

- (a) after Form 41.47 there shall be inserted the form set out in Part 1 of the Schedule to this Act of Sederunt;
- (b) in Form 59.1–B–
 - (i) after “the applicant” wherever it appears there shall be inserted “(or specify)”; and
 - (ii) after “[or decree of registration in the Books of Council and Session” there shall be inserted “or an original, official or certified copy document having the same force and effect as an extract of a decree of the Court of Session]”;
- (c) after Form 85.5 there shall be inserted the form set out in Part 2 of the Schedule to this Act of Sederunt.

Cullen of Whitekirk

Lord President
I.P.D.

Edinburgh
16th July 2004

SCHEDULE

PART 1

Rule 41.56

FORM 41.56

Form of reference on a preliminary point under an ACAS Scheme

UNTO THE RIGHT HONOURABLE
THE LORDS OF COUNCIL AND SESSION

REFERENCE ON A PRELIMINARY POINT

Under

(specify the ACAS Scheme under which the reference is being made)

by

[A.B.] *(address)*

Arbitrator in the case of

[C.D.] *(address)* against [E.F.] *(address)*

[or by

[C.D.] *(address)* and [E.F.] *(address)* parties in a case in which [A.B.] *(address)*

is the arbitrator]

(Here state in numbered paragraphs the facts and circumstances out of which the reference arises and set out the question for answer by the court)

PART 2

Rule 86.3(1)

FORM 86.3

Form of petition under section 28, 28A, 62, 62A, 63, 65G or 65H of the Competition Act 1998

UNTO THE RIGHT HONOURABLE

THE LORDS OF COUNCIL AND SESSION

PETITION

of

THE OFFICE OF FAIR TRADING ('THE OFT'), (*address*)

Petitioner

for a warrant under

section 28 [*or section 28A or section 62 or section 62A or section 63 or section 65G or section 65H*] of the Competition Act 1998

in respect of

(insert name and address or as the case may be)

HUMBLY SHEWETH:—

1. That (*here set out in this and the following numbered paragraphs the matters mentioned in rule 86.3.(2)*).

MAY IT THEREFORE please your Lordships
to (*insert prayer*)

According to Justice, etc.

(Signed)

EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the Rules of the Court of Session 1994 (S.I. 1994/1443) ('the Rules').

Paragraph 2(2) substitutes rule 22.4 (notes of argument) to reflect current practice.

Paragraph 2(3) makes provision to widen the category of person or company that can provide a bond of caution under rule 33.5 (cautioners and guarantors).

Paragraph 2(4) amends rule 39.1(3) (applications for new trial) to provide that when a party makes an application for a new trial on the grounds the verdict is contrary to the evidence he or she must lodge transcript copies of the passages of the evidence on which he or she wishes to rely.

Paragraph 2(5) amends rule 40.7A(b) (required application for early disposal of appeal against interlocutor other than final judgment) to extend the requirement for an application for the early disposal of an appeal to cases where the appeal is against an order under the Adoption Act 1978.

Paragraph 2(6) inserts a new rule 41.3A (competency of appeals) to allow the Deputy Principal Clerk of Session to refer a statutory appeal to a single judge to consider the competence of the appeal.

Paragraph 2(8) amends rule 41.20(2) (period for lodging certain appeals) to reflect changes in the primary legislation.

Paragraph 2(12), (13), (14), and (15) makes various amendments to the procedure for applications for statutory review under section 101(2) of the Nationality, Immigration and Asylum Act 2002.

Paragraph 2(16) inserts a new Part XIII in Chapter 41 in respect of procedure for references and appeals under an ACAS arbitration scheme.

Paragraph 2(17) amends rule 43.11(5) (persons against whom orders for interim payment of damages may be made) by adding a new category of person against whom an order for interim damages can be made.

Paragraph 2(18) amends rule 59.1(1)(b) (applications for letters of inhibition) to provide for an application for letters of inhibition where a claim for payment of tax in a foreign jurisdiction has the same force and effect as a decree of the Court of Session.

Paragraph 2(21) introduces a new Chapter 86 to set out a procedure for applying under certain sections of the Competition Act 1998 for warrants to enter and search premises.

Paragraph 2(7), (9), (10), (11), (19) and (20) makes minor amendments to the numbering of certain rules.

Paragraph 2(22) makes amendments to the forms set out in the Appendix to the Rules.

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