
STATUTORY INSTRUMENTS

1994 No. 2901 (S.147)

COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of the Court of Session
1994 Amendment No.3) (Miscellaneous) 1994**

Made - - - - 10th November 1994

Coming into force - - 5th December 1994

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⁾, section 48(1) of the Children Act 1975⁽²⁾, section 15 of the Presumption of Death (Scotland) Act 1977⁽³⁾, section 59(1) of the Adoption Act 1978⁽⁴⁾, section 48 of the Civil Jurisdiction and Judgments Act 1982⁽⁵⁾, sections 114(3), 204(3) and 231(3) of the Copyright, Designs and Patents Act 1988⁽⁶⁾, section 19(3) of the Trade Marks Act 1994⁽⁷⁾, 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 1994 Amendment No.3) (Miscellaneous) 1994 and shall come into force on 5th December 1994.

(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⁽⁸⁾ shall be amended in accordance with the following sub-paragraphs.

(2) In rule 9.2 (retransmission of processes to Office of Court), for “—1(1)”, substitute “—(1)”.

(3) In rule 10.2(1) (sederunt days), after the words “rule 10.3(1)”, insert the words “or 10.4”.

(4) In rule 16.12, for the word “**Excution**” in the heading, substitute the word “**Execution**”.

(5) In rule 23.10 (motions by defender or other person before calling), in paragraph (1), for the word “Clark”, substitute the word “Clerk”.

(1) 1988 c. 36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(3).

(2) 1975 c. 72; section 48(1) was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 2.

(3) 1977 c. 27.

(4) 1978 c. 28.

(5) 1988 c. 48.

(6) 1982 c. 27.

(7) 1994 c. 26.

(8) S.I. 1994/1443.

(6) In rule 24.2 (applications to amend pleadings), in paragraph (3)(a), after the words “have been lodged,” where they first occur, insert the words “unless the court otherwise orders”.

(7) In rule 35.4 (execution of commission and diligence for recovery of documents), in paragraph (12), for “(11)”, substitute “(10)”.

(8) In rule 36.6 (notices to admit and notices of non-admission), in paragraph (4), for “14”, substitute “21”.

(9) In Chapter 38 (reclaiming)–

- (a) in rule 38.3 (reclaiming days), in paragraph (2)(b), for the word “expense”, substitute the word “expenses”;
- (b) in rule 38.11 (reclaiming against decree by default), in paragraph (2), immediately before the words “to expenses”, insert the word “as”; and
- (c) in rule 38.16 (grounds of appeal in reclaiming motions), in paragraph (5), after the words “reclaiming motion”, insert the words “with or without hearing parties as the court thinks fit”.

(10) In Chapter 40 (appeals from inferior courts)–

- (a) in rule 40.14 (grounds of appeal), in paragraph (5), after the words “refuse the appeal”, insert the words “with or without hearing parties as the court thinks fit”; and
- (b) in rule 40.17 (lodging of appendices in appeals), in paragraph (1), for the words “after the cause had”, substitute the words “after the cause has”.

(11) In Chapter 41 (appeals under statute)–

- (a) in rule 41.17 (remit to reporter), in paragraph (3)(b), for the word “given”, substitute the word “give”;
- (b) in rule 41.21 (orders for service and answers), in paragraph (2)(b), for the words “to every person”, substitute the words “every person”;
- (c) for rules 41.23 to 41.25 (rules relating to Exchequer appeals), substitute the following rules:–

“Revenue appeals by stated case

41.23.—(1) This rule applies to an appeal to the court as the Court of Exchequer in Scotland under any of the following provisions:–

- (a) section 13(1) of the Stamp Act 1981⁽⁹⁾ (appeal from Commissioners of Inland Revenue);
- (b) section 705A of the Income and Corporation Taxes Act 1991⁽¹⁰⁾ (case for opinion of court from tribunal); and
- (c) regulation 20(1) of the General Commissioners (Jurisdiction and Procedure) Regulations 1994⁽¹¹⁾.

(2) Subject to paragraph (3), Part II (appeals by stated case etc.) shall apply to an appeal to which paragraph (1) applies.

(3) The following provisions of Part II shall not apply to an appeal to which this rule applies:–

rule 41.5

(applications for case),

⁽⁹⁾ 1891 c. 39.

⁽¹⁰⁾ 1988 c. 1; section 705A was inserted by S.I. 1994/1813 (“the 1994 Regulations”).

⁽¹¹⁾ S.I. 1994/1812.

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| rule 41.6 | (additional questions by other parties), |
| rule 41.7 | (consideration of application by tribunal), |
| rule 41.8 | (procedure for ordaining tribunal to state a case), |
| rule 41.9 | (preparation and issue of the case), |
| rule 41.10 | (intimation of intention to proceed). |

Revenue appeals from Special Commissioners

41.24.—(1) This rule applies to an appeal to the court under any of the following provisions:—

- (a) section 56A of the Taxes Management Act 1970⁽¹²⁾;
- (b) section 225 of the Inheritance Tax Act 1984⁽¹³⁾; and
- (c) regulation 10(1) of the Stamp Duty Reserve Tax Regulations 1986⁽¹⁴⁾.

(2) Part III (appeals in Form 41.19) shall apply to an appeal to which paragraph (1) applies.

Appeals relating to penalties

41.25.—(1) This rule applies to an appeal to the court as the Court of Exchequer in Scotland under any of the following provisions:—

- (a) section 53(1)⁽¹⁵⁾ or 100C(4)⁽¹⁶⁾ of the Taxes Management Act 1970 (appeals from General or Special Commissioners in relation to penalties);
- (b) an appeal against the amount of a penalty under section 100B(3) of the Taxes Management Act 1970⁽¹⁷⁾;
- (c) section 249(3) or 251(2) of the Inheritance Tax Act 1984 (appeals from Special Commissioners in relation to penalties); and
- (d) paragraph 10(3) of Schedule 12 to the Value Added Tax Act 1994⁽¹⁸⁾ (appeal from VAT tribunal in relation to penalty).

(2) Part III (appeals in Form 41.19) shall apply to an appeal to which paragraph (1) (a), (c) or (d) applies.

(3) In relation to paragraph (1)(b)—

- (a) Part II (appeals by stated case etc.) shall apply to an appeal from the General Commissioners; and
- (b) Part III shall apply to an appeal from the Special Commissioners.

(4) Within 30 days after service on them of an appeal in Form 41.19, the Special Commissioners or the VAT Tribunal, as the case may be, shall—

- (a) send six copies of a note of their findings and of the reasons for their decision to the Deputy Principal Clerk; and

⁽¹²⁾ 1970 c. 9; section 56A was substituted by the 1994 Regulations, Schedule 1, paragraph 11.

⁽¹³⁾ 1984 c. 51; section 225 was substituted by the 1994 Regulations, Schedule 1, paragraph 21.

⁽¹⁴⁾ S.I. 1986/1711; regulation 10 was substituted by the 1994 Regulations, Schedule 1, paragraph 29.

⁽¹⁵⁾ Section 53(1) was substituted by the 1994 Regulations, Schedule 1, paragraph 8.

⁽¹⁶⁾ Section 100C was inserted by section 167 of the Finance Act 1989 (c. 26).

⁽¹⁷⁾ Section 100B was inserted by section 167 of the Finance Act 1989 and section 100B(3) was amended by the 1994 Regulations, Schedule 1, paragraph 15.

⁽¹⁸⁾ 1944 c. 23.

- (b) send a copy of that note to every party to the appeal.”;
- (d) in rule 41.26 (appeals relating to certain determinations of the Commissioners of Inland Revenue), in paragraph (4), after the word “solicitor”, insert the words “in Scotland”.
- (12) In rule 42.10 (basis of charging), in paragraph (2), for the words “solicitor local to the party”, substitute the words “local solicitor”.
- (13) In rule 49.2 (averments in certain family actions about other proceedings), in paragraph (3)(c)(ii), for the word “sub-paragraph”, substitute the word “paragraph”.
- (14) In rule 50.5 (applications for variation or recall of decrees), in paragraph (4), for the words “paragraph (4)”, substitute the words “paragraph (3)”.
- (15) In rule 51.13 (decrees for payment), in paragraph (1)(a), for the word “have” where it second occurs, substitute the word “has”.
- (16) In Chapter 55 (causes relating to intellectual property)—
 - (a) in rule 55.14 (appeals from Comptroller)—
 - (i) in the heading, after the word “**Appeals**”, insert the words “**and references**”;
 - (ii) in paragraph (1), after the words “a decision of”, insert the words “, or a reference under the Copyright Act of 1988 from,”;
 - (iii) in paragraph (2), after the words “an appeal”, insert the words “or a reference”;
 - (iv) in paragraph (3), after the words “an appeal”, insert the words “or a reference”;
 - (v) in paragraph (3)(a), after the words “the decision”, insert the words “appealed against”;
 - (vi) in paragraph (3)(b), after the words “the decision”, insert the words “appealed against or the decision referring the proceedings to the court, as the case may be”; and
 - (vii) in paragraph (4), after the word “appeal”, insert the words “or reference”;
 - (b) for rule 55.17, substitute the following rule:—

“Intimation and service of applications under the Copyright Act of 1988 or the Trade Marks Act 1994 for orders for disposal of infringing matter

55.17. An application under section 114, 204 or 231 of the Copyright Act of 1988 (which provide for orders for disposal in respect of infringement of copyright, rights in performances and design rights), or section 19 of the Trade Marks Act 1994⁽¹⁹⁾ (order as to disposal of infringing goods, material or articles), shall be made—

- (a) in a cause depending before the court, by motion; or
- (b) where there is no depending cause, by petition; and

the applicant shall intimate the motion to, or serve the petition on, as the case may be, all persons, so far as known to the applicant or 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 Copyright Act of 1988 or section 19 of the said Act of 1994.”; and

- (c) after rule 55.18 (applications for leave to proceed), insert the following rule:—

(19) 1994 c. 26.

“Appeals and references under the Trade Marks Act 1994

55.19.—(1) Subject to the following paragraphs of this rule, an appeal or reference under section 76 of the Trade Marks Act 1994 (appeal from registrar or reference from appointed person) shall be heard in the Outer House by the patents judge.

(2) In the application of Part III of Chapter 41 (appeals in Form 41.19) by virtue of rule 41.43 (appeals to Lord Ordinary) to an appeal or reference under paragraph (1) of this rule—

(a) for references to the Inner House there shall be substituted references to the patents judge; and

(b) the following paragraphs of this rule shall apply.

(3) Subject to paragraph (4), an appeal or reference shall be lodged in the General Department—

(a) in the case of a decision on a matter of procedure, within 14 days after the date of the decision appealed against; and

(b) in any other case, within 6 weeks after the date of the decision appealed against or the decision referring the proceedings to the court, as the case may be.

(4) Except with the leave of the court, no appeal or reference under this rule shall be entertained unless it has been lodged within the period specified in paragraph (3) or within such further period as the Comptroller may allow on an application made to him before the expiry of that period.

(5) Any determination by the Comptroller that a decision is on a matter of procedure shall be treated as being itself a decision on a matter of procedure.

(6) In the application of paragraph (1) of rule 41.21 (orders for service and answers), the order under that paragraph shall include a requirement to—

(a) intimate the appeal to the Comptroller; and

(b) serve the appeal on every other party to the proceedings before the Comptroller.

(7) On receiving intimation of the appeal, the Comptroller shall forthwith transmit to the Deputy Principal Clerk all the papers relating to the matter which is the subject of the appeal.

(8) A respondent who, not having appealed from the decision of the Comptroller, wishes to contend at the hearing of the appeal that the decision or the grounds of the decision should be varied shall—

(a) specify the grounds of that contention in his answers; and

(b) intimate those answers to the Comptroller and to every other party to the proceedings before the Comptroller.

(9) Intimation of the date of the hearing of the appeal shall be made to the Comptroller by the appellant not less than 7 days before that date, unless the court otherwise directs.

(10) An appeal under this rule shall be a re-hearing and the evidence led on appeal shall be the same as that led before the Comptroller; and, except with the leave of the court, no further evidence shall be led.”.

(17) In rule 62.40 (enforcement in another Contracting State of Court of Session judgments etc.), in paragraph (3), for the word “of” where it second occurs, substitute the word “to”.

(18) In Chapter 67 (applications under the Adoption (Scotland) Act 1978)—

(a) in rule 67.32 (procedure after intimation to Register General or issue of extract), in paragraph (1), for “67.29”, substitute “67.30”; and

- (b) in rule 67.41 (revocation or annulment of regulated adoptions), in paragraph (3), omit the comma after the word “adoption”.
- (19) In rule 70.5 (form of applications relating to international child abduction), in paragraph (1), for sub-paragraph (b), substitute the following sub-paragraph:–
- “(b) there shall be produced with the petition and lodged as a production a certified or authorised copy of any relevant decision or agreement.”.
- (20) In rule 74.10 (form of petition for administration order), in paragraph (2)(f), after the words “winding up,”, insert the word “of”.
- (21) In Chapter 76 (causes in relation to confiscation of proceeds of crime)–
- (a) in rule 76.8 (incidental applications in an administration), in paragraph (2)(a), for “4(1)(o)”, substitute “14(1)(o)”; and
- (b) in rule 76.19 (application and interpretation of Part II of Chapter 76), for the word “act”, substitute the word “Act”.
- (22) In the appendix–
- (a) in the following forms, for the words “legal advice agency”, substitute the words “local advice agency”:–
- Form 13.12
- Form 35.4–A
- Form 43.3
- Form 43.13–B
- Form 44.2–A
- Form 44.3
- Forms 49.8–A, 49.8–B, 49.8–C, 49.8–D, 49.8–E, 49.8–F, 49.8–G, 49.8–I, 49.8–J, 49.8–K, 49.8–L
- Form 49.9
- Forms 49.14–A, 49.14–C, 49.14–E, 49.14–F,
- Form 49.37
- Form 49.62–A
- Form 50.2–B
- Form 61.31
- Form 62.9
- Form 76.9;
- (b) in Form 6.2, at the end, for the word “alternation”, substitute the word “alteration”;
- (c) in Form 13.2–A
- (i) to the left of the box drawn at the top of the form, insert the words “[*Insert the Royal Arms in Scotland*]”;
- (ii) centred below the words “IN THE COURT OF SESSION” on the first page, insert the words:
- “**SUMMONS**
- in the cause”; and
- (iii) on the backing, centred below the word “Summons”, insert the words “in the cause”;

- (d) in Form 13.2–B, in paragraph (17), for the words “or eighteen”, substitute the words “of eighteen”;
- (e) in Form 14.4, to the left of the box drawn at the top of the form, insert the words “[*Insert the Royal Arms in Scotland*]”;
- (f) In Form 26.1–A, in the first alternative of the second paragraph, for the word “along” where it first occurs, substitute the word “alone”;
- (g) in Form 36.2–A–
 - (i) above the words “(*Name and address of pursuer*” in the first paragraph, insert the following–
“Date: (*insert date of service of citation*)”;
 - (ii) in the second paragraph, after the words “[*or Agent*]”, insert the word “for”;
 - (iii) in the second paragraph, after the words “Messenger-at-Arms”, insert the words “on the instructions of (*name of agent on whose behalf citation executed*)”; and
 - (iv) at the end of the second paragraph, after the words “a witness”, insert the words “for the pursuer [*or as the case may be*]”;
- (h) in Form 44.2–B–
 - (i) in paragraph 3 of “PART B”, for the word “instalment”, substitute the word “instalments”; and
 - (ii) in the margin of “PART B”, after the words “Delete whichever is”, insert the words “not appropriate”;
- (i) In Form 49.29–A, after the words “specified in the”, insert the words “attached schedule and being satisfied that on this evidence a motion for decree in terms of the conclusions of the”;
- (j) in Form 49.73–B–
 - (i) on page 2 of the form in the section headed “ *Note on Section 4 opposite*”, in the paragraph beginning with the words “MARRIAGE CERTIFICATE”, for the words “Registrar nor”, substitute the words “Registrar not”; and
 - (ii) on page 3 of the form, at the end of Section 4, after the words “space is”, insert the word “not”;
- (k) in Form 62.40–A, in paragraph 4, for the words “in the sum or”, substitute the words “in the sum of”;
- (l) in Form 62.42–A, in the heading, for the word “ **of**”, substitute the word “ **to**”;
- (m) in Form 67.15, in paragraph 1, after the words “of an order freeing the child”, insert “[E.F.]”; and
- (n) in the form after Form 69.5 headed “ **Form 64.15**”–
 - (i) for the words “ **Form 64.15**”, substitute the words “ **Form 69.15**”; and
 - (ii) for the words “Rule 64.15”, substitute the words “Rule 69.15”.

Edinburgh,
10th November 1994

J.A.D. Hope
Lord President, I.P.D.

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 1994 by—

- (a) amending the rules for Exchequer Appeals (paragraph 2(11)(c) and (d));
- (b) amending rules 38.16(5) and 40.14(5) to allow the Inner House of the Court of Session, when considering whether to refuse a reclaiming motion or an appeal on the ground that the grounds of appeal do not comply with the rules, to do so with or without hearing parties (paragraph 2(9)(c) and (10)(a));
- (c) amending Chapter 55 (causes relating to intellectual property) to make provision in respect of references from the Comptroller under the Copyright, Designs and Patents Act 1988 (c. 48), in respect of section 19 (orders as to disposal of infringing goods, material or articles), and respect of section 76(3) (appeals from registrar, or references from appointed person, to court), of the Trade Marks Act 1994 (c. 26) (paragraph 2(16));
- (d) omitting the requirement in rule 70.5(1)(b) (form of applications relating to international child abduction) to provide a certificate or affidavit relating to the law of the State in which the child habitually resides (paragraph 2(19); and
- (e) correcting minor errors (all other sub-paragraphs of paragraph 2).