SCOTTISH STATUTORY INSTRUMENTS

2005 No. 193

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Miscellaneous) 2005

Made - - - -	*24th March 2005*
Coming into force - -	*1st April 2005*

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 paragraph 4 of the Schedule to the Prevention of Terrorism Act 2005(**2**) 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) 2005 and shall come into force on 1st April 2005.

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

(2) In rule 41.25 (appeals relating to penalties)—

(a) in paragraph (1)(e) "and" shall be omitted;

(b) after paragraph (1)(f) there shall be inserted—

"; and

(g) paragraph 6(1) of Schedule 14 to the Finance Act 2003(**4**) (appeals from General or Special Commissioners in relation to penalties)";

(c) in paragraph (3), for "paragraph (1)(b)" there shall be substituted "paragraph (1)(b), and (g)".

(3) In Part I of Chapter 49 (family actions: general provisions)—

(**1**) 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.
(**2**) 2005 c. 2.
(**3**) S.I.1994/1443, last amended by S.S.I. 2005/153.
(**4**) 2003 c. 14.

(a) in rule 49.1(2) (family actions: interpretation)(**5**)—

(i) after the definition of "the Act of 1995" there shall be inserted the following:–

""the Act of 2004" means the Gender Recognition Act 2004(**6**);"

(ii) after the definition of "contact order" there shall be inserted the following:–

""corrected gender recognition certificate" means a certificate issued under section 6(4) of the Act of 2004;

"full gender recognition certificate" and "interim gender recognition certificate" have the same meanings as in section 25 of the Act of 2004;".

(b) for rule 49.10(1)(a) (productions in action of divorce)(**7**) there shall be substituted the following:–

"(a) in an action of divorce—

(i) an extract or certified copy of the relevant entry in the register of marriages; and

(ii) where the actiion relies on section 1(1)(b) of the Act of 1976 (grounds for divorce: interim gender recognition certificate)(**8**), the interim gender recognition certificate or a certified copy of it; and".

(c) after rule 49.14(1)(b) (notices in certain actions of divorce or separation) there shall be inserted the following:–

"(c) in an action relying on section 1(1)(b) of the Act of 1976 (grounds for divorce: interim gender recognition certificate), a notice in Form 49.14–G.".

(d) after rule 49.27A (expenses of curator ad litem appointed to child)(**9**) there shall be inserted the following:–

"Corrected gender recognition certificates

49.27B.—(1) An application after final decree for a corrected gender recognition certificate under section 6 of the Act of 2004 shall be made by minute in the process of the action in which the full gender recognition certificate was issued.

(2) Where the court issues a corrected gender recognition certificate, the Deputy Principal Clerk shall send a certified copy of the certificate to the Secretary of State.".

(4) Chapter 83 (applications in investigations ordered pursuant to Article 14 of Regulation 17 of the Council of the European Communities)(**10**) shall be omitted.

(5) For rule 89.5(3)(**15**) (appeal after failure to determine application for revocation or modification of control order) there shall be substituted the following:–

"(3) In a case where the Secretary of State has failed to determine an application for the revocation of the control order, or for the modification of an obligation imposed by such an order, any appeal under section 10 of the Act of 2005(**16**) shall be lodged—

(a) no earlier than 28 days; and

(**5**) Rule 49.1 was amended by S.I. 1996/2587.
(**6**) 2004 c. 7.
(**7**) Rule 49.10 was amended by S.I. 1996/2587.
(**8**) 1976 c. 39; section 1(1)(b) was inserted by paragraph 6 of Schedule 2 to the Gender Recognition Act 2004 c. 7.
(**9**) Rule 49.27A was inserted by S.S.I. 1999/109.
(**10**) Chapter 83 was amended by S.S.I. 2001/92 and S.S.I. 2001/305.
(**15**) Rule 89.5 was inserted by S.S.I.2005/153.
(**16**) Prevention of terrorism Act 2005 c.2 .

(b) no later than 42 days;

after the date on which the application was made.".

(6) At the end there shall be inserted the following:–

"CHAPTER 90

FREEDOM OF INFORMATION

Applications

90.1.—(1) In this rule—

"the Act of 2000" means the Freedom of Information Act 2000(**11**); and

"the Act of 2002" means the Freedom of Information (Scotland) Act 2002(**12**).

(2) An application under section 54(3) of the Act of 2000 or section 53(3) of the Act of 2002 for the court to deal with a public authority as if it had committed a contempt of court shall be by petition.

(3) There shall be attached to a petition mentioned in paragraph (2)–

(a) where the application is under the Act of 2000, a certificate under section 54(1) of that Act (certificate by Information Commissioner of failure to comply with notice);

(b) where the application is under the Act of 2002, a certificate under section 53(1) of that Act (certificate by Scottish Information Commissioner of failure to comply with notice).

CHAPTER 91

GENDER RECOGNITION ACT 2004

Interpretation of this Chapter

91.1. In this Chapter–

"the Act of 2004" means the Gender Recognition Act 2004(**13**);

"full gender recognition certificate" has the same meaning as in section 25 of the Act of 2004; and

"Gender Recognition Panel" is to be construed in accordance with Schedule 1 to the Act of 2004.

References by Secretary of State

91.2.—(1) A reference by the Secretary of State under section 8(5) of the Act of 2004 shall be made by petition.

(2) Where the court quashes a decision by the Gender Recognition Panel to grant an application for a gender recognition certificate under section 1(1) or section 5(2), the Deputy Principal Clerk shall send a certified copy of the interlocutor to the Registrar General for Scotland.".

(7) In the appendix—

(a) in Form 37.2–B (form of citation of a juror) "Ext. 254" shall be omitted.

(**11**) 2000 c. 36.
(**12**) 2002 asp 13.
(**13**) 2004 c. 7.