SCOTTISH STATUTORY INSTRUMENTS

2004 No. 514

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Miscellaneous) 2004

Made - - - -	*29th November 2004*
Coming into force - -	*30th November 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(**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. 6) (Miscellaneous) 2004 and shall come into force on 30th November 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(**2**) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 33.6 (form of bonds of caution and other securities) paragraph (2) shall be omitted.

(3) After rule 35.15 (letters of request) there shall be inserted the following:–

"Applications for requests that evidence be taken under the Council Regulation

35.16.—(1) In this rule–

"the Council Regulation" means the Council Regulation (EC) No. 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil or commercial matters(**3**);

"Member State" has the same meaning as in Article 1(3) of the Council Regulation;

"request" means a request to which Article 1(1)(a) of the Council Regulation applies; and

(**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**) S.I. 1994/1443, last amended by S.S.I. 2004/331.
(**3**) O.J. L 174, 27.06.2001, p.1.

"requested court" has the same meaning as in Article 2(1) of the Council Regulation.

(2) This rule applies to an application under the Council Regulation for a request to a requested court in a Member State other than the United Kingdom for the purposes of a cause depending before the Court of Session.

(3) An application to which paragraph (2) applies shall be made by minute in Form 35.16–A with a proposed request in form A (request for the taking of evidence) or form I (request for direct taking of evidence) set out in the Annex to the Council Regulation.

(4) It shall be a condition of granting an application for a request that the agent for the applicant, or a party litigant, as the case may be, shall be personally liable, in the first instance, for any reimbursement required by the requested court in respect of any fees paid to experts and interpreters and the costs occasioned by the use of any requested special procedure in executing the request for evidence, or the use of requested communications technology at the performance of the taking of evidence; and that he shall consign into court any such sum as is required by the requested court as deposit or advance towards the costs of executing the request.

(5) Unless the requested court is in a country or territory–

(a) where English is an official language, or

(b) in relation to which the Deputy Principal Clerk certifies that no translation is required,

then the applicant shall, before the issue of the request, lodge in process a translation of the request and any interrogatories and cross-interrogatories into the official language of that country or territory.

(6) Where an application under this rule has been granted, the request shall be forwarded by the Deputy Principal Clerk to–

(a) the requested court; or

(b) the central body or competent authority designated by the other Member State to be responsible for taking decisions on requests to take evidence directly.

(7) The Deputy Principal Clerk shall, as soon as reasonably practicable after receipt of any communication from the requested court, send written intimation of that communication to the parties.

(8) If a request is made to take the evidence of a witness directly in another Member State, the Deputy Principal Clerk shall intimate to the witness who is to give evidence, a notice in Form 35.16–B and the witness shall return Form 35.16–C to the Deputy Principal Clerk, within 14 days after the date of intimation of the notice.".

(4) In rule 43.1(3)(**4**) (disapplication of certain rules to personal injuries actions) after "rule 22.3 (closing record)" there shall be inserted "rule 26.5(2)(c) (answers by third party to include pleas-in-law),".

(5) In rule 72.1(1) (interpretation) after "Bankruptcy (Scotland) Act 1985(**5**)" there shall be inserted the following:–

";

"the 2004 Regulations" means the Debt Arrangement Scheme (Scotland) Regulations 2004(**6**).".

(6) After rule 72.2 (first order in petitions for sequestration) there shall be inserted the following:–

(**4**) inserted by S.S.I. 2002/570 and amended by S.S.I. 2004/291.
(**5**) 1985 c. 66.
(**6**) S.S.I. 2004/468 as amended by S.S.I. 2004/470.

"Declaration regarding an approved debt payment programme

72.2A. The petitioner shall lodge with the petition a declaration or declarations by the petitioner and any concurring creditors in Form 72.2A confirming that the debtor has not entered into an approved debt payment programme or that the debts founded on in the petition are in respect of credit as defined in regulation 35(1)(b) of the 2004 Regulations.".

(7) After Chapter 86 (applications under various provisions of the Competition Act 1998) there shall be inserted the following:–

"CHAPTER 87

CAUSES RELATING TO ARTICLES 81 AND 82 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

Intimation of actions to the Office of Fair Trading

87.1.—(1) In this rule–

"the Treaty" means the Treaty establishing the European Community;

"the OFT" means the Office of Fair Trading.

(2) In an action where an issue under Article 81 or 82 of the Treaty is raised:–

(a) by the pursuer or petitioner in the summons or petition;

(b) by the defender or respondent in the defences or answers; or

(c) by any party in the pleadings;

intimation of the action shall be given to the OFT by the party raising the issue, by a notice of intimation in Form 87.1.

(3) Where the issue under Article 81 or 82 of the Treaty is raised in the summons or petition, a warrant for intimation shall be inserted in the summons or petition in the following terms: 'Warrant to intimate to the Office of Fair Trading'.

(4) Where the issue under Article 81 or 82 of the Treaty is raised in defences, answers or in any other part of the pleadings, the party raising the issue shall apply by motion for an order for intimation to the OFT.

(5) A certified copy of an interlocutor granting a motion under paragraph (4) shall be sufficient authority for the party to intimate by notice in Form 87.1.

(6) The notice of intimation shall be served on the OFT within such period as the court shall specify in the interlocutor allowing intimation.

(7) There shall be attached to the notice of intimation–

(a) a copy of the pleadings (including any adjustments and amendments);

(b) a copy of the interlocutor allowing intimation of the notice; and

(c) where the pleadings have not been amended in accordance with a minute of amendment, a copy of that minute.".

(8) In the appendix–

(a) after Form 35.15–B there shall be inserted the forms set out in Part 1 of the Schedule to this Act of Sederunt;

(b) after Form 69.23 there shall be inserted the form set out in Part 2 of the Schedule to this Act of Sederunt;

(c) after Form 86.3 there shall be inserted the form set out in Part 3 of the Schedule to this Act of Sederunt.

Edinburgh
29th November 2004 Lord President I.P.D.