SCOTTISH STATUTORY INSTRUMENTS

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(**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. 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(**2**) 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.

(**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. 2004/291.

(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 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(**3**) (appeal on a point of law from a determination of the Immigration Appeal Tribunal with permission of the Tribunal).".

(**3**) 2002 c. 41.

(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:–

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(**4**).

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) 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".

(**4**) 1992 c. 52.

(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;