SCOTTISH STATUTORY INSTRUMENTS

2004 No. 52

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) 2004

Made - - - -	*10th February 2004*
Coming into force - -	*1st March 2004*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 59 of the Adoption (Scotland) Act 1978(**1**), sections 4, 12 and 48 of the Civil Jurisdiction and Judgments Act 1982(**2**), section 5 of the Court of Session Act 1988(**3**) 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) (Miscellaneous) 2004 and shall come into force on 1st March 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(**4**) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 10.1(2) (terms of court) "annually" shall be omitted.

(3) After rule 16.2 (service furth of United Kingdom) there shall be inserted the following:–

"Service under the Council Regulation

16.2A.—(1) In this rule—

"competent receiving agency" and "Member State" have the same meaning as in the Council Regulation; and

(**1**) 1978 c. 28; section 59 was amended by the Children (Scotland) Act 1995 c. 36, Schedule 2, paragraph 27.
(**2**) 1982 c. 27; sections 4 and 12 were amended by articles 2(2) and 5(2)(c) respectively of S.I. 1993/604 and section 48 was amended by paragraph 17(c)(v) of Schedule 2 to S.I. 2001/3929.
(**3**) 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.
(**4**) S.I. 1994/1443, last amended by S.S.I. 2003/537.

"Council Regulation" means Council Regulation (E.C.) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters(**5**).

(2) This rule applies to service of a document under the Council Regulation on a person on whom service is to be executed in a Member State other than the United Kingdom.

(3) Where a document is being served by a competent receiving authority under Article 7 of the Council Regulation, rule 16.6(1) (translations of documents) shall not apply.

(4) Where a document has been served by a competent receiving authority under Article 7 of the Council Regulation, the party executing service shall lodge the certificate of service mentioned in Article 10 of the Council Regulation.".

(4) In rule 16.6(1) (translations of documents) at the beginning there shall be inserted "Subject to rule 16.2A,".

(5) In rule 16.8(1) (intimation on a warrant to intimate) after "rule 16.2 (service furth of United Kingdom)," there shall be inserted "rule 16.2A (service under the Council Regulation),".

(6) Rule 26.6(A1) shall be omitted.

(7) After Rule 26.6(1) there shall be inserted the following:–

"(1A) Where a minute of amendment under rule 26.2(2) has been lodged, the defender may not apply by motion under paragraph (1) unless, at or before the date on which he makes that application, he applies by motion to amend the pleadings in terms of the minute of amendment.".

(8) After Chapter 32 there shall be inserted the following:–

"CHAPTER 32A

TRANSFER OF CAUSES TO AND FROM THE COMPETITION APPEAL TRIBUNAL

Transfers to the Competition Appeal Tribunal

32A.1.—(1) An application to transfer a cause to the Competition Appeal Tribunal shall be made by motion.

(2) Where a cause is transferred to the Competition Appeal Tribunal, the Deputy Principal Clerk of Session shall, within four days after the interlocutor transferring the cause has been pronounced, transmit the process to the party on whose motion the transfer was made together with a certified copy of the interlocutor granting the motion under paragraph (1).

(3) When transmitting a process under paragraph (2), the Deputy Principal Clerk shall—

(a) give written intimation of the transmission to—

(i) the other parties;

(ii) the Registrar of the Competition Appeal Tribunal; and

(b) certify on the interlocutor sheet that such written intimation has been given.

(4) A failure by the Deputy Principal Clerk to comply with paragraph (3) shall not affect the validity of any transfer of a cause.

Receipt of transfers from the Competition Appeal Tribunal

32A.2. On receipt of documentation in respect of a claim which has been directed to be transferred to the court by the Competition Appeal Tribunal, the Deputy Principal Clerk of Session shall—

(**5**) O.J. L 160, 30.6.2000, p.37.

(a) mark the first page of the documentation or, as the case may be, the interlocutor sheet, with the date of receipt; and

(b) give written intimation of that date to each party.

Motion for further procedure and lodging of process in transfers from the Competition Appeal Tribunal

32A.3.—(1) Within 14 days after the date of receipt of documentation referred to in rule 32A.2 (receipt of transfers from the Competition Appeal Tribunal)—

(a) the party at whose request the transfer was directed, or

(b) in proceedings in which the transfer was directed by the Tribunal at its own initiative, the party who initiated the proceedings,

shall apply by motion for an order for such further procedure as he desires; and the cause shall proceed as if it had been an action in the court initiated by summons.

(2) On applying by motion under paragraph (1) the party shall make up and lodge a process incorporating the documentation referred to in rule 32A.2 (receipt of transfers from the Competition Appeal Tribunal) unless the documentation includes a process previously transferred to the Competition Appeal Tribunal under rule 32A.1 (transfers to the Competition Appeal Tribunal).

(3) A motion under paragraph (1) shall be disposed of by the Lord Ordinary.

Reponing against a failure to comply with rule 32A.3(1) or (2)

32A.4.—(1) Where—

(a) the party at whose request the transfer was directed; or

(b) in proceedings in which the transfer was directed by the Tribunal at its own initiative, the party who initiated the proceedings, fails to comply with the requirements of rule 32A.3(1) or (2) (motion for further procedure and lodging of process), he may, within seven days after the expiry of the period specified in rule 32A.3(1), apply by motion to be reponed.

(2) The party enrolling a motion under paragraph (1), where the failure is a failure to lodge a process under rule 32A.3, shall on enrolling the motion, lodge such a process and shall apply by motion for an order for such further procedure as he desires.

(3) A motion under paragraph (1) shall be granted only on cause shown and on such conditions, if any, as to expenses or otherwise as the court thinks fit.

Insistence in transfer by another party

32A.5. Where—

(a) the party at whose request the transfer was directed; or

(b) in proceedings in which the transfer was directed by the Tribunal at its own initiative, the party who initiated the proceedings, has failed to comply with the requirements of paragraph (1) or (2) of rule 32A.3 (motion for further procedure and lodging of process), any other party to the proceedings may, within seven days after the expiry of the period specified in rule 32A.3(1), comply with the requirements of those paragraphs himself and insist in the transfer.

Re-transmission to Registrar of the Competition Appeal Tribunal

32A.6. Where, on the expiry of 21 days after the receipt of the documentation referred to in rule 32A.2 (intimation of the date of receipt of documentation), no motion has been enrolled under rule 32A.4 (reponing against failure to comply with rule 32A.3(1) or (2)) and no motion has been enrolled under rule 32A.5 (insistence on transfer by another party), the transfer shall be deemed to be abandoned and the Deputy Principal Clerk shall—

(a) write on the first page of the documentation or, as the case may be, the interlocutor sheet the words "Re-transmitted in respect that transfer has been abandoned.";

(b) add his signature and the date; and

(c) transmit the documentation to the Registrar of the Competition Appeal Tribunal.".

(9) For rule 40.21 there shall be substituted the following:–

"Use of Gaelic

40.21.—(1) This rule applies where an inferior court has authorised the use of Gaelic by a party.

(2) If—

(a) the party wishes to address the Inner House in the appeal; or

(b) where proof has been ordered by the Inner House, the party wishes to give oral evidence or to address the judge to whom the Inner House has remitted the cause, in Gaelic,

he may apply by motion for authority to do so.

(3) Where the court has granted authority under paragraph (2), an interpreter shall be provided by the court.".

(10) In rule 41.4 (application and interpretation of Part II of Chapter 41) for "X" there shall be substituted "XI".

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

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

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

"and

(f) paragraph 4(1) of Schedule 2 to the Tax Credits Act 2002(**6**) (appeals from General or Special Commissioners in relation to penalties)";

(c) in paragraph (2) for "or (e)" there shall be substituted ", (e) or (f)"; and

(d) in paragraph (4) before "the Special Commissioners" there shall be inserted "the General Commissioners,".

(12) Before rule 49.89 there shall be inserted the heading "Directions".

(13) In rule 58.8A—

(a) for "Minute of Intervention", "Court" and "proceedings" in each place they appear there shall be substituted respectively, "minute of intervention", "court" and "cause";

(b) in paragraph (2) for "Form 58.8" and "lodge it with the court" there shall be substituted respectively "Form 58.8A" and "lodge it in process";

(c) in paragraph (10) for "notify" there shall be substituted "give written intimation of";

(**6**) 2002 c. 21.

(d) in paragraph (11) for "and intimated" there shall be substituted "who shall give written intimation of the diet";

(e) in paragraph (12) for "Rule" there shall be substituted "rule"; and

(f) at the end of paragraph (13) there shall be inserted "and not subject to review".

(14) For Part V of Chapter 62 there shall be substituted the following:–

"PART V

RECOGNITION AND ENFORCEMENT OF JUDGMENTS UNDER THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982 OR UNDER COUNCIL REGULATION (E.C.) NO. 44/2001 OF 22ND DECEMBER 2001

Application and interpretation of this Part

62.26.—(1) This Part applies to the recognition and enforcement of a judgment under the Civil Jurisdiction and Judgments Act 1982(**7**) or under the Council Regulation.

(2) Unless the context otherwise requires, in this Part—

"the Act of 1982" means the Civil Jurisdiction and Judgments Act 1982;

"Contracting State" has the meaning assigned in section 1(3) of the Act of 1982(**8**);

"judgment" includes an authentic instrument or court settlement;

"the Council Regulation" means Council Regulation (E.C.) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(**9**);

"Member State" has the same meaning as Member State in the Council Regulation.

Disapplication of certain rules to this Part

62.27. The following provisions shall not apply to an application under this Part in addition to those rules mentioned in rule 62.1:–

rule 4.1(1) (printed form for petition),

14.4 (form of petitions).

Enforcement of judgments, authentic instruments or court settlements from another Contracting State or Member State

62.28.—(1) An application under—

(a) section 4 of, and Article 31 (enforcement of judgment from another Contracting State) or Article 50 (enforcement of authentic instrument or court settlement from another Contracting State) of the Convention in Schedule 1 or 3C to, the Act of 1982(**10**); or

(**7**) 1982 c. 27.
(**8**) Section 1(3) of the Act of 1982 was amended by the Civil Jurisdiction and Judgments Act 1991 c. 12, section 2(5).
(**9**) O.J. No. L 012, 16.01.2001, p.1.
(**10**) Section 4 was amended by the Civil Jurisdiction and Judgments Act 1991 c. 12, Schedule 2, paragraph 2 and was extended to authentic instruments and court settlements by S.I. 1993/604. Schedule 1 was substituted by S.I. 1990/2591 and amended by S.I. 2000/1824. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991, section 1(3) and Schedule 1.