SCOTTISH STATUTORY INSTRUMENTS

# 2003 No. 601

# SHERIFF COURT

## Act of Sederunt (Taking of Evidence in the European Community) 2003

*Made - - - - 11th December 2003*

*Coming into force - - 1st January 2004*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(**1**), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

### Citation, commencement and interpretation

**1.**—(1) This Act of Sederunt may be cited as the Act of Sederunt (Taking of Evidence in the European Community) 2003, and shall come into force on 1st January 2004.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

(3) In this Act of Sederunt–

"Council Regulation" means the Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters(**2**);

"Ordinary Cause Rules" means Schedule 1 to the Sheriff Courts (Scotland) Act 1907(**3**); and

"Summary Cause Rules" means the Act of Sederunt (Summary Cause Rules) 2002(**4**).

### Directions by the sheriff principal

**2.**—(1) The sheriff principal of any sheriffdom on receipt of a request referred to in paragraph (2), may make a direction specifying–

(**1**) 1971 c. 58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and was extended by sections 39(2) and 49 of the Child Support Act 1991 (c. 48).

(**2**) O.J. No. L 174, 27/06/01, p.1.

(**3**) 1907 c. 51; Schedule 1 was substituted by S.I.1993/1956, and amended by S.I. 1996/2167 and 2445, and by S.S.I. 2000/239 and 408, 2001/8 and 144, 2002/7, 128 and 560, and 2003/25 and 26.

(**4**) S.S.I. 2002/132; amended by S.S.I. 2002/516 and 2003/26.

(a) the sheriff responsible for execution of that request;

(b) the manner in which that request is to be executed; and

(c) the manner in which any representative of a requesting court may participate under Article 12 of the Council Regulation in the performance of the taking of evidence.

(2) A request is–

(a) under Article 1 of the Council Regulation by a court of a Member State that a sheriff court shall take evidence; or

(b) under Article 17 of the Council Regulation by the Scottish central body that a sheriff court shall take part in the performance of the taking of evidence by a court of a Member State.

**Hearing on a request**

**3.**—(1) The sheriff responsible for executing a request under rule 2(1) shall, where appropriate, fix a diet for a hearing on that request.

(2) The sheriff shall grant a warrant for intimation of a hearing under paragraph (1) to such persons as the sheriff shall consider appropriate.

(3) The sheriff clerk shall, on a hearing being fixed under paragraph (1), intimate that hearing to the persons specified in paragraph (2) in any of the manners prescribed by rules 5.3 to 5.6 of the Ordinary Cause Rules.

**Amendment of the Ordinary Cause Rules**

**4.**—(1) The Ordinary Cause Rules are amended in accordance with paragraphs (2) to (4).

(2) In rule 28.14 (letters of request)–

(a) in paragraph (1), for "This" substitute "Subject to paragraph (7), this"; and

(b) after paragraph (6), insert–

"(7) This rule does not apply to any request for the taking of evidence under Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.".

(3) After rule 28.14 (letters of request), insert–

"**Taking of evidence in the European Community**

**28.14A.**—(1) This rule applies to any request–

(a) for the competent court of another Member State to take evidence under Article 1.1(a) of the Council Regulation; or

(b) that the court shall take evidence directly in another Member State under Article 1.1(b) of the Council Regulation.

(2) An application for a request under paragraph (1) shall be made by minute in Form G16, together with the proposed request in form A or I (as the case may be) in the Annex to the Council Regulation.

(3) In this rule, "the Council Regulation" means Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.".

(4) In Appendix 1, for Form G16 substitute the Form in Schedule 1.

**Amendment of the Summary Cause Rules**

**5.**—(1) The Summary Cause Rules are amended in accordance with paragraphs (2) to (4).

(2) In rule 18.7 (letter of request)–

(a) in paragraph (1) for "This" substitute "Subject to paragraph (7), this"; and

(b) after paragraph (6), insert–

"(7) This rule does not apply to any request for the taking of evidence under Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.".

(3) After rule 18.7 (letter of request), insert–

"**Taking of evidence in the European Community**

**18.7A.**—(1) This rule applies to any request–

(a) for the competent court of another Member State to take evidence under Article 1.1(a) of the Council Regulation; or

(b) that the court shall take evidence directly in another Member State under Article 1.1(b) of the Council Regulation.

(2) An application for a request under paragraph (1) shall be made by minute in Form 25B, together with the proposed request in form A or I (as the case may be) in the Annex to the Council Regulation.

(3) In this rule, "the Council Regulation" means Council Regulation (EC) No. 1206/2001 of 28th May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.".

(4) In Appendix 1–

(a) in Form 25, for "*court or tribunal having power to obtain the evidence*" substitute "*central authority of the country or territory in which the evidence is to be obtained*";

(b) in Form 25a, in section 2 of Part A after "the" insert "requested state"; and

(c) after Form 25a, insert Form 25B in Schedule 2.

Edinburgh
11th December 2003

*CULLEN OF WHITEKIRK*
Lord President I.P.D.