SCOTTISH STATUTORY INSTRUMENTS

2001 No. 305

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment No.4) (Miscellaneous) 2001

Made - - - -	*7th September 2001*
Coming into force - -	*18th September 2001*

The Lords of Council and Session, in exercise 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, commencement and interpretation

1.—(1) This Act of Sederunt—

(a) may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Miscellaneous) 2001;

(b) shall come into force on 18th September 2001; and

(c) shall be inserted in the Books of Sederunt.

(2) In this Act of Sederunt, any reference to a rule is to a rule contained in the Rules of the Court of Session 1994(**2**).

Service by messenger-at-arms

2.—(1) In rule 16.3(4), at the beginning there is inserted "Subject to paragraph (4A),".

(2) After that rule there is inserted—

"(4A) Where the firm which employs the messenger-at-arms has in its possession—

(a) the principal writ or a certified copy of it, it shall be competent for the messenger-at-arms to execute service of the document without having that writ or certified copy in his possession, in which case he shall, if required to do so by the person

(**1**) 1988 c. 36. Section 5 was amended by section 2(3) of the Civil Evidence (Scotland) Act 1988 (c. 32) and by paragraph 45 of Schedule 4 to the Children (Scotland) Act 1995 (c. 36).

(**2**) S.I. 1994/1443. Amendments to the Rules relevant for the purposes of this Act of Sederunt were made by: S.I. 1997/2692 which inserted rule 40.7A; S.S.I. 2001/92 which inserted rule 5.1A and the Chapter referred to by title in paragraph 17; S.S.I. 2000/316 which inserted the Chapter referred to by title in paragraph 18.

on whom service is executed and within a reasonable time of being so required, show the principal writ or certified copy to the person;

(b) a certified copy of the interlocutor, it shall be competent for the messenger-at-arms to execute service of the document if he has in his possession a facsimile copy of the certified copy interlocutor which he shall show, if required, to the person on whom he executes service.".

Third party proceedings

3.—(1) In rule 26.4(3), the word "and" after sub-paragraph (a) is omitted and at the end of sub-paragraph (b) there is inserted "and

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

(2) In rule 26.6, before paragraph (1) there is inserted—

"(A1) Where the pleadings have not been amended in accordance with the minute of amendment, no motion for a finding, order or decree against the third party may be enrolled by the defender unless, at or before the date on which he enrols the motion, he enrols a motion to amend the pleadings in accordance with the minute.".

Abandonment of actions

4. In rule 29.1(2)(a), for the word "he" there is substituted "the pursuer".

Minutes of transference

5. In rule 31.2, after paragraph (1) there is inserted—

"(1A) Where—

(a) a question of liability is the subject of proceedings before the court; and

(b) the effect of any statutory transfer while the cause is depending before the court is to transfer the liability if proved to a person other than an existing party to the cause,

any party to the proceedings may apply to the court by minute to have the cause transferred in favour of or against, as the case may be, the person to whom the liability has been transferred.".

Commission and diligence

6. In rule 35.2(3), for sub-paragraph (c) there is substituted—

"(c) where necessary—

(i) the Advocate General for Scotland (in a case where the document or other property sought is in the possession of either a public authority exercising functions in relation to reserved matters within the meaning of Schedule 5 to the Scotland Act 1998, or a cross-border public authority within the meaning of section 88(5) of that Act); or

(ii) the Lord Advocate (in any other case),

and if there is any doubt, both.".

Written statements in evidence

7.—(1) For rule 36.8 there is substituted—

"**Lodging of certain written statements**

36.8. A party who wishes to have any written statement (including an affidavit) or report, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988, received in evidence shall lodge the statement or report in process and shall intimate such lodging to the other party or parties.".

(2) In rule 49.28(5), for the words "(conditions for receiving certain written statements in evidence)" there is substituted "(lodging of certain written statements)".

Early disposal of appeals against orders under section 11(1) of the Children (Scotland) Act 1995

8. In rule 40.7A—

(a) after the word "against" there is inserted "(a)";

(b) after the word "judgment" there is inserted "; or

(b) an interlocutor of an inferior court containing an order made under section 11(1) of the Children (Scotland) Act 1995".

Use of Gaelic

9. After rule 40.20 there is inserted—

"**Use of Gaelic**

40.21.—(1) This rule applies where an appeal is only against an interlocutor of an inferior court which has granted an application by the appellant or the respondent, being in either case a party litigant, to address that court, or to give oral evidence, in Gaelic.

(2) Without prejudice to paragraph (3), if the party litigant in question wishes—

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

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

in Gaelic, he may lodge an application to that effect with the Deputy Principal Clerk not later than 14 days before the date of the appeal or, as the case may be, of the proof and shall intimate such application to the other parties in the proceedings.

(3) Where an application to use Gaelic is made orally at the bar, the Inner House or, as the case may be, the judge may if it or he thinks fit dispense with intimation and allow the application.

(4) The Inner House or, as the case may be, the judge may refuse an application to use Gaelic where it or he considers that to grant the application would hamper the proper administration of justice.

(5) Where an application to use Gaelic is granted, an interpreter shall be provided by the court.".

Remit to auditor

10. In rule 42.1(2)(a), the words "or within such further period as the court may allow on special cause shown" are omitted.