SCOTTISH STATUTORY INSTRUMENTS

2000 No. 319

COURT OF SESSION

Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Applications under s. 1 of the Administration of Justice (Scotland) Act 1972) 2000

Made - - - -	*7th September 2000*
Coming into force - -	*2nd October 2000*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 1 of the Administration of Justice (Scotland) Act 1972(**1**), section 5 of the Court of Session Act 1988(**2**) 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. 4) (Applications under s.1 of the Administration of Justice (Scotland) Act 1972) 2000 and shall come into force on 2nd October 2000.

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

Amendment of Rules of the Court of Session 1994: applications under section 1 of the Administration of Justice (Scotland) Act 1972

2.—(1) For Chapter 64 of the Rules of the Court of Session 1994(**3**) there is substituted Chapter 64 as set out in Schedule 1 to this Act of Sederunt.

(2) After Form 62.65 there are inserted Form 64—A and Form 64—B as set out in Schedule 2 to this Act of Sederunt.

Edinburgh
7th September 2000

Rodger of Earlsferry
Lord President, I.P.D.

(**1**) 1972 c. 59.
(**2**) 1988 c. 36 as amended.
(**3**) S.I.1994/1443.

SCHEDULE 1

RULES OF THE COURT OF SESSION 1994

CHAPTER 64

APPLICATIONS UNDER SECTION 1 OF THE ADMINISTRATION OF JUSTICE (SCOTLAND) ACT 1972

Application of this Chapter

64.1. This Chapter applies to an application for an order under section 1 of the Administration of Justice (Scotland) Act 1972 made where a cause is not depending before the court in which the application may be made.

Form and content of application

64.2.—(1) An application to which this Chapter applies shall be made by petition.

(2) The statement of facts shall set out–

(a) a list of documents and other property (in this Chapter and in Form 64—A referred to as the "listed items") which the petitioner wishes to be made the subject of the order;

(b) the address of the premises within which the petitioner believes the listed items are to be found;

(c) the facts which give rise to the petitioner's belief that were the order not to be granted the listed items or any of them would cease to be available for the purposes of the said section 1.

Accompanying documents

64.3. The petitioner shall lodge with the application–

(a) an affidavit supporting the averments in the petition;

(b) an undertaking by the petitioner that he–

(i) will comply with any order of the court as to payment of compensation if it is subsequently discovered that the order, or the implementation of the order, has caused loss to the respondent or, where the haver is not the respondent, to the haver; and

(ii) will bring within a reasonable time of the execution of the order any proceedings which he decides to bring; and

(iii) will not, without leave of the court, use any information, documents or other property obtained as a result of the order, except for the purpose of any proceedings which he decides to bring and to which the order relates.

Modification of undertakings

64.4. The court may, on cause shown, modify, by addition, deletion or substitution, the undertaking mentioned in rule 64.3(b).

Intimation and service of application

64.5.—(1) Before granting the application, the court may order such intimation and service of the petition to be given or executed, as the case may be, as it thinks fit.

(2) Any person receiving intimation or service of the petition by virtue of an order under paragraph (1) may appear and oppose the application.

Form of order

64.6. An order made under this Chapter shall be in Form 64—A.

Caution and other security

64.7. On granting, in whole or in part, the application the court may order the petitioner to find such caution or other security as it thinks fit.

Execution of order

64.8. The order of the court shall be served by the Commissioner in person and it shall be accompanied by the affidavit referred to in rule 64.3(a).

Duties of commissioner

64.9. The Commissioner appointed by the court shall, on executing the order–

(a) give to the haver a copy of the notice in Form 64—B;

(b) explain to the haver–

(i) the meaning and effect of the order;

(ii) that he may be entitled to claim that some or all of the listed items are confidential or privileged;

(c) inform the haver of his right to seek legal advice;

(d) enter the premises and take all reasonable steps to fulfil the terms of the order;

(e) where the order has authorised the recovery of any of the listed items, prepare an inventory of all the listed items to be recovered before recovering them;

(f) send any recovered listed items to the Deputy Principal Clerk of Session to await the further order of the court.

Confidentiality

64.10.—(1) Where confidentiality is claimed for any listed item, that listed item shall, where practicable, be enclosed in a sealed envelope.

(2) A motion to have such a sealed envelope opened may be made by the party who obtained the order and he shall intimate the terms of the motion, by registered post or first class delivery, to the person claiming confidentiality.

(3) A person claiming confidentiality may oppose a motion made under paragraph (2).

Restrictions on service

64.11.—(1) Except on cause shown, the order may be served on Monday to Friday only, between the hours of 9am and 5pm only.

(2) The order shall not be served at the same time as a search warrant granted in the course of a criminal investigation.

(3) The Commissioner may be accompanied only by–

(a) any person whom he considers necessary to assist him to execute the order;

(b) such representatives of the petitioner as are named in the order,

and if it is likely that the premises will be occupied by an unaccompanied female and the Commissioner is not herself female, one of the people accompanying the Commissioner shall be female.

(4) If it appears to the Commissioner when he comes to serve the order that the premises are occupied by an unaccompanied female and the Commissioner is neither female nor accompanied by a female, the Commissioner shall not enter the premises.

Right of haver to consult

64.12. The haver may seek legal or other professional advice of his choice and where the purpose of seeking this advice is to help him to decide whether to ask the court to vary the order the Commissioner shall not commence to search for or to take any other steps to take possession of or preserve the listed items.

Return of documents etc. to haver

64.13. The Deputy Principal Clerk of Session shall return the recovered listed items to the haver if the petitioner has taken no further action within 8 weeks of the date on which they are sent to him under rule 64.9(f).

SCHEDULE II

RULES OF THE COURT OF SESSION 1994
FORM 64—AForm of order of court in procedure for recovery of documents under Chapter 64