

2011 No. 288

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 4) (Miscellaneous) 2011**

Made - - - - - *28th June 2011*

Laid before the Scottish Parliament *29th June 2011*

Coming into force in accordance with paragraph 1(1) and (2)

The Lords of Council and Session, under and by virtue of the powers conferred by section 5 of the Court of Session Act 1988(a) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation, commencement etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 4) (Miscellaneous) 2011 and, subject to subparagraph (2), comes into force on 21st July 2011.

(2) Paragraph 4 comes into force on 7th July 2011.

(3) A certified copy of this Act of Sederunt is to be inserted in the Books of Sederunt.

(4) In this Act of Sederunt, “the Rules” means the Rules of the Court of Session 1994(b).

Restriction as to caveats

2.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In rule 5.1A (further restriction as to caveats)(c), omit paragraph (1).

Charges for witnesses and skilled persons

3.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) For rule 42.13 (charges for witnesses)(d) substitute—

“Charges for witnesses

42.13. Charges for the attendance at a proof or jury trial of a witness present but not called to give evidence may be allowed if the court has, at any time before the diet of

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3); the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 9; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); and the Judiciary and Courts (Scotland) Act 2008, (asp 6), section 46(3).

(b) S.I. 1994/1443, last amended by S.S.I. 2011/190.

(c) Rule 5.1A was inserted by S.S.I. 2001/92 and amended by S.S.I. 2001/305 and 2009/63.

(d) Rule 42.13 was amended by S.I. 1995/1396 and 1996/1756 and S.S.I. 2001/305 and 2006/294.

taxation, granted a motion for the name of that witness to be noted in the minute of proceedings in the cause.

Charges for skilled persons

42.13A.—(1) If, at any time before the diet of taxation, the court has granted a motion for the certification of a person as skilled, charges shall be allowed for any work done or expenses reasonably incurred by that person which were reasonably required for a purpose in connection with the action or in contemplation of the action.

(2) A motion under paragraph (1) may be granted only if the court is satisfied that—

- (a) the person was a skilled person; and
- (b) it was reasonable to employ the person.

(3) Where a motion under paragraph (1) is enrolled after the court has awarded expenses, the expenses of the motion shall be borne by the party enrolling it.

(4) The charges which shall be allowed under paragraph (1) shall be such as the Auditor determines are reasonable.

(5) Where the court grants a motion under paragraph (1), it shall record the name of the skilled person in its interlocutor.”.

(3) In the table of fees in rule 42.16(a)—

- (a) in Chapter II (witnesses’ fees)—
 - (i) for the heading, substitute “SKILLED PERSONS’ AND WITNESSES’ FEES”;
 - (ii) for paragraph 1, substitute—

“1. Skilled persons

Where it was reasonable to employ a skilled person to carry out work for any purpose, any charges for such work and for any attendance at any proof or jury trial shall be allowed at such a rate which the Auditor of Court shall determine is fair and reasonable.”;

- (b) for the heading to Part VII of Chapter III substitute “ADMIRALTY, MERCANTILE SEQUESTRATIONS AND APPLICATIONS FOR SUMMARY TRIAL UNDER SECTION 26 OF THE ACT OF 1988 AND CAUSES REMITTED FROM THE SHERIFF COURT”.

Damages (Scotland) Act 2011

4.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) In rule 43.1 (application and interpretation of Chapter 43)(b), for the definition of “relative” substitute—

““relative” has the meaning assigned to it by section 14(1) of the Damages (Scotland) Act 2011.” (c).

(3) In rule 43.14 (actions by connected persons)(d)—

- (a) for paragraph (1) substitute—

“(1) This rule applies in an action of damages in which, following the death of any person from personal injuries, damages are claimed—

- (a) in respect of the injuries from which the deceased died; or

(a) The table of fees was last amended by S.S.I. 2011/87.

(b) Chapter 43 and rule 43.1 were substituted by S.S.I. 2002/570. Rule 43.1 was amended by S.S.I. 2004/291, 2007/282 and 2009/63.

(c) 2011 asp 7.

(d) Rule 43.14 was substituted by S.S.I. 2002/570.

(b) in respect of the death of the deceased.”;

(b) in paragraph (2), omit “in an action to which paragraph (1) applies”.

(4) In rule 43.20 (mesothelioma actions: special provisions), for “section 1(2A) and (2B) of the Damages (Scotland) Act 1976 (liability where the personal injury in consequence of which the deceased died is mesothelioma)” substitute “section 5 of the Damages (Scotland) Act 2011 (discharge of liability to pay damages: exception for mesothelioma)”.

(5) In relation to any action raised in respect of any death occurring before 7th July 2011, rule 43.20 and the definition of “relative” in rule 43.1 shall be construed in accordance with article 4 of the Damages (Scotland) Act 2011 (Commencement, Transitional Provisions and Savings) Order 2011(a).

Personal injuries actions

5.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In rule 43.4 (inspection and recovery of documents)(b), in paragraph (4), for “rules” substitute “rule”.

Admiralty actions: actions *in rem*

6.—(1) The Rules are amended in accordance with the following subparagraph.

(2) In rule 46.3 (actions *in rem*)(c), for paragraph (1) substitute—

“(1) In an Admiralty action *in rem*—

- (a) where the owners or demise charterers of, or other parties interested in, the ship or the owners of the cargo against which the action is directed are known to the pursuer, they shall be called as defenders by name;
- (b) where such owners or demise charterers or other parties are unknown to the pursuer—
 - (i) the pursuer may call them as defenders as “the owners or demise charterers of, or other parties interested in the ship (*name and identify by its port of registry*) [*or the owners of the cargo*]”; and
 - (ii) the master, if known, shall also be called as a defender representing the owners or demise charterers.”.

Treaty of Lisbon terminology

7.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) The heading to Part IV of Chapter 62 becomes “**EU JUDGMENTS**”.

(3) In rule 62.18(1) (interpretation of Part IV of Chapter 62)(d) in the definitions of “Community judgment” and “order for enforcement”, for “Community judgment” substitute “EU judgment”.

(4) In rule 62.19 (register of European Community judgments), for “Community judgment” where it twice appears substitute “EU judgment”.

(5) The heading to rule 62.19 becomes “**Register of EU judgments**”.

(6) In rule 62.20 (applications for registration of European Community judgments)—

- (a) in paragraphs (1) and (2), for “a Community judgment” substitute “an EU judgment”;
- (b) in paragraph (3), for “Community judgment” substitute “EU judgment”.

(a) S.S.I. 2011/268.

(b) Rule 43.4(4) was amended by S.S.I. 2011/190.

(c) Rule 46.3 was amended by S.S.I. 2010/205.

(d) Rule 62.18(1) was amended by S.I. 1998/2637 and 1999/1281.

- (7) The heading to rule 62.20 becomes “**Applications for registration of EU judgments**”.
- (8) In rule 62.21 (warrant for registration of European Community judgments)—
- (a) in paragraph (1), for “any Community judgment” substitute “any EU judgment”;
 - (b) in paragraph (1)(a) and (2), for “a Community judgment” substitute “an EU judgment”.
- (9) The heading to rule 62.21 becomes “**Warrant for registration of EU judgments**”.
- (10) In rule 62.22 (registration of European Community judgments)(a), for “Community judgment” (where it twice appears) substitute “EU judgment”.
- (11) The heading to rule 62.22 becomes “**Registration of EU judgments**”.
- (12) In rule 62.23 (service on judgment debtor of European Community judgment), for “Community judgment” substitute “EU judgment”.
- (13) The heading to rule 62.23 becomes “**Service on judgment debtor of EU judgment**”.
- (14) In rule 62.24 (variation or cancellation of registration), in paragraph (2), for “a Community judgment” substitute “an EU judgment”.
- (15) In rule 62.25 (suspension of enforcement of Community judgments), in paragraph (1), for “Community judgment” substitute “EU judgment”.
- (16) The heading to rule 62.25 becomes “**Suspension of enforcement of EU judgments**”.

Application for refusal of recognition or enforcement of foreign arbitral awards

- 8.—(1) The Rules are amended in accordance with the following subparagraph.
- (2) In rule 62.60 (application for refusal of recognition or enforcement of a Convention award)(b), in paragraph (4), for “rule 62.59(1)” substitute “rule 62.58(1)”.

Applications under section 1 of the Administration of Justice (Scotland) Act 1972

- 9.—(1) The Rules are amended in accordance with the following subparagraph.
- (2) In the appendix, in Form 64.6 (form of order of court in procedure for recovery of documents under Chapter 64)(c), in the paragraph beginning “**ORDERS** the haver”, in subparagraph (2), at the beginning insert “(if appropriate)”.

Applications under the Adoption and Children (Scotland) Act 2007

- 10.—(1) The Rules are amended in accordance with the following subparagraphs.
- (2) In rule 67.6 (intimation to Principal Reporter)(d), for “intimate” substitute “give written intimation of”.
- (3) In rule 67.11 (appointment of curator *ad litem* and reporting officer)(e), in paragraph (6), for “intimate” substitute “give written intimation of”.
- (4) In rule 67.14 (intimation and hearing of adoption petition)(f), in paragraph (1)(e), for “intimate” substitute “give written intimation of”.

(a) Rule 62.22 was amended by S.I. 1996/2168.
 (b) Rule 62.60 was substituted by S.S.I. 2010/205.
 (c) Form 64.6 was inserted by S.S.I. 2000/319 as Form 64-A. It was renumbered by S.S.I. 2004/52 and amended by S.S.I. 2009/450 and then substituted by S.S.I. 2011/190.
 (d) Rule 67.6 was substituted by S.S.I. 2009/283.
 (e) Rule 67.11 was substituted by S.S.I. 2009/283.
 (f) Rule 67.14 was substituted by S.S.I. 2009/283.

Domestic Abuse (Scotland) Act 2011

- 11.**—(1) The Rules are amended in accordance with the following subparagraphs.
- (2) After rule 85.2(3)(d) (delivery of certain documents to the chief constable)(a) insert—
- “(e) where a determination has previously been made in respect of such interdict under section 3(1) of the Domestic Abuse (Scotland) Act 2011(b), a copy of the interlocutor making the determination.”.
- (3) After Chapter 85 (applications under the Protection from Abuse (Scotland) Act 2001)(c) insert—

“CHAPTER 85A DOMESTIC ABUSE INTERDICTS

Interpretation and application of this Chapter

- 85A.1.**—(1) In this Chapter—
- “the 2011 Act” means the Domestic Abuse (Scotland) Act 2011; and
- “interdict” includes interim interdict.
- (2) This Chapter applies to an application for a determination under section 3(1) of the 2011 Act that an interdict is a domestic abuse interdict.

Applications for determination that an interdict is a domestic abuse interdict

- 85A.2.**—(1) An application made before the interdict is obtained must be made by a conclusion of the summons, the prayer of the petition, the defences, answers or counterclaim in which the interdict is sought.
- (2) An application made after the interdict is obtained must be—
- (a) made by motion in process; and
- (b) intimated to the person against whom the interdict was obtained.
- (3) In respect of a determination of an application under paragraph (2), the following documents must be served along with the interlocutor in accordance with section 3(4) of the 2011 Act—
- (a) a copy of the application for interdict;
- (b) a copy of the interlocutor granting interdict; and
- (c) a copy of the certificate of service of the interdict.
- (4) Paragraph (5) applies where, in respect of the same interdict—
- (a) a power of arrest under section 1 of the Protection from Abuse (Scotland) Act 2001(d) is in effect; and
- (b) a determination under section 3(1) of the 2011 Act is made.
- (5) As soon as possible after the determination has been served under section 3(4) of the 2011 Act, the documents specified in paragraph (6) must be sent by the person who obtained the determination to such chief constable as the court sees fit.
- (6) The documents are—

(a) Rule 85.2 was inserted by S.S.I. 2002/514 and amended by S.S.I. 2006/206.
(b) 2011 asp 13.
(c) Chapter 85 was inserted by S.S.I. 2002/514.
(d) 2001 asp 14.

- (a) a copy of the application for interdict;
- (b) a copy of the interlocutor granting interdict;
- (c) a copy of the certificate of service of the interdict; and
- (d) where the application for a determination was made after the interdict was granted—
 - (i) a copy of the application for the determination;
 - (ii) a copy of the interlocutor granting it; and
 - (iii) a copy of the certificate of service of the determination.

(7) Where paragraph (5) applies and the determination is recalled under section 3(5) of the 2011 Act, the court must appoint a person to send a copy of the interlocutor recalling the determination to such chief constable as the court sees fit.

(8) Where a person is required by virtue of this Chapter to send documents to a chief constable, such person must, after such compliance, lodge in process a certificate of sending documents in Form 85A.2.”.

(4) In Appendix 1, after Form 85.5(a) insert the Form 85A.2 set out in the Schedule to this Act of Sederunt.

A.C. HAMILTON
Lord President
I.P.D.

Edinburgh
28th June 2011

(a) Form 85.5 was inserted by S.S.I. 2002/514.

SCHEDULE

Paragraph 11(4)

Form 85A.2

Rule 85A.2(8)

Form of certificate of sending documents to chief constable

(Insert place and date) I, _____ hereby certify that upon the _____ day of _____ I
duly sent to *(insert name and address)* chief constable(s) of *(insert name(s) of constabulary)*
(insert details of the documents sent). This I did by *(state method of sending documents)*.

(Signed)

(Insert name and designation of person sending documents)

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994.

Paragraph 2 amends the rule on restrictions as to caveats, by omitting the reference to a petition under rule 83.2. This reflects the fact that Chapter 83 of the Rules has now been revoked.

Paragraph 3 makes amendments to the rules and table of fees in Chapter 42 in relation to charges for witnesses and charges for skilled persons.

Paragraph 4 amends two rules in Chapter 43, relating to actions of damages for, or arising from personal injuries, as a consequence of the repeal and re-enactment of certain provisions in the Damages (Scotland) Act 2011.

Paragraph 5 makes a minor amendment to the rule on inspection and recovery of documents in personal injuries actions.

Paragraph 6 makes a minor amendment to the rule on admiralty actions *in rem*.

Paragraph 7 amends various rules to reflect changes in terminology arising out of the Treaty of Lisbon Amending the Treaty on the European Union and the Treaty Establishing the European Community signed at Lisbon on 13th December 2007.

Paragraph 8 amends a reference in rule 62.60(4), in relation to the recall of an interlocutor granting warrant for registration under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Paragraph 9 makes a minor amendment to Form 64.6 (form of order in procedure for recovery of documents under Chapter 64).

Paragraph 10 makes amendments to rules which impose requirements on the Deputy Principal Clerk of Session or the clerk of court to provide certain documents or information to specified persons in pursuance of provisions of the Adoption and Children (Scotland) Act 2007. The rules are amended to make clear that written intimation is required.

Paragraph 11 inserts a new Chapter 85A into the Rules, containing rules on the procedure which applies in relation to applications for determinations that an interdict is a domestic abuse interdict under the Domestic Abuse (Scotland) Act 2011. In particular, the rules specify how applications for such determinations are to be made; how such determinations are to be served; and that where both a determination under section 3 of the 2011 Act and a power of arrest under section 1 of the Protection from Abuse (Scotland) Act 2001 is in effect in respect of the same interdict, certain documents must be sent to such chief constable(s) as the court sees fit. This is because in terms of section 2(2) of the 2011 Act, a person who breaches such an interdict commits a criminal offence.

© Crown Copyright 2011

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£5.75