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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 83**

**Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) 2006**

**Amendment of the Rules of the Court of Session**

**2.—(1)** The Rules of the Court of Session 1994<sup>(1)</sup> shall be amended in accordance with the following sub-paragraphs.

(2) In rule 41.3 (determination of applications for leave to appeal)—

(a) after paragraph (1) there shall be inserted—

“(1A) An order for intimation and service under paragraph (1) shall include a requirement to intimate the application to the clerk of the tribunal.”;

(b) in paragraph (3)—

(i) “in an appeal by stated case” shall be omitted; and

(ii) in sub-paragraph (b), at the beginning there shall be inserted “in an appeal by stated case”; and

(c) after paragraph (3) there shall be inserted—

“(4) Where an application for leave to appeal has been refused, the Deputy Principal Clerk shall send to the tribunal a copy of the interlocutor refusing the application.”.

(3) After rule 41.3A (competency of appeal)<sup>(2)</sup> there shall be inserted—

“Intimation of final interlocutor

**41.3B.** The Deputy Principal Clerk shall send to the tribunal a copy of the final interlocutor in an appeal.”.

(4) In Chapter 43 (personal injuries actions)<sup>(3)</sup> for rule 43.11(3) (applications for interim damages) there shall be substituted the following:—

“(3) On a motion under paragraph (1), the court may ordain—

(a) any defender who has admitted liability to the pursuer in the action; or

(b) where the court is satisfied that, if the action proceeded to proof, the pursuer would succeed on the question of liability without any substantial finding of contributory negligence on his part, or on the part of any person in respect of whose injury or death the claim of the pursuer arises, and would obtain decree for damages, any defender who has not admitted liability to the pursuer in the action,

to make an interim payment to the pursuer of such amount as it thinks fit, not exceeding a reasonable proportion of the damages which, in the opinion of the court, are likely to be recovered by the pursuer.”.

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(1) S.I.1994/1443, last amended by S.S.I. 2005/663.

(2) Rule 41.3A was inserted by S.S.I. 2004/331.

(3) Chapter 43 was inserted by S.S.I. 2002/570.

(5) Paragraph (1)(m) of rule 49.8 (warrants for intimation in family actions) as inserted by the Act of Sederunt (Rules of the Court of Session Amendment No. 9) (Civil Partnership Act 2004 etc.) 2005(4) shall be numbered paragraph (1)(n) of that rule.

(6) In Part II of Chapter 63 (applications relating to trusts: petitions for directions)–

- (a) in rule 63.4 (application of Part II) for “may” there shall be substituted “is to”;
- (b) at the beginning of rule 63.5(2) (content of petition) and rule 63.6 (determination of petition) there shall be inserted “Subject to rule 63.6A (executors of underwriting members of Lloyd’s of London),”; and
- (c) after rule 63.6 (determination of petition) there shall be inserted the following:–

“Executors of underwriting members of Lloyd’s of London

**63.6A.**—(1) This rule applies to a petition under this Part for directions as to the distribution of, or the administration of any trust relating to, the estate of a deceased underwriting member of Lloyd’s of London, where–

- (a) all liabilities of the estate in respect of syndicates of which the deceased was a member have been reinsured (whether directly or indirectly) or are otherwise the subject of indemnity; and
  - (b) the only reason for the executor delaying distribution of the estate is the possibility of personal liability to creditors of Lloyd’s of London.
- (2) The petition shall–
- (a) state that this rule applies; and
  - (b) contain averments as to the matters mentioned in paragraph (1).
- (3) There shall be lodged with the petition all affidavits and other documents available to the petitioner in respect of the matters mentioned in paragraph (1).
- (4) If, on the expiry of the period of notice, no answers have been lodged–
- (a) the petitioner shall apply by motion for a remit to a reporter approved by the court for that purpose; and
  - (b) where a report has been lodged in process by the reporter, the petitioner may apply by motion for an order granting the prayer of the petition.
- (5) Where answers have been lodged–
- (a) the parties may adjust the petition and answers within 28 days after the date on which the answers were lodged (“the adjustment period”) and shall intimate such adjustments to one another;
  - (b) within 14 days after the expiry of the adjustment period, the petitioner shall apply by motion for such further procedure as may be specified in the motion.
- (6) Where the petitioner fails to comply with the requirements of paragraph (5), a respondent may apply by motion for decree of dismissal.”.

(7) In Part IIA of Chapter 70 (international child abduction: applications under the Hague Convention where the Council Regulation applies) in rule 70.19 (recording of hearings under Article 12 of the Hague Convention)(5)–

- (a) in paragraph (1) for “Evidence at a” there shall be substituted “Any”;
- (b) in paragraph (2) “evidence taken at the” shall be omitted;

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(4) [S.S.I. 2005/632](#).

(5) Rule 70.19 was inserted by [S.S.I. 2005/135](#).

- (c) in paragraph (3) for “evidence” there shall be substituted “hearing”;
  - (d) in paragraph (4) for “evidence” where it first appears there shall be substituted “the hearing”;
  - (e) in paragraph (4) for “evidence” where it second, third and fourth appears there shall be substituted “hearing”; and
  - (f) in paragraph (5) for “evidence” there shall be substituted “hearing”.
- (8) In Part I of Chapter 74 (companies: general provisions)–
- (a) after rule 74.1(1)(b) there shall be inserted the following:–
    - “; and
    - (c) Chapter 3 of Part 3 of the Energy Act 2004(6).”;
  - (b) in rule 74.1(2)(7) (companies: interpretation)–
    - (i) after the definition of “the Act of 1986” there shall be inserted the following:–
      - “the Act of 2004” means the Energy Act 2004;”;
      - (ii) after the definition of “the Insolvency Rules” there shall be inserted the following:–
        - “the Energy Administration Rules” means the Energy Administration (Scotland) Rules 2006(8);”;
        - (iii) after the definition of “the EC Regulation” there shall be inserted the following:–
          - “non GB company” shall have the meaning assigned in section 171 of the Act of 2004;”
      - (c) for rule 74.1(3) (companies: words and expressions used) there shall be substituted the following:–
        - “(3) Unless the context otherwise requires, words and expressions used in this Chapter which are also used in the Act of 1986, Chapter 3 of Part 3 of the Act of 2004, the Insolvency Rules or the Energy Administration Rules have the same meaning as in those Acts or Rules, as the case may be.”;
      - (d) for rule 74.2 (companies: proceedings before insolvency judge) there shall be substituted the following:–
        - “**74.2.** All proceedings in the Outer House in a cause under or by virtue of the Act of 1986, the Company Directors Disqualification Act 1986 or Chapter 3 of Part 3 of the Act of 2004, shall be brought before a judge of the court nominated by the Lord President as the insolvency judge or, where the insolvency judge is not available, any other judge of the court (including the vacation judge): and “insolvency judge” shall be construed accordingly.”;
      - (e) for rule 74.3 (companies: notices and reports sent to the court) there shall be substituted the following:–
        - “**74.3.** Where, under the Act of 1986, the Act of 2004, the Insolvency Rules or the Energy Administration Rules–
          - (a) notice of a fact is to be given to the court,

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(6) 2004 c. 20.

(7) Rule 74.1(2) was amended by S.S.I. 2003/385.

(8) S.I. 2006/

- (b) a report is to be made, or sent, to the court, or  
(c) any other document is to be sent to the court,  
it shall be sent to the Deputy Principal Clerk who shall cause it to be lodged in the process to which it relates.”.
- (9) In Part III of Chapter 74 (companies: administration procedure)(9)–
- (a) for rule 74.10(1) (form of petition in administration procedure)(10) there shall be substituted the following:–
- “(1) In this Part, “the petition” means a petition under section 9 of, or section 8 of and Schedule B1 to, the Act of 1986 (petition for administration order), or section 156 of the Act of 2004 (petition for energy administration order).”;
- (b) in rule 74.10(2)(c), at the beginning there shall be inserted “in the case of a petition under the Act of 1986,”;
- (c) in rule 74.10(2)(e)–
- (i) after “receiver” where it first occurs there shall be inserted, “or an administrator”;  
and  
(ii) after “receiver” where it second occurs there shall be inserted “or an administrator, as the case may be,”;
- (d) in rule 74.10(2)(g), after “administration” there shall be substituted “or an energy administration, as the case may be”;
- (e) rule 74.10(2)(h) shall be omitted;
- (f) in rule 74.10(2)(i), after “administrator” there shall be inserted “or energy administrator, as the case may be”;
- (g) in rule 74.10(2)(j), at the beginning there shall be inserted “in the case of a petition under the Act of 1986,”;
- (h) at the end of rule 74.10(2) (averments in petition) there shall be inserted the following:–
- “(k) whether the Secretary of State has certified the case as one in which he considers it would be appropriate for him to petition under section 124A of the Act of 1986 (petition for winding up on grounds of public interest)(11);  
(l) so far as known to the petitioner in a petition for an energy administration order, whether any steps have been taken for an administration order under Schedule B1 to the Act of 1986;  
(m) whether a protected energy company in a petition for an energy administration order is a non GB company.”;
- (i) rule 74.10(3) shall be omitted;
- (j) in rule 74.10A(12), after “1986” there shall be inserted “or section 157(1)(d) of the Act of 2004”;
- (k) after rule 74.11(b) (notice of petitions)(13) there shall be inserted the following:–
- “or,

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(9) The heading of Part III was amended by [S.S.I. 2003/385](#).

(10) Rule 74.10 was amended by [S.I. 1994/2901](#) and [S.S.I. 2003/385](#).

(11) Section 124A was inserted by sections 60(3) and 213(2) of the Companies Act 1989 (c. 40) and amended by sections 5, 7(2), and paragraph 56(2) of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40) and article 305 of [S.I. 2001/3649](#).

(12) Rule 74.10A was inserted by [S.S.I. 2005/268](#).

(13) Rule 74.11 was amended by [S.S.I. 2003/385](#).

- (c) the petition and a notice are to be served on a person mentioned in section 156(2) (a) to (c) of the Act of 2004 (notice of application for energy administration order) or rule 5(1) of the Energy Administration Rules.”;
- (l) for rule 74.14 (time and date of lodging an administration)(**14**) there shall be substituted the following:–

“Time and date of lodging in administration or energy administration

**74.14.**—(1) The time and date of lodging of a notice or document relating to an administration under the Act of 1986 or the Insolvency Rules, or an energy administration under the Act of 2004 or the Energy Administration Rules, shall be noted by the Deputy Principal Clerk upon the notice or document.

(2) Subject to any provision in the Insolvency Rules or the Energy Administration Rules, as the case may be–

- (a) where the time of lodging of a notice or document cannot be ascertained by the Deputy Principal Clerk, the notice or document shall be deemed to be lodged at 10 a.m. on the date of lodging; and
  - (b) where a notice or document under paragraph (1) is delivered on any day other than a business day, the date of lodging shall be the first business day after such delivery.”;
- (m) for rule 74.15 (applications during an administration)(**15**) there shall be substituted the following:–

“Applications during an administration or energy administration

**74.15.** An application or appeal under any provision of the Act of 1986, the Insolvency Rules, the Act of 2004 or the Energy Administration Rules during an administration or energy administration, as the case may be, shall be–

- (a) where no previous application or appeal has been made, by petition; or
- (b) where a petition for an order in respect of an administration, or energy administration, as the case may be, has been lodged, by note in the process of that petition.”.

- (10) At the end of Part V of Chapter 74 (companies: winding up of companies) there shall be inserted the following:–

“Replacement liquidators

**74.32A.**—(1) This rule applies where–

- (a) a person has been appointed by the court as a liquidator in respect of a petition; and
- (b) that person dies or otherwise ceases to be able to act as liquidator; and
- (c) an application is made to the court for the appointment of a replacement liquidator.

(2) An application mentioned in paragraph (1)(c) may include a list of other petitions in which the liquidator has been appointed by the court and in respect of which the appointment of the same replacement liquidator is sought.

(3) In an interlocutor appointing a replacement liquidator in respect of an application under paragraph (2), the court may–

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(14) Rule 74.14 was amended by [S.S.I. 2003/385](#).

(15) Rule 74.15 was amended by [S.S.I. 2003/385](#).

- (a) order the replacement liquidator to be appointed in any or all of the petitions listed;
  - (b) direct that a copy of the interlocutor be put in the process or processes of that petition or those petitions, as the case may be; and
  - (c) make such orders as it thinks fit for the intimation and advertisement of such appointment.”.
- (11) For rule 82.3(1) (declaration of incompatibility)(**16**) there shall be substituted the following:–
- “(1) Where in any proceedings a party seeks a declaration of incompatibility or the court is considering whether to make such a declaration at its own instance–
- (a) notice in Form 82.3-A shall be given as soon as reasonably practicable to such persons as the Lord President may from time to time direct–
    - (i) by the party seeking the declaration; or
    - (ii) by the clerk of court,as the case may be, provided that there shall be no requirement to give such notice to a party or to the representative of a party; and
  - (b) where notice is given by the party seeking the declaration, the party shall lodge a certificate of notification in process.”.
- (12) In rule 88.1 (interpretation of Chapter 88: civil matters involving parental responsibilities under the Council Regulation)(**17**)–
- (a) after the definition of “the Council Regulation” there shall be inserted–  
“foreign court” means a court in a Member State other than the United Kingdom”; and
  - (b) the definition of “requesting court” shall be omitted.
- (13) For rule 88.2 (transfers of cases involving matters of parental responsibility) there shall be substituted–
- “Transfer of cases involving matters of parental responsibility
- 88.2.** Where the court receives a request under Article 15(1) (request for transfer to court better placed to hear the case) or an application under Article 15(2)(c) (application for transfer of case involving parental responsibilities to foreign court) of the Council Regulation, the request or application, as the case may be, shall–
- (a) contain a detailed statement on the particular connection the child is considered to have with either Scotland or the Member State of the foreign court;
  - (b) contain the full name, designation and address of all the parties to the action involving parental responsibilities, including any Scottish agent instructed to represent any of the parties;
  - (c) in the case of a request under Article 15(1), be accompanied by any order of the foreign court confirming that at least one of the parties has accepted the request;
  - (d) be accompanied by any other documents considered by the foreign court to be relevant to the action involving parental responsibilities including any papers forming part of the process in the foreign court.”.
- (14) In rule 88.3 (transfers where proceedings ongoing in the sheriff court)–
- (a) in paragraph (1)–

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(16) Rule 82.3 was inserted by [S.S.I. 2000/316](#).

(17) Chapter 88 was inserted by [S.S.I. 2005/135](#).

- (i) for the words from “a request” to “responsibility)” there shall be substituted, “an application under Article 15(2)(c) of the Council Regulation (application for transfer of case involving parental responsibilities to foreign court) is received”; and
- (ii) for “request” wherever it next appears there shall be substituted “application”; and
- (b) in paragraph (2)–
  - (i) for “a request” there shall be substituted “an application”; and
  - (ii) for “requesting court” there shall be substituted “foreign court”.
- (15) In rule 88.5(5) (acceptance of jurisdiction) for “requesting court” there shall be substituted “foreign court”.
- (16) In rule 88.6 (request to decline jurisdiction from a court in another Member State)–
  - (a) for the heading there shall be substituted–

“Application for transfer of case involving parental responsibilities to foreign court”;
  - (b) for the words from “a request” to “responsibilities” there shall be substituted “an application under Article 15(2)(c) of the Council Regulation (application for transfer of case involving parental responsibilities to foreign court) is received”; and
  - (c) for “request” wherever it next occurs, there shall be substituted “application”.
- (17) After rule 88.6 there shall be inserted–

“Placement of child in another Member State

**88.7.**—(1) Where the court requires to obtain the consent of a competent authority in another Member State to the placement of a child under Article 56 of the Council Regulation it shall send a request in Form 88.7 and any other documents it considers to be relevant to the Scottish central authority for transmission to the central authority in the other Member State.

(2) In this rule “central authority” means an authority designated under Article 53 of the Council Regulation.”.

- (18) In the Appendix–
  - (a) in Form 82.3-A(**18**)–
    - (i) after “not to” there shall be inserted the following:–

“[Or: That (*specify party*) is seeking that the court]”; and
    - (ii) after “Deputy Principal Clerk of Session” where it second appears there shall be inserted the following:–

“[or Solicitor [*or Agent*] for (*specify*)]”;
  - (b) for Form 82.4 there shall be substituted the form set out in Part 1 of the Schedule to this Act of Sederunt; and
  - (c) at the end there shall be inserted the form set out in Part 2 of the Schedule to this Act of Sederunt.