

2007 No. 449

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 8) (Miscellaneous) 2007**

Made - - - - - *4th October 2007*

Coming into force - - - - - *25th October 2007*

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, these rules making provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appearing to the Lords of Council and Session that it is expedient for the reference to Council Regulation (E.C.) No. 1348/2000 of 29th May 2000 on service in the Member States of judicial and extrajudicial documents in civil and commercial matters and Council Regulation (E.C.) No. 1346/2000 of 29th May 2000 on insolvency proceedings to be construed as a reference to those instruments as amended from time to time, under and by virtue of the powers conferred by paragraph 1A of Schedule 2 to the European Communities Act 1972(b), and under and by virtue 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. 8) (Miscellaneous) 2007 and shall come into force on 25th October 2007.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(c) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 16.2A(1) (service under the Council Regulation)(d) for the definition of “Council Regulation” there shall be substituted the following:—

““Council Regulation” means Council Regulation (E.C.) No. 1348/2000 of 29th May 2000 on service in the Member States of judicial and extrajudicial documents in civil and commercial matters as amended from time to time and as applied by the Agreement of 19th October 2005 between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil and commercial matters(e).”.

(a) 1988 c.36. Section 5 was amended by the Civil Evidence (Scotland) Act 1988 c.32, section 2(3), the Children (Scotland) Act 1995 c.36, Schedule 4, paragraph 45 and by the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1).

(b) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(c) S.I. 1994/1443, last amended by S.S.I. 2007/360.

(d) Rule 16.2A was inserted by S.S.I. 2004/52.

(e) O.J. No. L 160, 30.6.2000 p.37-52 and O.J. No. L 300, 17.11.2005 p.55-60.

(3) In rule 42.2(1A) (diet of taxation: note of objection)(a) for “3 working days prior to” there shall be substituted “4.00pm on the fourth business day before”.

(4) After rule 42.2(2) (diet of taxation: duty to provide vouching) there shall be inserted the following:–

“(3) In this rule, a “business day” means any day other than a Saturday, Sunday, or public holiday as directed by the Lord President of the Court of Session.”.

(5) After rule 58.8(2) (comparing parties)(b) there shall be inserted the following:–

“(3) For the purposes of paragraph (2) above, the Commission for Equality and Human Rights shall be regarded as directly affected by an issue raised where it has, in relation to that issue, title and interest by virtue of section 30(2) of the Equality Act 2006(c).”.

(6) For rule 72.1(1) (interpretation)(d) there shall be substituted the following:–

“(1) In this Chapter–

“the Act of 1985” means the Bankruptcy (Scotland) Act 1985(e);

“the Council Regulation” means Council Regulation (E.C.) No. 1346/2000 of 29th May 2000 on insolvency proceedings as it may be amended from time to time(f);

“centre of main interests” has the same meaning as in the Council Regulation;

“establishment” has the same meaning as in Article 2(h) of the Council Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the Council Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the Council Regulation and–

(a) in relation to England and Wales and Scotland, set out in Annex A to the Council Regulation under the heading “United Kingdom”; and

(b) in relation to another Member State, set out in Annex A to the Council Regulation under the heading relating to that Member State;

“Member State” means a Member State of the European Community that has adopted the Council Regulation;

“territorial proceedings” means proceedings opened in accordance with Article 3(2) and 3(4) of the Council Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the Council Regulation and–

(a) in relation to England and Wales and Scotland, set out in Annex A to the Council Regulation under the heading “United Kingdom”; and

(b) in relation to another Member State, set out in Annex A to the Council Regulation under the heading relating to that Member State;”.

(7) For rule 72.1A (application of EU regulation)(g) there shall be substituted the following:–

“Application of the Council Regulation

72.1A. A petition for sequestration to which section 12 of the Act of 1985 (petition for sequestration of debtor’s estate) applies shall include averments stating the basis for jurisdiction under the Council Regulation, in particular stating, so far as known to the petitioner–

(a) where the centre of main interests of the debtor is and whether the debtor has any other establishments in another Member State; and

(a) Rule 41.2(1A) was inserted by S.S.I. 2001/305.

(b) Rule 58.8(2) was amended by S.S.I. 2000/317.

(c) 2006 c.3.

(d) Rule 72.1 was amended by S.S.I. 2004/514 and substituted by S.S.I. 2005/268.

(e) 1985 c.66.

(f) O.J. L 160, 30/06/2000 P. 0001-0018.

(g) Rule 72.1A was inserted by S.S.I. 2005/268.

(b) whether there are insolvency proceedings elsewhere in respect of the debtor and whether those proceedings are main or territorial.”.

(8) In rule 74.1(2) (companies: application and interpretation of this Chapter)(a)–

(a) for “the EC Regulation” to “insolvency proceedings” there shall be substituted the following:–

““the Council Regulation” means Council Regulation (E.C.) No. 1346/2000 of 29th May 2000 on insolvency proceedings as it may be amended from time to time;

“centre of main interests” has the same meaning as in the Council Regulation;

“establishment” has the same meaning as in Article 2(h) of the Council Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the Council Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the Council Regulation and–

(a) in relation to England and Wales and Scotland, set out in Annex A to the Council Regulation under the heading “United Kingdom”; and

(b) in relation to another Member State, set out in Annex A to the Council Regulation under the heading relating to that Member State;

“Member State” means a Member State of the European Community that has adopted the Council Regulation;”.

(b) at the end there shall be inserted the following:–

““territorial proceedings” means proceedings opened in accordance with Article 3(2) and 3(4) of the Council Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the Council Regulation and–

(a) in relation to England and Wales and Scotland, set out in Annex A to the Council Regulation under the heading “United Kingdom”; and

(b) in relation to another Member State, set out in Annex A to the Council Regulation under the heading relating to that Member State.”.

(9) For rule 74.10(2)(j) (averments in petition for administration)(b) there shall be substituted the following:–

“(j) in the case of a petition under the Act of 1986(c), jurisdiction under the Council Regulation, in particular stating, so far as known to the petitioner–

(i) where the centre of main interests of the company is and whether the company has any other establishments in another Member State; and

(ii) whether there are insolvency proceedings elsewhere in respect of the company and whether those proceedings are main or territorial proceedings;”.

(10) In rule 74.21 (petition to wind up a company)–

(a) after sub-paragraph (b)(iii) there shall be inserted the following:–

“(iv) where the centre of main interests of the company is and whether the company has any other establishments in another Member State;”; and

(b) at the end there shall be inserted the following:–

“(f) whether there are insolvency proceedings elsewhere in respect of the company and whether those proceedings are main or territorial proceedings.”.

(11) For rule 74.34(2)(a) (intimation of petition for disqualification order)(d) there shall be substituted the following:–

“(a) to the Secretary of State for Business, Enterprise and Regulatory Reform; or”.

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

(b) Rule 74.10(2)(j) was inserted by S.S.I. 2003/385 and amended by S.S.I. 2006/83.

(c) Insolvency Act 1986 c.45.

(d) Rule 74.34(2) was substituted by S.S.I. 2005/521.

(12) After Chapter 93 (live links)(a) there shall be inserted the following:–

“CHAPTER 94

INTERVENTIONS BY THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

Interpretation

94.1. In this Chapter, “the CEHR” means the Commission for Equality and Human Rights.

Intervention by the CEHR in proceedings

94.2.—(1) The CEHR may apply to the court for leave to intervene in proceedings in accordance with this Chapter.

(2) An application under paragraph (1) above may be made in relation to any proceedings (including a petition for judicial review or an appeal in connection with such a petition).

(3) This Chapter is without prejudice to–

- (a) rule 58.8 (application by comparing party to enter process of a judicial review); and
- (b) any other entitlement of the CEHR, by virtue of having title and interest in relation to the subject matter of any proceedings by virtue of section 30(2) of the Equality Act 2006 or any other enactment, to seek to be sisted as a party in those proceedings.

(4) Nothing in this Chapter shall affect the power of the court to make such other direction as it considers appropriate in the interests of justice.

(5) Any decision of the court in proceedings under this Chapter shall be final and not subject to review.

Application to intervene

94.3.—(1) An application for leave to intervene shall be by way of a minute of intervention in Form 94.3, and the CEHR shall–

- (a) send a copy of it to all the parties; and
- (b) lodge it in process, certifying that sub-paragraph (a) above has been complied with.

(2) A minute of intervention shall set out briefly–

- (a) the CEHR’s reasons for believing that the proceedings are relevant to a matter in connection with which the CEHR has a function;
- (b) the issue in the proceedings which the CEHR wishes to address; and
- (c) the propositions to be advanced by the CEHR and the CEHR’s reasons for believing that they are relevant to the proceedings and that they will assist the court.

(3) The court may–

- (a) refuse leave without a hearing;
- (b) grant leave without a hearing unless a hearing is requested under paragraph (4) below; or
- (c) refuse or grant leave after such a hearing.

(a) Chapter 93 was inserted by S.S.I. 2007/7.

(4) A hearing, at which the applicant and the parties may address the court on the matters referred to in paragraph (5)(c) below, may be held if, within 14 days of the minute of intervention being lodged, any of the parties lodges a request for a hearing.

(5) Any diet in pursuance of paragraph (4) shall be fixed by the Keeper of the Rolls who shall give written intimation of the diet to the CEHR and all the parties.

(6) The court may grant leave only if satisfied that—

- (a) the proceedings are relevant to a matter in connection with which the CEHR has a function;
- (b) the propositions to be advanced by the CEHR are relevant to the proceedings and are likely to assist the court; and
- (c) the intervention will not unduly delay or otherwise prejudice the rights of the parties, including their potential liability for expenses.

(7) In granting leave, the court may impose such terms and conditions as it considers desirable in the interests of justice, including making provision in respect of any additional expenses incurred by the parties as a result of the intervention.

(8) The clerk of court shall give written intimation of a grant or refusal of leave to the CEHR and all the parties.

Form of intervention

94.4.—(1) An intervention shall be by way of a written submission which (including any appendices) does not exceed 5000 words.

(2) The CEHR shall lodge the submission and send a copy of it to all the parties by such time as the court may direct.

(3) The court may in exceptional circumstances—

- (a) allow a longer written submission to be made;
- (b) direct that an oral submission is to be made.

(4) Any diet in pursuance of paragraph (3)(b) shall be fixed by the Keeper of the Rolls who shall give written intimation of the diet to the CEHR and all the parties.”.

(13) In the appendix, after Form 88.7(a) there shall be inserted the form set out in the Schedule to this Act of Sederunt.

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

Edinburgh
4th October 2007

(a) Form 88.7 was inserted by S.S.I. 2006/83.

SCHEDULE

Paragraph 2(13)

FORM 94.3

Rule 94.3

Form of minute of intervention by the Commission for Equality and Human Rights

**APPLICATION FOR LEAVE TO INTERVENE BY THE COMMISSION FOR EQUALITY
AND HUMAN RIGHTS**

in the cause

[A.B.] (*designation and address*), Pursuer [*or* Petitioner]

against

[C.D.] (*designation and address*), Defender [*or* Respondent]

[*Here set out briefly:*

(a) *the Commission's reasons for believing that the proceedings are relevant to a matter in connection with which the Commission has a function;*

(b) *the issue in the proceedings which the Commission wishes to address; and*

(c) *the propositions to be advanced by the Commission and the Commission's reasons for believing that they are relevant to the proceedings and that they will assist the court.]*

EXPLANATORY NOTE

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

This Act of Sederunt makes miscellaneous amendments to the Rules of the Court of Session 1994 (S.I. 1994/1443).

Paragraph 2(2) amends the definition of Council Regulation (E.C.) No. 1348/2000 of 29th May 2000 on service of judicial and extrajudicial documents to take account of the extension of the Council Regulation to Denmark by an Agreement between the European Community and the Kingdom of Denmark of 19th October 2005 and to incorporate references to any future amendments of the Council Regulation.

Amendments are also made to the rule on diets of taxation to clarify the time limits within which any note of objection must be received within the offices of the Auditor of Court: see paragraphs 2(3) and (4).

Further, amendments are made to the rules on petitions for sequestration and for administration or winding up of a company to provide further requirements for averments relating to jurisdiction in light of Council Regulation (E.C.) No. 1346/2000 of 29th May 2000 on insolvency proceedings. Also, an amendment is made to incorporate references to any future amendments of Council Regulation (E.C.) No. 1346/2000: see paragraphs 2(6) to (10).

Paragraph 2(11) amends rule 74.34 on intimation of petitions for a disqualification order for a company director to take account of the transfer of certain functions from the Secretary of State for Trade and Industry to the Secretary of State for Business, Enterprise and Regulatory Reform.

Finally, paragraphs 2(5), (12) and (13) make provision for interventions by the Commission for Equality and Human Rights in proceedings as a consequence of the coming into force of section 30 of the Equality Act 2006 (c.3).

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