

2013 No. 294

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 6) (Miscellaneous) 2013**

Made - - - - *17th October 2013*

Laid before the Scottish Parliament *21st October 2013*

Coming into force - - *11th November 2013*

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), section 446 of the Proceeds of Crime Act 2002(b) 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. 6) (Miscellaneous) 2013.

(2) It comes into force on 11th November 2013.

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

(4) The Rules of the Court of Session(c) are amended in accordance with the following paragraphs.

Required applications for urgent disposal

2.—(1) After rule 38.11 (urgent disposal of reclaiming motion)(d) insert—

“Required application for urgent disposal of certain reclaiming motions

38.11A. Where a party reclaims against an interlocutor in relation to an order under section 11(1) of the Children (Scotland) Act 1995, the claimer shall seek urgent disposal of the reclaiming motion under rule 38.11(1).”

(2) After rule 40.9 (urgent disposal of appeal)(e) insert—

(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; the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1); the Judiciary and Courts (Scotland) Act 2008, (asp 6), section 46(3) and the Legal Services (Scotland) Act 2010 (asp 16), section 126(a).

(b) 2002 c.29.

(c) 1994 S.I. 1994/1443, last amended by S.S.I. 2013/238.

(d) Rule 38.11 was substituted by S.S.I. 2010/30.

(e) Rule 40.9 was substituted by S.S.I. 2010/30.

“Required application for urgent disposal of appeal against certain interlocutors

40.9A. On lodging an appeal print under rule 40.7(2)(b) in respect of an appeal marked against an interlocutor of an inferior court containing an order made under section 11(1) of the Children (Scotland) Act 1995, the appellant shall seek urgent disposal of the appeal under rule 40.9(1).”.

Permission to appeal against decisions of the Upper Tribunal

3. In rule 41.57(2)(a)(a), after “principle” omit “or practice”.

Civil Recovery Proceedings

4. In rule 76.36 (applications)(b)—

- (a) in paragraph (4), after 2005 where it appears for the second time, insert “or a prohibition order under article 141ZD(1)(c) of the POCA Order of 2005”;
- (b) in paragraph (5)(d), at the beginning, insert “article 141ZJ(2) or”;
- (c) in paragraph (6) after subparagraph (h), insert—
 - “(i) article 141ZD(2) of the POCA Order of 2005 (variation and recall of prohibition order);
 - (j) article 141ZH(1) and (6)(a) of the POCA Order of 2005 (inhibition of property affected by prohibition order);
 - (k) article 141ZI(1) and (6) of the POCA Order of 2005 (arrestment of property affected by prohibition order).”;
- (d) in paragraph (9), after subparagraph (h), insert—
 - “(i) article 141ZH(1) and (6)(a) of the POCA Order of 2005;
 - (j) article 141ZI(1) and (6) of the POCA Order of 2005.”.

Civil Recovery Investigations

5.—(1) In rule 76.37 (disclosure orders)(d)—

- (a) for paragraph (1) substitute—

“(1) An application under section 391(1) of the Act of 2002 or article 50 of the Proceeds of Crime Act 2002 (External Investigations) Order 2013(e) (disclosure orders) shall be by petition.”;
- (b) for paragraph (3) substitute—

“(3) An application under section 396(4) of the Act of 2002 or article 55(2) of the Proceeds of Crime Act 2002 (supplementary) shall be by motion.”.

(a) Rule 41.57 was inserted by S.S.I. 2013/238.
(b) Rule 76.36 was substituted by S.S.I. 2005/663.
(c) Article 141ZD(1) was inserted into S.I. 2005/3181 by S.I. 2013/2604.
(d) Rule 76.37 last amended by S.S.I. 2012/275.
(e) S.I. 2013/2605.

(2) In rule 76.37A(a) for “2012” substitute “2002”.

Edinburgh
17th October 2013

BRIAN GILL
Lord President
I.P.D.

(a) Rule 76.37A was last inserted by S.S.I. 2013/162.

EXPLANATORY NOTE

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

Paragraph 2 inserts new rules into Chapter 38 (Reclaiming) and Chapter 40 (Appeals from inferior courts) in respect of the urgent disposal of reclaiming motions and appeals. In cases where the claimer or appellant appeals against an interlocutor containing an order under section 11(1) of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc.), those new rules provide that the claimer or appellant must enrol for urgent disposal of the reclaiming motion or appeal.

Paragraph 3 amends rule 41.57 (permission to appeal against decisions of the Upper Tribunal) in consequence of an error identified in the enabling legislation.

Paragraph 4 amends rule 76.36 (applications) in consequence of the amendment of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005.

Paragraph 5 amends rule 76.37 (disclosure orders) in consequence of the coming into force of the Proceeds of Crime Act 2002 (External Investigations) Order 2013. Rule 76.37A is also amended in respect of a typographical error.

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