

**2017 No. 130**

**COURT OF SESSION**

**SHERIFF COURT**

**Act of Sederunt (Rules of the Court of Session 1994 and  
Ordinary Cause Rules 1993 Amendment) (Competition  
Proceedings) 2017**

<i>Made</i> - - - -	<i>26th April 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>28th April 2017</i>
<i>Coming into force</i> - -	<i>26th May 2017</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by paragraph 1A of schedule 2 of the European Communities Act 1972(b), sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(c) and all other powers enabling it to do so

This Act of Sederunt makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(d) and it appears to the Court of Session that it is expedient for the references in this Act of Sederunt to Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union(e) to be construed as references to that instrument as amended from time to time.

**Citation and commencement, etc.**

**1.**—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Competition Proceedings) 2017.

(2) It comes into force on 26th May 2017.

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

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(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).  
(b) 1972 (c. 68). Paragraph 1A of schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006 (c. 51), section 28, and amended by the European Union (Amendment) Act 2008 (c. 7), schedule, Part 1.  
(c) 2014 asp 18.  
(d) Section 2(2) was amended by the Scotland Act 1998 (c. 46), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c. 51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c. 7), schedule, Part 1.  
(e) OJ L 349, 5.12.2014, p.1.

## **Amendment of the Rules of the Court of Session 1994**

2.—(1) The Rules of the Court of Session 1994(a) are amended in accordance with this paragraph.

(2) After Chapter 86(b) (applications under section 28, 28A, 62, 62A, 63, 65G or 65H of the Competition Act 1998), insert—

### **“CHAPTER 86A**

#### **APPLICATIONS IN COMPETITION PROCEEDINGS**

##### **Interpretation of this Chapter**

**86A.1.** In this Chapter—

“the 1998 Act” means the Competition Act 1998(c);

“competition authority” has the meaning given by paragraph 3(1) of schedule 8A of the 1998 Act(d);

“competition proceedings” has the meaning given by paragraph 2(4) of schedule 8A of the 1998 Act;

“the Directive” means Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union as amended from time to time; and

“investigation materials” has the meaning given by paragraph 3(3) of schedule 8A of the 1998 Act.

##### **Recovery of evidence**

**86A.2.**—(1) This rule applies where a party in competition proceedings makes an application under rule 35.2(1) for—

(a) a commission and diligence for the recovery of a document; or

(b) an order under section 1 of the Administration of Justice (Scotland) Act 1972(e).

(2) The applicant must intimate a copy of the motion made under rule 35.2(1) and the specification lodged under rule 35.2(2) to the Advocate General for Scotland.

(3) An application in relation to a document or other evidence that is in the possession of a competition authority must contain a statement that there is no person, other than the competition authority, reasonably able to provide the document or evidence sought.

(4) An application in relation to the investigation materials of a competition authority must contain a statement that the investigation to which those materials relate has closed.

(5) In deciding whether to grant an application made under this rule, the court must take into account Article 5(3), and, where the document or other evidence sought is in the possession of a competition authority, Article 6(4), of the Directive.

##### **Applications in relation to alleged cartel leniency statement or settlement submission**

**86A.3.**—(1) An application by a party under—

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(a) The Rules of the Court of Session are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2017/53.

(b) Chapter 86 was inserted by S.S.I. 2004/331.

(c) 1998 (c. 41).

(d) Schedule 8A was inserted by S.I. 2017/385, schedule 1, paragraph 4.

(e) 1972 (c. 59). Section 1 was last amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 12.

- (a) paragraph 4(7) of schedule 8A of the 1998 Act for a determination by the court as to whether information is a cartel leniency statement; or
- (b) paragraph 5(3) of schedule 8A of the 1998 Act for a determination by the court as to whether a document is a settlement submission,

must be made by motion.

(2) A party enrolling a motion under paragraph (1) must intimate that motion to—

- (a) the Advocate General for Scotland; and
- (b) the author (where known) of the document or information in question.

(3) The hearing of a motion enrolled under paragraph (1) must be held in private and only the persons mentioned in paragraph (2)(a) and (b) may appear at that hearing.”.

### **Amendment of the Ordinary Cause Rules 1993**

- 3.—(1) The Ordinary Cause Rules 1993(a) are amended in accordance with this paragraph.
- (2) After Chapter 42(b) (competition appeal tribunal), insert—

## **“CHAPTER 42A**

### **APPLICATIONS IN COMPETITION PROCEEDINGS**

#### **Interpretation of this Chapter**

**42A.1.** In this Chapter—

“the 1998 Act” means the Competition Act 1998;

“competition authority” has the meaning given by paragraph 3(1) of schedule 8A of the 1998 Act;

“competition proceedings” has the meaning given by paragraph 2(4) of schedule 8A of the 1998 Act; and

“the Directive” means Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union as amended from time to time; and

“investigation materials” has the meaning given by paragraph 3(3) of schedule 8A of the 1998 Act.

#### **Recovery of evidence**

**42A.2—**(1) This rule applies where a party in competition proceedings makes an application under rule 28.2(1) for—

- (a) a commission and diligence for the recovery of a document; or
- (b) an order under section 1 of the Administration of Justice (Scotland) Act 1972.

(2) The applicant must intimate a copy of the motion made under rule 28.2(1) and the specification lodged under rule 28.2(2) to the Advocate General for Scotland.

(3) An application in relation to a document or other evidence that is in the possession of a competition authority must contain a statement that there is no person, other than the competition authority, reasonably able to provide the document or evidence sought.

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(a) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c. 51). Schedule 1 was substituted by S.I. 1993/1956 and was last amended by S.S.I. 2017/52.  
(b) Chapter 42 was inserted by S.S.I. 2004/350 and was last amended by S.S.I. 2015/424.

(4) An application in relation to the investigation materials of a competition authority must contain a statement that the investigation to which those materials relate has closed.

(5) In deciding whether to grant an application made under this rule, the court must take into account Article 5(3), and, where the document or other evidence sought is in the possession of a competition authority, Article 6(4), of the Directive.

#### **Applications in relation to alleged cartel leniency statement or settlement submission**

**42A.3**—(1) An application by a party under—

- (a) paragraph 4(7) of schedule 8A of the 1998 Act for a determination by the court as to whether information is a cartel leniency statement; or
- (b) paragraph 5(3) of schedule 8A of the 1998 Act for a determination by the court as to whether a document is a settlement submission,

must be made by motion.

(2) A party enrolling a motion under paragraph (1) must intimate that motion to—

- (a) the Advocate General for Scotland; and
- (b) the author (where known) of the document or information in question.

(3) The hearing of a motion enrolled under paragraph (1) must be held in private and only the persons mentioned in paragraph (2)(a) and (b) may appear at that hearing.”.

#### **Savings**

**4.** The amendments made by this Act of Sederunt do not apply to proceedings in the Court of Session or sheriff court commenced before 26th May 2017.

*CJM Sutherland*  
Lord President  
I. P. D.

Edinburgh  
26th April 2017

## **EXPLANATORY NOTE**

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

This Act of Sederunt amends various court rules in consequence of recent amendments to the Competition Act 1998 made by the Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017. Those Regulations partially implement Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Members States and of the European Union.

Paragraph 2 inserts a new Chapter 86A into the Rules of the Court of Session 1994, which makes provision for certain applications in competition proceedings. Paragraph 3 makes equivalent changes to the Ordinary Cause Rules 1993.

Paragraph 4 provides that the amendments made by this Act of Sederunt only apply in relation to proceedings commenced on or after 26th May 2017.

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