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STATUTORY INSTRUMENTS

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1986 No. 1946 (S. 146)

SHERIFF COURT, SCOTLAND

Act of Sederunt (Civil Jurisdiction of the Sheriff Court) 1986

Made - - - - 13th November 1986

Coming into Operation 1st January 1987

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a), section 48 of the Civil Jurisdiction and Judgments Act 1982(b) and of all other powers enabling them in that behalf, do hereby enact and declare:—

*Citation, commencement and interpretation*

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Civil Jurisdiction of the Sheriff Court) 1986 and shall come into operation on 1st January 1987.

(2) In this Act of Sederunt—

“Ordinary Cause Rules” means the First Schedule to the Sheriff Courts (Scotland) Act 1907(c) and a rule referred to by number in paragraph 2 of this Act of Sederunt means the rule so numbered in the Ordinary Cause Rules;

“Summary Cause Rules” means the Schedule to the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976(d) and a rule referred to by number in paragraph 3 of this Act of Sederunt means the rule so numbered in the Summary Cause Rules.

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

*Amendment of Ordinary Cause Rules*

2.—(1) The Ordinary Cause Rules shall be amended in accordance with the following provisions of this paragraph.

(2) In rule 3 (initial writ)—

(a) paragraphs (2) to (8) shall be renumbered as paragraphs (5) to (11); and

(b) after paragraph (1), insert the following paragraphs:—

“(2) The initial writ shall contain averments about any agreement which the pursuer has reason to believe may exist prorogating jurisdiction over the subject matter of the cause to another court.

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(a) 1971 c. 58.

(b) 1982 c. 27.

(c) 1907 c. 51; Schedule substituted by S.I. 1983/747 and as amended by S.I. 1984/255, 1986/513 and 1230.

(d) S.I. 1976/476; relevant amending instruments are S.I. 1978/1805 and 1980/455

(3) The initial writ shall contain averments about any proceedings which the pursuer has reason to believe may be pending before another court involving the same cause of action and between the same parties as those named in the initial writ.

(4) An article of condescendence shall be included in the initial writ stating —

(a) the domicile of the defender as determined in accordance with sections 41 to 46 of, and article 52 of Schedule 1 to, the Civil Jurisdiction and Judgments Act 1982; and

(b) the ground of jurisdiction of the court.”.

(3) For rule 12, substitute the following rule:—

*“Citation of or service on persons outwith Scotland*

12.—(1) Subject to the following provisions of this rule, an initial writ or decree, or any other writ or order following upon such initial writ or decree or any charge or warrant, may be served outwith Scotland on any person —

(a) at a known residence or place of business in England, Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—

(i) in accordance with the rules for personal service under the domestic law of the place in which service is to be effected; or

(ii) by posting in Scotland a copy of the document in question in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence or place of business;

(b) in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965(a) or the European Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as set out in Schedule 1 to the Civil Jurisdiction and Judgments Act 1982 —

(i) by a method prescribed by the internal law of the country where service is to be effected for the service of documents in domestic actions upon persons who are within its territory;

(ii) by or through a central authority in the country where service is to be effected at the request of the Foreign Office;

(iii) by or through a British Consular authority at the request of the Foreign Office;

(iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence; or

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(a) Cmnd. 2613 (1965).

(v) where the law of the country in which service is to be effected permits, service by an *huissier*, other judicial officer or competent official of the country where service is to be made;

(c) in a country with whom the United Kingdom has a convention on the service of writs in that country other than the conventions mentioned in sub-paragraph (b), by one of the methods approved in the relevant convention.

(2) Any document which requires to be posted in Scotland for the purposes of this rule shall be posted by a solicitor or an officer of court, and the forms for citation and certificate of citation in rule 9 shall apply to a postal citation under this rule as they apply to a citation under that rule.

(3) On the face of the envelope used for postal service under this rule, there shall be written or printed a notice in the same or similar terms as that required in the case of ordinary service under rule 15(3).

(4) Where service is effected by a method specified in paragraph (1)(b)(ii) or (iii), the pursuer shall —

(a) send a copy of the writ and warrant for service with citation attached, or other document, with a request for service to be effected by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and

(b) lodge in process a certificate of execution of service signed by the authority which has effected service.

(5) Where service is effected by the method specified in paragraph (1)(b)(v) the pursuer, his solicitor or the officer of court, shall —

(a) send to the official in the country in which service is to be effected a copy of the writ and warrant for service with citation attached, or other document, with a request for service to be effected by delivery to the defender or his residence; and

(b) the pursuer shall lodge in process a certificate of execution of service by the official who has effected service.

(6) Where service is effected in accordance with paragraph (1)(a)(i) or (1)(b)(i), the pursuer shall lodge a certificate by a person who is conversant with the law of the country concerned and who practices or has practised as an advocate or solicitor in that country or is a duly accredited representative of the Government of that country, stating that the form of service employed is in accordance with the law of the place where the service was effected. It shall not be necessary to lodge a certificate where service has taken place in another part of the United Kingdom, the Channel Isles or the Isle of Man.

(7) Every writ or document and every citation and notice on the face of the envelope referred to in paragraph (3) shall be accompanied by a translation in an official language of the country in which service is to be executed unless English is an official language of that country.

(8) A translation referred to in paragraph (7) shall be certified as a correct translation by the person making it and the certificate shall contain the full name, address and qualifications of the translator and be lodged along with the execution of citation or certificate of execution.”.

(4) In rule 21 (minute for granting of decree without attendance), in paragraph (1) —

(a) after “(1)”, insert “(a)”;

(b) after the words “Subject to paragraph (2)”, insert the words “of this rule and rule 21A”;

(c) after the word “court”, insert the following words:—

“: provided that the sheriff shall not grant decree in the cause unless it appears *ex facie* of the initial writ that a ground of jurisdiction exists under the Civil Jurisdiction and Judgments Act 1982”; and

(d) after sub-paragraph (a), insert the following sub-paragraph:—

“(b) In the case of a defender domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the initial writ in sufficient time to arrange for his defence or that all necessary steps have been taken to that end; and for the purposes of this sub-paragraph—

(i) the question as to whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982;

(ii) the question as to whether a person is domiciled in another Contracting State shall be determined in accordance with article 52 of Schedule 1 to that Act; and

(iii) the term “Contracting State” has the meaning assigned to it by section 1 of that Act.”.

(5) After rule 21, insert the following rule:—

*“Decree in causes to which the Hague Convention applies*

**21A.** Where in any civil proceedings (including proceedings for divorce, separation and aliment and actions for custody of children), the initial writ has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with.”.

(6) In rule 33 (notice of intention to defend)—

(a) after the word “intends”, insert the words “to challenge the jurisdiction of the court or”;

(b) at the end, insert the following words:—

“The lodging of such notice of intention to defend shall not imply acceptance of the jurisdiction of the court.”.

(7) In rule 134(1)(c) (reference to European Court), after the words “European Coal and Steel Community Treaty”, insert the words—

“or a ruling on the interpretation of the Conventions, as defined in section 1(1) of the Civil Jurisdiction and Judgments Act 1982, under article 3 of Schedule 2 to that Act.”.

(8) In rule 138(2) (citation in simplified divorce procedure), after the word "officer", insert the words "or, if appropriate, by any other method provided for by rule 139".

(9) For rule 139 substitute the following rule:—

*"Citation of or service on persons outwith Scotland"*

**139.**—(1) Subject to the following provisions of this rule, any simplified divorce application may be served outwith Scotland on any person—

(a) at a known residence or place of business in England and Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—

(i) in accordance with the rules for personal service under the domestic law of the place in which service is to be effected; or

(ii) by posting in Scotland a copy of the application in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence or place of business;

(b) in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965—

(i) by a method prescribed by the internal law of the country where service is to be effected for the service of documents in domestic actions upon persons who are within its territory;

(ii) by or through a central authority in the country where service is to be effected at the request of the Foreign Office;

(iii) by or through a British Consular authority at the request of the Foreign Office;

(iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the application in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence; or

(v) where the law of the country in which the person resides permits, service by an *huissier*, other judicial officer or competent official of the country where service is to be made;

(c) in a country with which the United Kingdom has a convention on the service of writs in that country other than the convention in subparagraph (b), by one of the methods approved in the relevant convention.

(2) An application which requires to be posted in Scotland for the purposes of this rule shall be posted by the sheriff clerk and the form for citation in rule 138 shall apply to a postal citation under this rule as they apply to a citation under that rule.

(3) On the face of the envelope used for postal service under this rule there shall be written or printed a notice in the same or similar terms as that required in the case of ordinary service under rule 138.

(4) Where service is effected by a method specified in paragraph (1)(b)(ii) or (iii), the sheriff clerk shall—

(a) send a copy of the application with citation attached with a request for service to be effected by delivery to the defender or his residence to the Secretary of State for Foreign and Commonwealth Affairs; and

(b) lodge in process a certificate of execution of service signed by the authority which has effected service.

(5) Where service is effected by the method specified in paragraph (1)(b)(v), the sheriff clerk shall—

(a) send to the official in the country in which service is to be effected a copy of the application with citation attached with a request for service to be effected by delivery to the defender or his residence; and

(b) lodge in process a certificate of execution of service by the official who has effected service.

(6) Every writ or document and every citation and notice on the face of the envelope under paragraph (3) shall be accompanied by a translation in an official language of the country in which service is to be executed unless English is an official language of that country.

(7) A translation under paragraph (6) shall be certified as a correct translation by the person making it and the certificate shall contain the full name, address and qualifications of the translator and be lodged along with the execution of citation or certificate of execution.”.

(10) In rule 140 (opposition to applications in simplified divorce procedure) —

(a) in paragraph (1), after the word “may”, insert the words “challenge the jurisdiction of the court or”; and

(b) at the end, insert the following paragraph:—

“(4) The lodging of a letter under paragraph (1) shall not imply acceptance of the jurisdiction of the court.”.

(11) In rule 141(1) (decree in simplified divorce procedure), after the word “served”, insert the following words:—

“: provided that, when the application has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with”.

#### *Amendment of Summary Cause Rules*

3.—(1) The Summary Cause Rules shall be amended in accordance with the following provisions of this paragraph.

(2) In rule 2 (statement of claim)—

(a) after “2.”, insert “—(1)”; and

(b) after paragraph (1), insert the following paragraphs:—

“(2) The statement of claim shall contain averments about any agreement which the pursuer has reason to believe may exist prorogating jurisdiction over the subject matter of the cause to another court.

(3) The statement of claim shall contain averments about any proceedings which the pursuer has reason to believe may be pending before another court involving the same cause of action and between the same parties as those named in the initial writ.

(4) The statement of claim shall specify—

(a) the domicile of the defender as determined in accordance with sections 41 to 46 of, and article 52 of Schedule 1 to, the Civil Jurisdiction and Judgments Act 1982; and

(b) the ground of jurisdiction of the court.”.

(3) For rule 9, substitute the following rule:—

*“Citation of or service on persons outwith Scotland*

9.—(1) Subject to the following provisions of this rule, any summons or decree, or any other writ or order following upon such summons or decree, or any charge or warrant, may be served outwith Scotland on any person—

(a) at a known residence or place of business in England and Wales, Northern Ireland, the Isle of Man, the Channel Islands or any country with which the United Kingdom does not have a convention providing for service of writs in that country—

(i) in accordance with the rules for personal service under the domestic law of the place in which service is to be effected; or

(ii) by posting in Scotland a copy of the document in question in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence or place of business;

(b) in a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965 or the European Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters as set out in Schedule 1 to the Civil Jurisdiction and Judgments Act 1982—

(i) by a method prescribed by the internal law of the country where service is to be effected for the service of documents in domestic actions upon persons who are within its territory;

(ii) by or through a central authority in the country where service is to be effected at the request of the Foreign Office;

(iii) by or through a British Consular authority at the request of the Foreign Office;

(iv) where the law of the country in which the person resides permits, by posting in Scotland a copy of the document in a registered or recorded delivery letter or the nearest equivalent which the available postal services permit addressed to the person at his residence; or

- (v) where the law of the country in which service is to be effected permits, service by an *huissier*, other judicial officer or competent official of the country where service is to be made;
  - (c) in a country with which the United Kingdom has a convention on the service of writs in that country other than the conventions in subparagraph (b), by one of the methods approved in the relevant convention.
- (2) A document which requires to be posted in Scotland for the purposes of this rule shall be posted by a solicitor or an officer of court, and the forms for citation and certificate of citation in rule 5 shall apply to a postal citation under this rule as they apply to a citation under that rule.
- (3) On the face of the envelope used for postal service under this rule there shall be written or printed a notice in the same or similar terms as that required in the case of ordinary service under rule 10.
- (4) Where service is effected by a method specified in paragraph (1)(b)(ii) or (iii), the pursuer shall—
- (a) send a copy of the summons and warrant for service with citation attached, or other document, with a request for service to be effected by the method indicated in the request to the Secretary of State for Foreign and Commonwealth Affairs; and
  - (b) lodge in process a certificate of execution of service signed by the authority which has effected service.
- (5) Where service is effected by the method specified in paragraph (1)(b)(v) the pursuer, his solicitor or the officer of court, shall—
- (a) send to the official in the country in which service is to be effected a copy of the summons and warrant for service, with citation attached, or other document, with a request for service to be effected by delivery to the defender or his residence; and
  - (b) the pursuer shall lodge in process a certificate of execution of service by the official who has effected service.
- (6) Where service is effected in accordance with paragraph (1)(a)(i) or (1)(b)(i), the pursuer shall lodge a certificate by a person who is conversant with the law of the country concerned and who practices or has practised as an advocate or solicitor in that country or is a duly accredited representative of the Government of that country, stating that the form of service employed is in accordance with the law of the place where the service was effected. It shall not be necessary to lodge such a certificate where service has taken place in another part of the United Kingdom, the Channel Isles or the Isle of Man.
- (7) Every summons or document and every citation and notice on the face of the envelope referred to in paragraph (3) shall be accompanied by a translation in an official language of the country in which service is to be executed unless English is an official language of that country.
- (8) A translation referred to in paragraph (7) shall be certified as a correct translation by the person making it and the certificate shall contain full name, address and qualifications of the translator and be lodged along with the execution of such citation or certificate of execution.”

(4) In rule 18 (first calling) —



(a) in paragraph (6), after the word "him" insert the words—

“: provided that the sheriff shall not grant decree in the cause unless it appears *ex facie* of the summons that a ground of jurisdiction exists under the Civil Jurisdiction and Judgments Act 1982 ”; and

(b) at the end, insert the following paragraph:—

“(8) In the case of a defender domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the summons in sufficient time to arrange for his defence or that all necessary steps have been taken to that end; and for the purposes of this paragraph—

(a) the question as to whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982;

(b) the question as to whether a person is domiciled in another Contracting State shall be determined in accordance with article 52 of Schedule 1 to that Act; and

(c) the term “Contracting State” has the meaning assigned to it by section 1 of that Act.”.

(5) After rule 18, insert the following rule:—

*“Decree in causes to which the Hague Convention applies*

**18A.** Where, in any civil proceedings (including proceedings for aliment), the summons has been served in a country to which the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15 November 1965 applies, decree shall not be granted until it is established to the satisfaction of the sheriff that the requirements of article 15 of that Convention have been complied with.”.

(6) In rule 51 (notice of intention to appear)—

(a) after the word “intends”, insert the words “to challenge the jurisdiction of the court or”; and

(b) at the end, insert the following words —

“The lodging of such notice of intention to appear shall not imply acceptance of the jurisdiction of the court.”.

(7) In rule 55 (no notice by defender)—

(a) in paragraph (1), for the word “Where” substitute the words “Subject to paragraph (5), where”;

(b) at the end, insert the following paragraphs:—

“(5) The sheriff shall not grant decree in the cause unless it appears *ex facie* of the summons that a ground of jurisdiction exists under the Civil Jurisdiction and Judgments Act 1982.

(6) In the case of a defender domiciled in another part of the United Kingdom or in another Contracting State, the sheriff shall not grant decree in absence until it has been shown that the defender has been able to receive the summons in sufficient time to arrange for his defence

or that all necessary steps have been taken to that end; and for the purposes of this paragraph—

- (a) the question as to whether a person is domiciled in another part of the United Kingdom shall be determined in accordance with sections 41 and 42 of the Civil Jurisdiction and Judgments Act 1982;
- (b) the question as to whether a person is domiciled in another Contracting State shall be determined in accordance with article 52 of Schedule 1 to that Act; and
- (c) the term “Contracting State” has the meaning assigned to it by section 1 of that Act.”

*Emslie*  
Lord President,  
I.P.D.

Edinburgh.  
13th November 1986

## EXPLANATORY NOTE

*(This Note is not part of the Act of Sederunt.)*

This Act of Sederunt amends the Ordinary and Summary Cause Rules of the sheriff court by giving effect to the jurisdictional provisions of the Civil Jurisdiction and Judgments Act 1982, and the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters dated 15th November 1965.