STATUTORY INSTRUMENTS

1987 No. 2160 (S.144)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No.5) (Miscellaneous) 1987

Made - - - -		*10th December 1987*
Coming into force - -		*5th January 1988*

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 16 of the Administration of Justice (Scotland) Act 1933(**1**) and 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 Court Amendment No.5) (Miscellaneous) 1987 and shall come into force on 5th January 1988.

(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(**2**) shall be amended in accordance with the following sub-paragraphs.

(2) After rule 68A (service, intimation and citation)(**3**), insert the following section and rules:—

"SECTION 11

SITTINGS OF THE COURT

Sessions of court

68B.—(1) There shall be three sessions of the court, namely—

(a) a winter session;

(b) a spring session; and

(**1**) 1933 c. 41; section 16 was relevantly amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 8.

(**2**) S.I. 1965/321; relevant amending instruments are S.I. 1968/1150, 1977/1621, 1980/1144, 1984/997, 1986/1941 and 1955 and 1987/1206

(**3**) Rule 68A was inserted by S.I. 1968/1150

(c) a summer session, the dates of which shall be such as the Lord President shall direct annually.

(2) The Lord President may, if at any time he considers the business of the court so requires, direct that a session of the court shall be extended for such period as may be necessary.

Sederunt days

68C.—(1) A day on which the court sits during session under rule 68D(1) shall be a sederunt day.

(2) The Lord President may by direction provide that such days in vacation as he may specify in the direction shall be sederunt days.

Sittings during session

68D.—(1) Subject to the following paragraphs of this rule, the court shall sit on Tuesday, Wednesday, Thursday and Friday of each week during session at such times as the Lord President may direct.

(2) The court shall not sit during session—

(a) subject to paragraph (3), on such public holidays; or

(b) on such other days in exceptional circumstances, as the Lord President may direct.

(3) A Division or Lord Ordinary may sit—

(a) on a Monday where it is considered necessary to hear and determine a cause; or

(b) on a Saturday, Sunday or public holiday to hear and determine a matter of urgency.

Sittings during vacation

68E.—(1) During vacation one or more of the judges of the court, other than the Lord President and the Lord Justice Clerk, shall act from time to time as vacation judge sitting in court or in chambers.

(2) A vacation judge shall deal with the business of the vacation judge under rule 1 on such days and at such times as may be convenient, subject to any direction of the Lord President.

(3) A Division or Lord Ordinary may sit during vacation, whether or not on a sederunt day, to conclude a hearing commenced in session.

(4) A Division may sit during vacation, whether or not on a sederunt day, to hear and determine urgent Inner House business which cannot competently be heard and determined by the vacation judge.

Lord Ordinary in exchequer causes

68F. The Lord Ordinary in exchequer causes may hear and determine an exchequer cause whether during a session of the court or in vacation.

Exercise of powers of Lord President by Lord Justice Clerk

68G. In the absence of the Lord President, the Lord Justice Clerk may exercise a power conferred on the Lord President in this section to make directions.".

(3) In rule 89(ac) (decree in absence)(**4**)—

(**4**) Rule 89(ac) was inserted by S.I. 1986/1941 and amended by S.I. 1987/1206

(a) after the words "court and", insert the words ", in a cause to which the Civil Jurisdiction and Judgments Act 1982(**5**) applies,"

(b) for the words "sections 41 to 46 to the Civil Jurisdiction and Judgments Act 1982", substitute the words "the provisions of that Act".

(4) In rule 90 (making up record)(**6**), omit paragraph (6).

(5) In rule 189 (Outer House petitions)—

(a) for head (xxiv)(**7**), substitute the following head:—

"(xxiv) Petitions under the Adoption (Scotland) Act 1978(**8**);"

(b) after head (xxix)(**9**), insert the following heads:—

"(xxx) Applications under section 27 of the Civil Jurisdiction and Judgments Act 1982;

(xxxi) Applications under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985(**10**), which shall be by petition where rectification of a document is not to be sought with other remedies in a cause initiated by summons;

(xxxii) Petitions for judicial review;

(xxxiii) Petitions under the Child Abduction and Custody Act 1985(**11**);

(xxxiv) Petitions under the Financial Services act 1986(**12**);

(xxxv) Petitions under section 6(3) of the Law Reform (Parent and Child) (Scotland) Act 1986(**13**);

(xxxvi) Applications under section 48, 49 or 93 of the Banking Act 1987(**14**);".

(6) In rule 197(e) (unopposed petitions)(**15**)—

(a) after the words "court and", insert the words ", in a cause to which the Civil Jurisdiction and Judgments Act 1982 applies,"; and

(b) for the words "sections 41 to 46 of the Civil Jurisdiction Act 1982", substitute the words "the provisions of that Act".

(7) In rule 230(4)(a) (opening of sealed confidential envelope)(**16**), after the word "refers", insert the words, "or to a solicitor, local authority or adoption agency authorised in writing by the adopted person to obtain information from the process".

(8) After rule 260L (general provisions in applications under the Child Abduction and Custody Act 1985)(**17**), insert the following section and rules:—

(**5**) 1982 c. 27
(**6**) Rule 90 was amended by S.I. 1980/1144
(**7**) Inserted by S.I. 1977/1621
(**8**) 1978 c. 28
(**9**) Inserted by S.I. 1987/1206
(**10**) 1985 c. 73
(**11**) 1985 c. 60
(**12**) 1986 c. 60
(**13**) 1986 c. 9
(**14**) 1987 c. 22
(**15**) Rule 197(e) was inserted by S.I. 1987/1206
(**16**) Rule 230 was substituted by S.I. 1984/997
(**17**) Rule 260L was inserted by S.I. 1986/1955

"SECTION 18

CAUSES UNDER THE FINANCIAL SERVICES ACT 1986

Interpretation

260M. In this section, "the Act of 1986" means the Financial Services Act 1986.

Causes under the Financial Services Act 1986

260N.—(1) An application by virtue of any of the following provisions of the Financial Services Act 1986 shall be made by petition presented to the Outer House:—

    (a) sections 6, 61, 71(1), 91(4), 104(4), 131(8) and 184(8) (applications by the Secretary of State or a designated agency for interdict or restitution);

    (b) sections 12, 20, 37(8) and 39(8) (applications by the Secretary of State or a designated agency for compliance orders);

    (c) section 13(5) (applications by recognised organisation to have a direction set aside);

    (d) section 93 (applications by the Secretary of State or a designated agency to remove, replace a manager or trustee or to wind up a unit trust scheme); and (e) Schedule 11—

        (i) paragraph 6(1) (applications by Registrar of friendly societies for compliance orders);

        (ii) paragraph 7(4) (applications by recognised self regulating organisations to set aside a direction);

        (iii) paragraph 22 (applications by Registrar of friendly societies for interdict or to remedy a contravention); and

        (iv) paragraph 23(1) so far as it modifies section 61 as applied by section 71(1) (applications by Registrar of friendly societies for interdict or restitutions.

(2) Certification by inspectors to the court by virtue of section 94(3) or under section 178(1) of the Act of 1986 shall be made by petition presented to the Outer House.

(3) No order shall be made under section 6, 61, 71, 91, 104, 131 or 184 of, or paragraph 22 of Schedule 11 to, the Act of 1986 against any person unless he is a party to the cause in which the order is to be pronounced.

(4) Where a question of the interpretation of any of the rules or regulations referred to in section 61(1)(a) of the Act of 1986 arises in a petition under this rule, the Secretary of State, a designated agency or any person referred to in section 61(1)(a)(iv) of that Act and not already a party in the cause may make representations to the court by lodging answers to the petition.".

(9) The enactments mentioned in the Schedule to this Act of Sederunt are repealed to the extent specified in the third column of that Schedule.

Edinburgh
10th December 1987

Emslie
Lord President, IPD

SCHEDULE Paragraph 2(9)

ENACTMENTS REPEALED

Year of session and chapter	*Short title*	*Extent of repeal*
19 & 20 Vict.c.56	Exchequer Court Act 1856 (Scotland)	In section 3, the words from the beginning of the section to the words "judgment therein; and".
31 & 32 Vict.c.100	Court of Session Act 1868	Sections 6, 7, 8 and 11.
23 & 24 Geo.5 c.41	Administration of Justice (Scotland) Act 1933	Section 4(2); in section 4(3), the words from "the judges of the court" to the words "vacation judge, and" where they first occur; and section 4(5).
12, 13 & 14 Geo.6 c.10	Administration of Justice (Scotland) Act 1948	Section 2.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session by providing—

(a) rules for the sittings of the court in place of certain statutory provisions which are repealed by this Act of Sederunt (paragraph 2(2), (9) and Schedule);

(b) further amendment of the rule concerning decrees in absence in relation to causes to which the Civil Jurisdiction and Judgments Act 1982 applies (paragraph 2(3) and (6));

(c) that the period of adjustment of an open record shall run in vacation (paragraph 2(4));

(d) in the list of Outer House petitions, additions to the list of causes to be presented to the Outer House (paragraph 2(5));

(e) a restriction on the persons who may be permitted to open a sealed envelope containing the process of an adoption petition on behalf of an adopted person (paragraph 2(7)); and

(f) rules for certain applications under the Financial Services Act 1986 (paragraph 2(8)).