

SCHEDULE 2

THE RULES OF THE COURT OF SESSION 1994

Other proceedings in relation to statutory applications

CHAPTER 62

RECOGNITION, REGISTRATION AND ENFORCEMENT OF FOREIGN JUDGMENTS, ETC. PART I GENERAL PROVISIONS

Disapplication of certain rules to this Chapter

62.1. The following rules shall not apply to a petition or application under this Chapter:—

- 14.5 (first order in petitions),
- 14.6 (period of notice for lodging answers),
- 14.7 (intimation and service of petitions),
- 14.9 (unopposed petitions).

Certificate of currency conversion

62.2.—(1) Where the sum payable under a judgment, award, recommendation or determination to be registered in accordance with a provision of this Chapter is expressed in a currency other than sterling, the petitioner or applicant, as the case may be, before applying to the Keeper of the Registers for registration of such a document, shall lodge in the Petition Department—

- (a) a certified statement of the rate of exchange prevailing at—
 - (i) the date of the judgment, award, recommendation or determination,
 - (ii) the date on which the certified statement is lodged, or
 - (iii) a date within three days before the date on which the certified statement is lodged,and of the sterling equivalent, at that rate, of the principal sum, interest and expenses contained in the judgment, award, recommendation or determination, as the case may be; and
- (b) a certificate of currency conversion in Form 62.2.

(2) The certified statement required under paragraph (1) shall be by an official in the Bank of England or an institution authorised under the Banking Act 1987⁽¹⁾.

(3) On receipt of the documents specified in paragraph (1), the clerk of session shall, if satisfied with the terms of those documents, sign and date the certificate of currency conversion.

Translation of document lodged

62.3. Where a judgment, award, or other document lodged with a petition or application to which this Chapter applies is in a language other than English, there shall be produced with the petition a translation into English certified as correct by the translator; and the certificate shall include his full name, address and qualification.

PART II REGISTRATION AND ENFORCEMENT UNDER THE ADMINISTRATION OF JUSTICE ACT 1920 AND THE FOREIGN JUDGEMENTS (RECIPROCAL ENFORCEMENT) ACT 1933

(1) 1987 c. 22.

Application and interpretation of this Part

62.4.—(1) This Part applies to an application to the court under the Administration of Justice Act 1920⁽²⁾ or the Foreign Judgments (Reciprocal Enforcement) Act 1933⁽³⁾.

(2) In this Part—

“the Act of 1920” means the Administration of Justice Act 1920;

“the Act of 1933” means the Foreign Judgments (Reciprocal Enforcement) Act 1933.

Applications for registration under the Act of 1920 or 1933

62.5.—(1) An application under section 9 of the Act of 1920 (enforcement in United Kingdom of judgments obtained in superior courts in other British Dominions etc.) shall be made by petition.

(2) An application under section 2 of the Act of 1933⁽⁴⁾ (application for registration of a foreign judgment) shall be made by petition.

Supporting documents

62.6.—(1) There shall be produced with the petition for registration referred to in rule 62.5 an affidavit—

(a) referring to the judgment or a certified copy of the judgment issued by the original court and authenticated by its seal; and

(b) stating—

(i) the full name, title, trade or business and the usual or last known place of residence or business of the judgment creditor and the judgment debtor respectively;

(ii) that the petitioner is entitled to have the judgment registered under the Act of 1920 or the Act of 1933, as the case may be;

(iii) where the judgment is in respect of several matters, only some of which may be registered, those in respect of which the petitioner seeks registration;

(iv) the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the date of the affidavit;

(v) the amount of the judgment which is unsatisfied;

(vi) that at the date of presentation of the petition the judgment may be enforced by execution in the country of the original court;

(vii) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 4 of the Act of 1933; and

(viii) that the judgment is not a judgment to which section 5 of the Protection of Trading Interests Act 1980⁽⁵⁾ (restriction on enforcement of certain overseas judgments) applies.

(2) There shall be produced with a petition referred to in rule 62.5 such other evidence with respect to the matters referred to in sub-paragraphs (b)(iv) and (b)(vi) of paragraph (1) as may be required having regard to the provisions of an order in Council made under section 1 of the Act of 1933⁽⁶⁾ (power to extend the Act of 1933 to the country of the original court).

(2) 1920 c. 81.

(3) 1933 c. 13.

(4) Section 2 was amended by the Administration of Justice Act 1977 (c. 38), section 4 and Schedule 3.

(5) 1980 c. 11.

(6) Section 1 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 10.

Warrant for registration under the Act of 1920 or 1933

62.7.—(1) The court shall, on being satisfied that the petition complies with the requirements of the Act of 1920 or the Act of 1933, as the case may be, pronounce an interlocutor granting warrant for the registration of the judgment.

(2) The interlocutor under paragraph (1) shall specify a date by which the judgment debtor may apply to the court to set aside the registration; and in fixing such date, regard shall be had to the place of residence of the judgment debtor.

(3) In fixing the date under paragraph (2), the court shall have regard, in the case of a judgment debtor furth of Scotland, to the periods for superseding extract of a decree in absence in rule 19.1(5).

Registration of judgments under the Act of 1920 or 1933

62.8.—(1) Where the court pronounces an interlocutor under rule 62.7(1) granting warrant for registration, the Deputy Principal Clerk shall enter details of the judgment in a register of judgments under the Act of 1920 or the Act of 1933, as the case may be, kept in the Petition Department.

(2) On presentation by the petitioner to the Keeper of the Registers of—

- (a) a certified copy of the interlocutor under rule 62.7(1) granting warrant for registration,
- (b) the judgment or a certified copy of the judgment and any translation of it, and
- (c) any certificate of currency conversion under rule 62.2(2),

they shall be registered in the register of judgments of the Books of Council and Session.

(3) An extract of a registered judgment with a warrant for execution shall not be issued by the Keeper of the Registers until the certificate mentioned in rule 62.10(3) is produced to him.

Service on judgment debtor

62.9. On registration of a judgment under rule 62.8(2), the petitioner shall serve a notice of the registration on the judgment debtor in Form 62.9.

Application to set aside registration under the Act of 1920 or 1933

62.10.—(1) An application by a judgment debtor to set aside the registration of a judgment shall be made by note and supported by affidavit and any documentary evidence.

(2) In relation to such an application, the court may order such inquiry as it thinks fit.

(3) Where no such application is made by the date specified in the interlocutor pronounced under rule 62.7(2) or where the application has been made and refused, the Deputy Principal Clerk shall, at the request of the petitioner, issue a certificate to that effect.

(4) Subject to paragraph (5), where such an application is granted, a certificate to that effect issued by the Deputy Principal Clerk shall be sufficient warrant to the Keeper of the Registers to cancel the registration and return the judgment to the petitioner.

(5) Where the court makes an order under section 5(3) of the Act of 1933 (judgment ordered to be registered for balance payable), it shall pronounce an interlocutor—

- (a) recalling the warrant for registration granted under rule 62.7; and
- (b) granting warrant for registration of the judgment in respect of the balance remaining payable at the date of the original petition for registration.

Application for enforcement abroad under the Act of 1920 or 1933

62.11.—(1) An application under section 10 of the Act of 1920⁽⁷⁾ or the Act of 1933⁽⁸⁾, as the case may be, for a certified copy of a judgment pronounced by the court shall be made by letter to the Deputy Principal Clerk.

(2) On receipt of such an application, the Deputy Principal Clerk shall issue under the seal of the court a copy of the judgment certified by him in Form 62.11.

(3) Where such an application is made under section 10 of the Act of 1933, the Deputy Principal Clerk shall issue with the certified copy of the judgment a further certificate under the seal of the court signed by him containing the details, and having appended the documents, mentioned in paragraph (4).

(4) A certificate under paragraph (3) shall—

(a) state—

- (i) the manner in which the principal writ or counterclaim was served on the judgment debtor;
- (ii) whether or not the judgment debtor entered appearance or lodged answers in the process of the cause;
- (iii) any objection made to the jurisdiction;
- (iv) that the time limit for appeal has expired and that no appeal has been taken, or that an appeal was taken but was refused; and
- (v) such other particulars as may be required by the foreign court which may enable execution of the judgment; and

(b) number, identify and have appended to it a copy of—

- (i) the principal writ or counterclaim showing the manner in which such writ was served on the judgment debtor;
- (ii) the pleadings, if any, in the cause resulting in the judgment; and
- (iii) a copy of the opinion, if any, of the judge or judges who issued the judgment.

(5) Where necessary, the applicant shall provide the copies of the documents mentioned in paragraph (4).

PART III REGISTRATION OF AWARDS UNDER THE ARBITRATION (INTERNATIONAL INVESTMENT DISPUTES) ACT 1966**Application and interpretation of this Part**

62.12.—(1) This Part applies to the registration of awards under the Arbitration (International Investment Disputes) Act 1966⁽⁹⁾.

(2) In this Part—

- “the Act of 1966” means the Arbitration (International Investment Disputes) Act 1966;
- “award” has the meaning assigned to it in section 1(7) of the Act of 1966;
- “the Convention” means the convention mentioned in section 1(1) of the Act of 1966.

⁽⁷⁾ Section 10 of the Act of 1920 was substituted by the Civil Jurisdiction and Judgments Act 1982 (c. 27) (“the 1982 Act”), section 35.

⁽⁸⁾ Section 10 of the Act of 1933 was substituted by the 1982 Act, Schedule 10, paragraph 3.

⁽⁹⁾ 1966 c. 41.

Applications for registration under the Act of 1966

62.13.—(1) An application for recognition or enforcement of an award under Article 54 of the Convention shall be made by petition.

(2) There shall be produced with such a petition an affidavit—

(a) exhibiting a copy of the award certified under the Convention; and

(b) stating—

(i) the full name, title, trade or business and the usual or the last known place of residence or, where appropriate, of the business of the petitioner and of the party against whom the award was made;

(ii) that the petitioner is entitled to have the award registered under the Act of 1966;

(iii) the amount of the award which is unsatisfied;

(iv) whether the enforcement of the award has been sisted (provisionally or otherwise) under the Convention and whether any, and if so what, application has been made under the Convention which, if granted, might result in a sist of enforcement of the award.

Warrant for registration under the Act of 1966

62.14. The court shall, subject to rule 62.17 (sist of enforcement), on being satisfied that the petition complies with the requirements of the Act of 1966, pronounce an interlocutor granting warrant for the registration of the award.

Registration under the Act of 1966

62.15.—(1) Where the court pronounces an interlocutor under rule 62.14 granting warrant for registration, the Deputy Principal Clerk shall enter details of the interlocutor and the award in a register of awards under the Act of 1966.

(2) On presentation by the petitioner to the Keeper of the Registers of—

(a) a certified copy of the interlocutor under rule 62.14,

(b) a certified copy of the award and any translation of it, and

(c) any certificate of currency conversion under rule 62.2(2),

they shall be registered in the register of judgments of the Books of Council and Session.

(3) An extract of the registered award with warrant for execution shall not be issued by the Keeper of the Registers until a certificate of service under rule 62.16 is produced to him.

Service on party against whom award made

62.16. On registration under rule 62.15, the petitioner shall forthwith serve a notice of the registration on the party against whom the award was made in Form 62.16.

Sist of enforcement under the Act of 1966

62.17.—(1) Where it appears to the court that—

(a) the enforcement of the award has been sisted (whether provisionally or otherwise) under the Convention, or

(b) any application has been made under the Convention which, if granted, might result in a sist of the enforcement of the award,

the court shall, or in the case referred to in sub-paragraph (b) may, sist the petition for such time as it thinks fit.

(2) Where the court has granted a warrant for registration under rule 62.14, the party against whom the award was made may apply to the court for suspension or interdict of execution of the award.

(3) An application under paragraph (2) shall—

- (a) be made on ground (a) or (b) of paragraph (1);
- (b) notwithstanding rule 60.2 (form of applications for suspension), be made by note in the process of the petition under rule 62.13; and
- (c) be accompanied by an affidavit stating the relevant facts.

PART I EUROPEAN COMMUNITY JUDGMENTS

Interpretation of this Part

62.18.—(1) In this Part—

“Community judgment” means any decision, judgment or order which is enforceable under or in accordance with—

- (a) Article 187 or 192 of the E.E.C. Treaty,
- (b) Article 18, 159 or 164 of the Euratom Treaty, or
- (c) Article 44 or 92 of the E.C.S.C. Treaty;

“Euratom inspection order” means an order made by or in the exercise of the functions of the President of the European Court or by the Commission of the European Communities under Article 81 of the Euratom Treaty;

“European Court” means the Court of Justice of the European Communities;

“order for enforcement” means an order by or under the authority of the Secretary of State that the Community judgment to which it is appended is to be registered for enforcement in the United Kingdom.

(2) In paragraph (1), the expressions “E.E.C. Treaty”, “Euratom Treaty” and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972⁽¹⁰⁾.

Register of European Community judgments

62.19. A register shall be kept by the Deputy Principal Clerk for the purpose of registering—

- (a) any Community judgment to which the Secretary of State has attached an order for enforcement
- (b) any Euratom inspection order; or
- (c) any order of the European Court that enforcement of a registered Community judgment shall be suspended.

Applications for registration of European Community judgments

62.20.—(1) An application for registration of a Community judgment or Euratom inspection order shall be made by petition.

(2) Where the application is for registration of a Community judgment under which a sum of money is payable, the petition shall set out—

(10) 1972 c. 68.

- (a) the name, trade or business and the usual or last known place of residence or business of the judgment debtor, so far as known to the petitioner; and
 - (b) the amount of the judgment which remains unsatisfied.
- (3) There shall be produced with a petition referred to in paragraph (1) the Community judgment and the order for its enforcement or the Euratom inspection order, as the case may be, or a copy of it.

Warrant for registration of European Community judgments

62.21.—(1) On an application being made under rule 62.20, the court shall direct that any Euratom inspection order or any Community judgment which has appended to it an order for enforcement shall be entered in the register kept under rule 62.19 and—

- (a) in respect of a Community judgment, subject to paragraph (2), pronounce an interlocutor granting warrant for registration of the judgment in the Books of Council and Session; or
- (b) in respect of a Euratom inspection order, pronounce such interlocutor as is necessary for the purpose of ensuring that effect is given to that order.

(2) Where it appears that a Community judgment under which a sum of money is payable has been partly satisfied at the date of the application under rule 62.20, warrant for registration in the Books of Council and Session shall be granted only in respect of the balance remaining payable at that date.

Registration of European Community judgments

62.22.—(1) On presentation by the petitioner to the Keeper of the Registers of—

- (a) a certified copy of an interlocutor pronounced under rule 62.21(1)(a),
- (b) the Community judgment or a certified copy of it and any translation of it, and
- (c) any certificate of currency conversion under rule 62.2(2),

they shall immediately be registered in the register of judgments of the Books of Council and Session.

(2) On registration under paragraph (1), the Keeper of the Registers shall issue an extract of the registered Community judgment with a warrant for execution.

Service on judgment debtor of European Community judgment

62.23. On an interlocutor being pronounced under rule 62.21(1)(a), the petitioner shall forthwith serve a copy of it on the person against whom the Community judgment was given or the Euratom inspection order was made, as the case may be.

Variation or cancellation of registration

62.24.—(1) An application for the variation or cancellation of any registration shall be made by note in the process of the petition under rule 62.20(1).

(2) Where the court grants an application under paragraph (1), it may direct that the entry in the register kept under rule 62.19, and, in the case of variation of a Community judgment, the entry in the Books of Council and Session, shall be varied as sought by the noter.

Suspension of enforcement of Community judgments

62.25.—(1) An order of the European Court that enforcement of a registered Community judgment be suspended—

- (a) shall—

- (i) on production of the order to the Court of Session, and
 - (ii) on application made by note,
- be registered forthwith, and
- (b) shall be of the same effect as if the order had been an order made by the Court of Session on the date of its registration suspending the execution of the judgment for the same period and on the same conditions as are stated in the order of the European Court.
- (2) No steps to enforce the judgment mentioned in paragraph (1) shall be taken while such an order of the European Court remains in force.

PART V RECOGNITION AND ENFORCEMENT OF JUDGMENTS UNDER THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

Application and interpretation of this Part

62.26.—(1) This Part applies to the recognition and enforcement of a judgment under the Civil Jurisdiction and Judgments Act 1982(11).

(2) Unless the context otherwise requires, in this Part—

“the Act of 1982” means the Civil Jurisdiction and Judgments Act 1982;

“Contracting State” has the meaning assigned in section 1(3) of the Act of 1982(12);

“judgment” includes an authentic instrument or court settlement.

Disapplication of certain rules to this Part

62.27. The following provisions shall not apply to an application under this Part in addition to those rules mentioned in rule 62.1:—

rule 4.1(1) (printed form for petition),

rule 14.4 (form of petitions).

Enforcement of judgements, authentic instruments or court settlements from another Contracting State

62.28.—(1) An application under section 4 of, and Article 31 (enforcement of judgment from another Contracting State) or Article 50 (enforcement of authentic instrument or court settlement from another Contracting State) of the Convention in Schedule 1 or 3C to, the Act of 1982(13) shall be made by petition in Form 62.28.

(2) There shall be produced with the petition—

- (a) an authentic copy of the judgment to be registered;
- (b) a document which establishes that, according to the law of the country in which the judgment has been given, the judgment is enforceable and has been served;
- (c) where judgment has been given in absence (that is to say, in default of appearance), the original or a certified copy of the document which establishes that the party against whom judgment was given in absence was served with the document initiating the proceedings or with an equivalent document;

(11) 1982 c. 27.

(12) Section 1(3) of the Act of 1982 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), section 2(5).

(13) Section 4 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2, paragraph 2 and was extended to authentic instruments and court settlements by S.I. 1993/604. Schedule 1 was substituted by S.I. 1990/2591. Schedule 3C was inserted by the Civil Jurisdiction and Judgments Act 1991, section 1(3) and Schedule 1.

- (d) where applicable, a document showing that the applicant is in receipt of legal aid in the country in which the judgment was given;
- (e) an affidavit stating—
 - (i) whether the judgment provides for the payment of a sum of money;
 - (ii) whether interest is recoverable on the judgment under the law of the country in which judgment was given, and if so, the rate of interest, the date from which interest is due and the date on which interest ceases to accrue;
 - (iii) an address within the jurisdiction of the court for service on or intimation to the petitioner;
 - (iv) the usual or last known place of residence or business of the person against whom the judgment was given;
 - (v) the grounds on which the petitioner is entitled to enforce the judgment; and
 - (vi) the part of the judgment which is unsatisfied.
- (3) Where the petitioner does not produce a document required under paragraph (2)(a) to (d), the court may—
 - (a) fix a period within which that document is to be lodged;
 - (b) accept an equivalent document; or
 - (c) dispense with the requirement to produce the document.

Protective measures and interim interdict

62.29.—(1) On lodging a petition referred to in rule 62.28, the petitioner may, at any time until the expiry of the period for lodging an appeal referred to in rule 62.34 or its disposal, apply by motion for a warrant for the execution of protective measures.

(2) On lodging such a petition, the petitioner may, at any time until the expiry of the period for lodging an appeal mentioned in rule 62.34 or its disposal, apply by motion for an interim interdict.

Warrant for registration under the Act of 1982

62.30.—(1) The court shall, on being satisfied that the petition complies with the requirements of the Act of 1982, pronounce an interlocutor—

- (a) granting warrant for the registration of the judgment;
 - (b) granting warrant for the execution of protective measures; and
 - (c) where necessary, granting decree in accordance with Scots law.
- (2) The interlocutor pronounced under paragraph (1) shall specify—
- (a) the period within which an appeal mentioned in rule 62.34 against the interlocutor may be made; and
 - (b) that the petitioner—
 - (i) may register the judgment under rule 62.32; and
 - (ii) may not proceed to execution until the expiry of the period for lodging such an appeal or its disposal.

Intimation to petitioner

62.31. Where the court pronounces an interlocutor under rule 62.30(1) granting warrant for registration, the Deputy Principal Clerk shall intimate such interlocutor to the petitioner by sending

to his address for service in Scotland a certified copy of the interlocutor by registered post or the first class recorded delivery service.

Registration under the Act of 1982

62.32.—(1) Where the court pronounces an interlocutor under rule 62.30(1) granting warrant for registration, the Deputy Principal Clerk shall enter the judgment in a register of judgments, authentic instruments and court settlements under the Act of 1982 kept in the Petition Department.

(2) On presentation by the petitioner to the Keeper of the Registers of—

- (a) a certified copy of the interlocutor under rule 62.30(1) granting warrant for registration,
- (b) an authentic copy of the judgment and any translation of it, and
- (c) any certificate of currency conversion under rule 62.2(2),

they shall be registered in the register of judgments of the Books of Council and Session.

(3) On registration under paragraph (2), the Keeper of the Registers shall issue an extract of the registered judgment with a warrant for execution.

Service of warrant for registration under the Act of 1982

62.33. The petitioner shall serve a copy of the interlocutor granting warrant for registration of a judgment and a notice in Form 62.33 on the person liable under the judgment.

Appeals under the Act of 1982

62.34.—(1) An appeal under Article 37 of the convention in Schedule 1 or 3C to the Act of 1982 (appeal against granting of warrant for registration) shall be made by motion—

- (a) to the Lord Ordinary; and
- (b) within one month of service under rule 62.33 (service of warrant for registration under the Act of 1982) or within two months of such service where service was executed on a person domiciled in another Contracting State.

(2) An appeal under Article 40 of the convention in Schedule 1 or 3C to the Act of 1982 (appeal against refusal to grant warrant for registration) shall be made by motion—

- (a) to the Lord Ordinary; and
- (b) within one month of the interlocutor pronounced under rule 62.30(1) (warrant for registration under the Act of 1982).

(3) Where the respondent in any such appeal is domiciled furth of the United Kingdom—

- (a) in relation to an appeal under paragraph (1), intimation of the motion shall be made to the address for service of the respondent in Scotland;
- (b) in relation to an appeal under paragraph (2), intimation of the motion shall be made in accordance with rule 16.2 (service furth of United Kingdom) or rule 16.5 (service where address of person is not known), as the case may be.

(4) Where an appeal under paragraph (1) is successful, the court shall, on the motion of the appellant, pronounce an interlocutor recalling any protective measure or interim interdict.

Reclaiming under the Act of 1982

62.35.—(1) Any party dissatisfied with the interlocutor of the Lord Ordinary in any appeal mentioned in rule 62.34 (appeals under the Act of 1982) may reclaim on a point of law against that interlocutor.

(2) Where a reclaiming motion under paragraph (1) against the registration of a judgment is successful, the court shall, on the motion of the appellant, pronounce an interlocutor recalling any protective measure or interim interdict.

Recognition of judgments from another Contracting State

62.36.—(1) For the purposes of Article 26 of the convention in Schedule 1 or 3C to the Act of 1982, an interlocutor pronounced under rule 62.30(1) (warrant for registration under the Act of 1982) shall imply recognition of the judgment so dealt with.

(2) In an application under Article 26(2) of the convention in Schedule 1 or 3C to the Act of 1982 (application for recognition of a judgment), rules 62.26 to 62.35 shall apply to such an application as they apply to an application under Article 31 of that convention, subject to the following provisions:—

- (a) it shall not be necessary to produce any documents required by rule 62.28(2)(b) and (d); and
- (b) rule 62.32 shall not apply.

Enforcement of judgments from another part of the United Kingdom in Scotland (money provisions)

62.37.—(1) An application under paragraph 5 of Schedule 6 to the Act of 1982 (application for registration in the Court of Session of a certificate in relation to a money provision in a judgment from another part of the United Kingdom) shall be made by presenting to the Keeper of the Registers—

- (a) a certificate under paragraph 4(1) of Schedule 6 to the Act of 1982; and
- (b) any certificate of currency conversion under rule 62.2(2).

(2) On presentation of the certificate mentioned in paragraph (1)(a), the Keeper of the Registers shall—

- (a) register the certificate in the register of judgments of the Books of Council and Session; and
- (b) issue an extract of the certificate with a warrant for execution.

(3) An application under—

- (a) paragraph 9 of Schedule 6 to the Act of 1982 (application to sist proceedings for enforcement of a certificate registered under paragraph (2) of this rule), or
- (b) paragraph 10 of Schedule 6 to the Act of 1982 (application to reduce the registration under paragraph (2) of this rule),

shall be made by petition.

Enforcement of judgments from another part of the United Kingdom in Scotland (non-money provisions)

62.38.—(1) An application under paragraph 5 of Schedule 7 to the Act of 1982 (application for registration in the Court of Session of a non-money provision in a judgment from another part of the United Kingdom) shall be made by petition in Form 62.38.

(2) There shall be produced with the petition under paragraph (1)—

- (a) a certified copy of the judgment of the original court; and
- (b) a certificate under paragraph 4(1)(b) of Schedule 7 to the Act of 1982.

(3) The petition under paragraph (1) shall be heard by the Lord Ordinary in chambers and shall not require any appearance for the applicant unless the court so requires.

Status: This is the original version (as it was originally made).

(4) The court shall, on being satisfied that the petition complies with the requirements of section 18 of, and Schedule 7 to, the Act of 1982, pronounce an interlocutor—

- (a) granting warrant for the registration of the judgment; and
- (b) where necessary, granting decree in accordance with Scots law.

(5) Where the court pronounces an interlocutor under paragraph (4), rule 62.32 shall apply to the registration of a judgment under this rule as it applies to the registration of a judgment under that rule.

(6) An application under—

- (a) paragraph 8 of Schedule 7 to the Act of 1982 (application to sist proceedings for enforcement of a judgment registered under paragraph (5) of this rule), or
- (b) paragraph 9 of Schedule 7 to the Act of 1982 (application to reduce the registration under paragraph (5) of this rule),

shall be made by petition.

Cancellation of registration under the Act of 1982

62.39. Where—

- (a) an interlocutor under rule 62.30(1) (warrant for registration under the Act of 1982) is recalled and registration under rule 62.32 (registration under the Act of 1982) is ordered to be cancelled after an appeal under Article 37 of the convention in Schedule 1 or 3C to the Act of 1982, or
- (b) registration under rule 62.37(2) (registration of judgments from another part of the United Kingdom in Scotland (money provisions)) or rule 62.38(5) (registration of judgments from another part of the United Kingdom in Scotland (non-money provisions)) is reduced, a certificate to that effect by the Deputy Principal Clerk shall be sufficient warrant to the Keeper of the Registers to cancel the registration and return the judgment, certificate or other documents to the person who applied for registration.

Enforcement in another Contracting State of Court of Session judgments etc.

62.40.—(1) Where a person seeks to apply under section 12 of the Act of 1982⁽¹⁴⁾ for recognition or enforcement in another Contracting State of a judgment given by the court or a court settlement in the court, he shall apply by letter to the Deputy Principal Clerk for—

- (a) a certificate in Form 62.40–A;
- (b) a certified copy of the judgment; and
- (c) if required, a certified copy of the opinion of the court.

(2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1)(a) unless there is produced to him an execution of service of the judgment on the person on whom it is sought to be enforced.

(3) Where a person seeks to apply under Article 50 of the convention in Schedule 1 or 3C of the Act of 1982 for enforcement of an authentic instrument or court settlement registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate in Form 62.40–B; and
- (b) an extract of the authentic instrument or court settlement.

⁽¹⁴⁾ Section 12 was extended to court settlements by [S.I. 1993/604](#).

Enforcement in another part of the United Kingdom of Court of Session judgments or documents registered for execution (money provisions)

62.41.—(1) Where a person seeks to apply under Schedule 6 to the Act of 1982 for enforcement in another part of the United Kingdom of a money provision in a judgment given by the court, he shall apply by letter to the Deputy Principal Clerk for a certificate in Form 62.41–A.

(2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1) unless there is produced to him an affidavit stating—

- (a) the sum or aggregate of sums including interest and expenses payable and unsatisfied;
- (b) that the time for making an appeal against such judgment has expired or such appeal has been finally determined;
- (c) that enforcement of the judgment has not been suspended and the time available for its enforcement has not expired; and
- (d) the address of the party entitled to enforce, and the usual or last known address of the party liable to execution on, the judgment.

(3) Where a person seeks to apply under Schedule 6 to the Act of 1982 for enforcement in another part of the United Kingdom of a document registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate in Form 61.41–B; and
- (b) an extract of the document.

(4) The Keeper of the Registers shall not issue a certificate under paragraph (3) unless there is produced to him an affidavit which includes the statements required under paragraph (2)(a), (c) and (d).

Enforcement in another part of the United Kingdom of Court of Session judgments or documents registered for execution (non-money provisions)

62.42.—(1) Where a person seeks to apply under Schedule 7 to the Act of 1982 for enforcement in another part of the United Kingdom of a non-money provision in a judgment of the court, he shall apply by letter to the Deputy Principal Clerk for—

- (a) a certificate in Form 62.42–A; and
- (b) a certified copy of such judgment.

(2) The Deputy Principal Clerk shall not issue a certificate under paragraph (1) unless there is produced to him an affidavit stating—

- (a) that the time for making an appeal against such judgment has expired or such appeal has been finally determined; and
- (b) the address of the party entitled to enforce, and the usual or last known address of the party liable to execution on, the judgment or registered document.

(3) Where the Deputy Principal Clerk issues a certificate in Form 62.42–A, he shall attach it to the certified copy judgment.

(4) Where a person seeks to apply under Schedule 7 to the Act of 1982 for enforcement in another part of the United Kingdom of a non-money provision in a document registered for execution in the Books of Council and Session, he shall apply by letter to the Keeper of the Registers for—

- (a) a certificate in Form 62.42–B; and
- (b) an extract of the document.

(5) The Keeper of the Registers shall not issue a certificate under paragraph (4) unless there is produced to him an affidavit referred to in paragraph (2).

(6) Where the Keeper of the Registers issues a certificate in Form 62.42–B, he shall attach it to the extract of the document.

PART VIREGISTRATION UNDER THE MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982

Application and interpretation of this Part

62.43.—(1) This part applies to an application under section 9 of the Merchant Shipping (Liner Conferences) Act 1982⁽¹⁵⁾ (recognition and enforcement of recommendations, etc., of conciliators).

(2) In this Part, “the Liner Conferences Act” means the Merchant Shipping (Liner Conferences) Act 1982.

Applications for registration under the Liner Conferences Act

62.44.—(1) An application under—

- (a) section 9(1)(b) of the Liner Conferences Act (application for registration for enforcement of a recommendation, determination or award), or
- (b) section 9(3) of that Act (application for registration for enforcement of a determination of costs),

shall be made by petition.

(2) A petition under section 9(1)(b) of the Liner Conferences Act shall include averments in relation to—

- (a) the reasons for the petition; and
- (b) where appropriate, the limited extent to which the recommendation is enforceable under section 9(2) of that Act.

(3) There shall be produced with the petition—

- (a) a certified copy of the recommendation, the reasons for the recommendation and the record of settlement;
- (b) a copy of the acceptance of the recommendation by the parties on whom it is binding.

(4) There shall be produced with a petition under section 9(3) of the Liner Conferences Act a certified copy of the determination of costs.

Warrant for registration under the Liner Conferences Act

62.45. The court, on being satisfied that the recommendation, determination or award may be registered, shall pronounce an interlocutor granting warrant for registration of the recommendation, determination or award, as the case may be.

Registration under the Liner Conferences Act

62.46.—(1) Where the court pronounces an interlocutor under rule 62.45 granting warrant for registration—

- (a) the Deputy Principal Clerk shall enter the warrant in the register of recommendations, determinations and awards to be registered under section 9 of the Liner Conferences Act; and
- (b) the petitioner shall serve a copy of the interlocutor containing such warrant on the party against whom the recommendation, determination or award may be enforced.

(15) 1982 c. 37.

- (2) On presentation by the petitioner to the Keeper of the Registers of—
- (a) a certified copy of the interlocutor under rule 62.45 granting warrant for registration,
 - (b) a certified copy of the recommendation, determination or award to be registered and any translation of it, and
 - (c) where necessary, a certificate of currency conversion under rule 62.2(2),
- they shall be registered in the register of judgments of the Books of Council and Session.

(3) On registration under paragraph (2), the Keeper of the Registers shall issue an extract of the registered recommendation, determination or award, as the case may be, with a warrant for execution.

PART VI RECIPROCAL ENFORCEMENT OF ORDERS IN RELATION TO CONFISCATION OF PROCEEDS OF CRIME

Interpretation of this Part

62.47. In this Part—

- “the Act of 1987” means the Criminal Justice (Scotland) Act 1987⁽¹⁶⁾;
- “the Act of 1988” means the Criminal Justice Act 1988⁽¹⁷⁾;
- “the Act of 1989” means the Prevention of Terrorism (Temporary Provisions) Act 1989⁽¹⁸⁾;
- “money order” means an order for the payment of money;
- “non-money order” means an order which is not a money order.

Applications for registration under the Act of 1987, 1988 or 1989

- 62.48.**—(1) An application to which this rule applies shall be made by petition.
- (2) This rule applies to an application under any of the following provisions:—
- (a) section 28(1) of the Act of 1987 (application for registration of an order to which section 27 of the Act applies);
 - (b) section 30A(1) of the Act of 1987⁽¹⁹⁾ (application for registration of an external confiscation order);
 - (c) section 91(1) of the Act of 1988 (application for registration of an order to which section 90 of that Act applies);
 - (d) paragraph 19(2) of Schedule 4 to the Act of 1989 (application for registration of an England and Wales order, Northern Ireland order or Islands order).
- (3) There shall be produced with a petition under paragraph (1) a certified copy of the order which is sought to be registered.

Warrant for registration under the Act of 1987, 1988 or 1989

62.49. The court shall, on being satisfied that the application complies with the requirements of the Act of 1987, the Act of 1988 or the Act of 1989, as the case may be—

- (a) pronounce an interlocutor granting warrant for execution of a non-money order; or
- (b) pronounce an interlocutor granting warrant for the registration of a money order.

⁽¹⁶⁾ 1987 c. 41.

⁽¹⁷⁾ 1988 c. 33.

⁽¹⁸⁾ 1989 c. 4.

⁽¹⁹⁾ Section 30A of the Act of 1987 was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 63.

Registration under the Act of 1987, 1988 or 1989

62.50.—(1) Where the court pronounces an interlocutor under rule 62.49, the Deputy Principal Clerk shall enter the order in the register for the registration of orders under the Act of 1987, the Act of 1988 or the Act of 1989.

(2) On presentation by the petitioner to the Keeper of the Registers of—

- (a) a certified copy of the interlocutor pronounced under rule 62.49(b), and
- (b) a certified copy of the order to be registered,

they shall be registered in the register of judgments of the Books of Council and Session.

(3) On registration under paragraph (2), the Keeper of the Registers shall issue an extract of the registered order with a warrant for execution.

Service of warrant for registration under the Act of 1987, 1988 or 1989

62.51. The petitioner shall serve a copy of the interlocutor, pronounced under rule 62.49 granting warrant for registration, and a notice in Form 62.51 on the person against whom the order may be enforced.

Suspension of enforcement under the Act of 1987, 1988 or 1989

62.52.—(1) Where an order has been registered under rule 62.50, the court may, on the application of the person against whom the order may be enforced, if satisfied that an application has been made to the court which made the order to have it set aside or quashed—

- (a) suspend enforcement of the order; and
- (b) sist any proceedings for enforcement of the order.

(2) Notwithstanding rule 60.2 (form of applications for suspension), an application under paragraph (1) shall be made by note in the process in the petition under rule 62.48(1).

Modification and cancellation of registration

62.53.—(1) An application to modify or cancel the registration of an order registered under rule 62.50 shall be made—

- (a) by the petitioner, by motion; or
- (b) by any other interested party, by note.

(2) There shall be produced with the application under paragraph (1) a certified copy of any order which modifies or revokes the registered order or which causes the order to cease to have effect.

(3) The court shall, on being satisfied—

- (a) that the registered order has been modified, revoked or has ceased to have effect, or
- (b) that the registration of an external confiscation order should be cancelled in terms of section 30A(3) of the Act of 1987,

pronounce an interlocutor so modifying or cancelling the registration, as the case may be, and grant warrant for the registration of a certified copy of the interlocutor in the Books of Council and Session.

(4) Where the court pronounces an interlocutor under paragraph (3), the Deputy Principal Clerk shall modify or cancel the registration in the register kept under rule 62.50(1) in accordance with that interlocutor.

Applications for inhibition or arrestment

62.54. An application under section 11(1) of the Act of 1987 as applied by subsection (6) of that section, section 92(1) of the Act of 1988 or paragraph 16(1) of Schedule 4 to the Act of 1989 for warrant for inhibition or arrestment shall be made—

(a) where the prayer of the petition has previously been granted, by motion in the process of the petition under rule 62.48(1); or

(b) in the prayer of that petition.

PART VIII REGISTRATION OF AWARDS UNDER THE MULTILATERAL INVESTMENT GUARANTEE AGENCY ACT 1988

Registration of awards under the Multilateral Investment Guarantee Agency Act 1988

62.55. Part III shall, with the necessary modifications, apply to an award under Article 4 of Annex II to the convention referred to in section 1(1) of the Multilateral Investment Guarantee Agency Act 1988⁽²⁰⁾ as it applies to an award under the convention mentioned in section 1(1) of the Arbitration (International Investment Disputes) Act 1966⁽²¹⁾.

PART IX RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS UNDER THE MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

Application and interpretation of this Part

62.56.—(1) This Part applies to an application under article 35 of the Model Law in Schedule 7 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽²²⁾ (applications for enforcement of arbitral award).

(2) In this Part—

“the Act of 1990” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;

“arbitral award” means an award to which the Model Law, as applied by section 86 of the Act of 1990, applies;

“the Model Law” means the Model Law on International Commercial Arbitration as set out in Schedule 7 to the Act of 1990.

Applications for registration under the Act of 1990

62.57.—(1) An application for enforcement of an arbitral award under article 35 of the Model Law shall be made by petition.

(2) There shall be produced with such a petition—

(a) the authenticated original arbitral award or a certified copy of it;

(b) the original arbitration agreement referred to in article 7 of the Model Law or a certified copy of it;

(c) an affidavit stating—

(i) the full name, title, trade or business and the usual or last known place of residence or, where appropriate, of the business of the petitioner and the party against whom the arbitral award was made;

(ii) the amount of the arbitral award which is unsatisfied;

⁽²⁰⁾ 1988 c. 8.

⁽²¹⁾ 1966 c. 41.

⁽²²⁾ 1980 c. 40.

- (iii) that the arbitral award has become binding on the parties and has not been set aside or suspended by a court of the country in which, or under the law of which, that award was made; and
- (iv) whether any application has been made under the Model Law which, if granted, might result in the setting aside of the award.

Registration under the Act of 1990

62.58.—(1) The court, on being satisfied that the arbitral award may be registered, shall grant warrant for registration.

(2) Where the court pronounces an interlocutor under paragraph (1), the Deputy Principal Clerk shall enter the arbitral award in a register of arbitral awards under article 35 of the Model Law.

(3) On presentation by the petitioner to the Keeper of the Registers of—

- (a) a certified copy of the interlocutor of the warrant for registration,
- (b) a certified copy of the arbitral award to be registered and any translation of it, and
- (c) any certificate of currency conversion under rule 62.2(2),

they shall be registered in the register of judgments of the Books of Council and Session.

(4) An extract of a registered arbitral award with warrant for execution shall not be issued by the Keeper of the Registers until a certificate of service under rule 62.59 (service on party against whom arbitral award made) is produced to him.

Service on party against whom arbitral award made

62.59. On registration under rule 62.58, the petitioner shall forthwith serve a notice of the registration on the party against whom the arbitral award was made in Form 62.16.

Application for refusal of recognition or enforcement under the Act of 1990

62.60.—(1) An application under article 36(1)(a) of the Model Law (request by party against whom arbitral award made for refusal of recognition or enforcement) shall be made by note.

(2) A note referred to in paragraph (1)—

- (a) may crave—
 - (i) suspension or interdict of any past or future steps in the execution of the arbitral award, including registration or enforcement of the award; and
 - (ii) recall of any interlocutor pronounced under rule 62.58(1) (registration under the Act of 1990); and
- (b) shall be supported by affidavit and any documentary evidence.

(3) Where any interlocutor pronounced under rule 62.58(1) is recalled, a certificate to that effect issued by the Deputy Principal Clerk shall be sufficient warrant to the Keeper of the Registers to cancel the registration and return the documents registered to the petitioner on whose application the interlocutor under the rule was pronounced.

CHAPTER 63

APPLICATIONS RELATING TO TRUSTS

PART IV VARIATION OR REVOCATION OF TRUSTS

Interpretation of this Part

63.1. In this Part, “the Act of 1961” means the Trusts (Scotland) Act 1961⁽²³⁾.

Form of petitions under section 1(4) of the Act of 1961

63.2. In a petition under section 1(4) of the Act of 1961 (petition to vary or revoke purposes of an alimentary trust), it shall not be necessary to aver the amount or details of the income of an alimentary beneficiary from all sources.

Service on certain persons

63.3. In a petition under section 1 of the Act of 1961⁽²⁴⁾ (petition for variation or revocation of trust purposes or extension of trustees' powers), the order under rule 14.5 (first order in petitions)–

- (a) shall include a requirement for the petition to be served–
 - (i) where the trust deed is registered in a register kept by the Keeper of the Registers or the Keeper of the Records, on the relevant Keeper; or
 - (ii) where the trust deed is registered in a sheriff court book, on the sheriff clerk who keeps the relevant sheriff court book; and
- (b) may include a requirement for the petition to be served on a truster or settlor or any other person who has contributed or is liable to contribute to the trust estate which may be affected by the petition.

PART IIPETITIONS BY TRUSTEES FOR DIRECTIONS

Application of this Part

63.4. This Part applies to an application for which provision may be made by virtue of section 6(vi) of the Act of 1988⁽²⁵⁾ (provision to enable trustees under any trust deed to obtain direction of the court).

Form and service of application

63.5.—(1) An application to which rule 63.4 applies shall be made by petition.

(2) The petition shall set out the question on which the direction of the court is sought and may include, in an appendix, any relevant documents.

(3) The court may, in any order made under rule 14.5 (first order in petitions) or in any subsequent order, include a requirement to serve the petition on creditors, beneficiaries or other persons interested in the subject-matter of the petition.

Determination of petition

63.6.—(1) The petition shall be disposed of at a hearing on the Summar Roll.

(2) At the hearing on the Summar Roll, the court may order inquiry by–

- (a) proof,
- (b) remit to a reporter, or
- (c) affidavit,

⁽²³⁾ 1961 c. 57.

⁽²⁴⁾ Section 1 was amended by the Age of Majority (Scotland) Act 1969 (c. 39), Schedule 1 and the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 1, paragraph 27 and Schedule 2.

⁽²⁵⁾ 1988 c. 36.

as it thinks fit.

PART III PUBLIC TRUSTS

Application and interpretation of this Part

63.7.—(1) This Part applies to—

- (a) an application to the *nobile officium* of the court for approval of a cy près scheme in relation to a public trust; or
- (b) an application to the court under—
 - (i) Part VI of the Education (Scotland) Act 1980⁽²⁶⁾ (reorganisation of endowments); or
 - (ii) Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽²⁷⁾ (charities and reorganisation of public trusts).

(2) In this Part, “the Act of 1990” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Proceedings before nominated judge

63.8. Subject to rule 63.9 (referral to Inner House), all proceedings in an application to which this Part applies shall be brought before a judge of the court nominated for that purpose by the Lord President or, where the nominated judge is not available, any other judge of the court (including the vacation judge); and, in this Part, “Lord Ordinary” shall be construed accordingly.

Remit to Inner House

63.9. The Lord Ordinary, if he thinks fit, may at any time remit a petition to which this Part applies to the Inner house to be determined by a Division of the Inner House.

Form of applications

63.10.—(1) Subject to the following paragraphs of this rule, an application to which this Part applies shall be made by petition.

(2) An application for an order in a petition to which this Part applies which is in dependence shall be made by motion.

(3) At the hearing of a motion under paragraph (2), the court may order that the application be made by note; and, in such a case, shall make an order for the lodging of answers to the note in process within such period as the court thinks fit.

(4) Intimation to the court by the Lord Advocate under section 1(6) or 5(13) of the Act of 1990 (interdict until intimation to court) shall be made by motion for recall of the interlocutor.

Service on interested persons

63.11. A petition to which this Part applies shall be served on all persons who may have an interest in the subject-matter of the petition.

Procedure where no answers lodged

63.12.—(1) if, on the expiry of the period of notice, no answers have been lodged, the petitioner may apply by motion for an order granting the prayer of the petition.

⁽²⁶⁾ 1980 c. 44.

⁽²⁷⁾ 1990 c. 40.

- (2) On a motion under paragraph (1), the Lord Ordinary may, before determining that motion—
- (a) remit to a reporter to inquire into, and report on, the petition and any scheme appended to it;
 - (b) order the petitioner to lodge evidence by affidavit or documentary evidence;
 - (c) order a further hearing; or
 - (d) make such other order as he thinks fit.

Procedure where answers lodged

63.13.—(1) Where answers are lodged in a petition, the parties may adjust the petition and answers during the period of 28 days from the date on which answers are lodged or from the expiry of the period of notice, whichever is the later.

(2) Within 14 days after the expiry of the period allowed for adjustment under paragraph (1), the petitioner shall enrol a motion for an order for such further procedure as he shall specify.

(3) On a motion under paragraph (2), the Lord Ordinary shall make such order as he thinks fit for the further procedure of the petition; and, in particular—

- (a) may—
 - (i) remit to a reporter to inquire into, and report on, the petition and any scheme appended to it;
 - (ii) order a party to lodge evidence by affidavit or documentary evidence; and
- (b) then, or thereafter, shall appoint the cause to a hearing.

(4) At a hearing appointed under paragraph (3)(b), the Lord Ordinary shall—

- (a) determine the petition; or
- (b) make such order for further procedure as he thinks fit.

(5) If at any stage answers are withdrawn, the petition shall proceed as if answers had not been lodged.

Warrants for registration

63.14. An interlocutor approving a cy près scheme or a scheme for the variation or reorganisation of a public trust shall contain a warrant for the registration of an official certified copy of the interlocutor, and a copy of the scheme certified by the agent to the petitioner, in the Books of Council and Session or the books of a specified sheriff court.

Advertisement of court orders

63.15. An order made under paragraph (a) or (g) of section 7(4) of the Act of 1990 (interim interdict or interdict of body holding itself out as a charity etc.) shall, unless the court otherwise directs, be advertised forthwith in one or more newspapers as the court shall direct for ensuring that it comes to the notice of persons dealing with a non-recognised body within the meaning of section 2(2) of that Act.

CHAPTER 64**APPLICATIONS UNDER SECTION 1 OF THE
ADMINISTRATION OF JUSTICE (SCOTLAND) ACT 1972****Application of this Chapter**

64.1. This Chapter applies to an application for an order under section 1 of the Administration of Justice (Scotland) Act 1972⁽²⁸⁾ made where a cause is not depending before the court in which the application may be made.

Form of applications under the Act of 1972

64.2. An application to which this Chapter applies shall be made by petition.

Intimation and service

64.3.—(1) Before granting the application, the court may order such intimation and service of the petition to be given or executed, as the case may be, as it thinks fit.

(2) Any person receiving intimation or service of the petition by virtue of an order under paragraph (1) may appear and oppose the application.

Orders for caution or other security

64.4. On granting, in whole or in part, the application, the court may order the petitioner to find such caution or other security as it thinks fit.

CHAPTER 65**REFERENCES TO THE EUROPEAN COURT OF JUSTICE****Interpretation of this Chapter**

65.1.—(1) In this Chapter—

“appeal” includes an application for leave to appeal;

“the European Court” means the Court of Justice of the European Communities;

“reference” means a reference to the European Court for—

- (a) a preliminary ruling under Article 177 of the E.E.C. Treaty, Article 150 of the Euratom Treaty, or Article 41 of the E.C.S.C. Treaty;
- (b) a preliminary ruling on the interpretation of the Conventions, mentioned in Article 1 of Schedule 2 to the Civil Jurisdiction and Judgments Act 1982⁽²⁹⁾, under Article 3 of that Schedule; or
- (c) a preliminary ruling on the interpretation of the instruments, mentioned in Article 1 of Schedule 3 to the Contracts (Applicable Law) Act 1990⁽³⁰⁾, under Article 2 of that Schedule.

(2) The expressions “E.E.C. Treaty”, “Euratom Treaty” and “E.C.S.C. Treaty” have the meanings assigned respectively in Schedule 1 to the European Communities Act 1972⁽³¹⁾.

⁽²⁸⁾ 1972 c. 59; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 19 and Schedule 2, paragraph 15.

⁽²⁹⁾ 1982 c. 27.

⁽³⁰⁾ 1990 c. 36.

⁽³¹⁾ 1972 c. 68.

Applications for reference

65.2. A reference may be made by the court at its own instance or on the motion of a party in Form 65.2.

Preparation of case for reference

65.3.—(1) Where the court decides that a reference shall be made, it shall pronounce an interlocutor giving directions to the parties about the manner and time in which the reference is to be drafted and adjusted.

(2) When the reference has been drafted at the sight of the court, the court shall make and sign the reference.

(3) A certified copy of the interlocutor making the reference shall be annexed to the reference.

Sist of cause

65.4.—(1) Subject to paragraph (2), on a reference being made, the cause shall, unless the court when making such a reference otherwise orders, be sisted until the European Court has given a preliminary ruling on the question referred to it.

(2) The court may recall a sist made under paragraph (1) for the purpose of making an interim order which a due regard to the interests of the parties may require.

Transmission of reference

65.5.—(1) Subject to paragraph (2), a copy of the reference, certified by the Deputy Principal Clerk, shall be transmitted by him to the Registrar of the European Court.

(2) Unless the court otherwise directs, a copy of the reference shall not be sent to the Registrar of the European Court where a reclaiming motion or appeal against the making of the reference is pending.

(3) For the purpose of paragraph (2), a reclaiming motion or an appeal shall be treated as pending—

(a) until the expiry of the time for marking that reclaiming motion or appeal; or

(b) where a reclaiming motion or an appeal has been made, until it has been determined.

CHAPTER 66

APPLICATIONS UNDER THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1975

Interpretation of this Chapter

66.1. In this Chapter—

“the Act of 1975” means the Evidence (Proceedings in Other Jurisdictions) Act 1975(32);

“civil proceedings” has the meaning assigned in section 9(1) of the Act of 1975;

“requesting court” has the meaning assigned in section 9(1) of the Act of 1975.

Disapplication of certain rules to this Chapter

66.2. The following rules shall not apply to an application to which this Chapter applies:—

rule 14.5 (first order in petitions),

(32) [1975 c. 34.](#)

- rule 14.6 (period of notice for lodging answers),
- rule 14.7 (intimation and service of petitions),
- rule 14.9 (unopposed petitions).

Form of applications under the Act of 1975

66.3.—(1) An application under section 1 of the Act of 1975 (application for assistance in obtaining evidence for foreign civil proceedings) shall be made by petition.

(2) There shall be produced with such a petition a certificate—

- (a) certifying that the application is made by virtue of a request issued by or on behalf of a requesting court situated furth of Scotland; or
- (b) certifying that the evidence to be obtained is for the purposes of civil proceedings commenced or contemplated before that court; and
- (c) signed—
 - (i) in the case of a requesting court situated in England, Wales or Northern Ireland, by a duly authorised officer of that court;
 - (ii) in the case of a requesting court situated furth of the United Kingdom, a duly authorised diplomatic or consular representative of the country or territory within which that court is situated.

(3) Where the letter of request is in a language other than English, there shall be produced with the petition a translation into English certified as correct by the translator; and the certificate shall include his full name, address and qualifications.

Intimation of order and citation

66.4.—(1) Where the court pronounces an interlocutor making an order under section 2(1) of the Act of 1975, the petitioner shall—

- (a) intimate a certified copy of that interlocutor to any witness or haver named in the interlocutor; and
- (b) cite such witness or haver to give evidence.

(2) Rule 35.4(3) and (4) (citation of haver to commission) and rule 35.11(5) and (6) (citation of witness to commission) shall, with the necessary modifications, apply to the citation of a haver or witness, as the case may be, under this rule.

Variation or recall of orders

66.5. A witness or haver who has received intimation and citation under rule 66.4 may apply to the court by motion to have the order under section 2(1) of the Act of 1975 varied or recalled.

Procedure where witness claims he is not compellable

66.6.—(1) Where a witness or haver who has received intimation and citation under rule 66.4—

- (a) claims that he is not a compellable witness or haver by virtue of section 3(1)(b) of the Act of 1975, and
- (b) is required to give evidence,

the court or any commissioner appointed by the court shall take the evidence and record it in a document separate from the record of any other evidence; and that document shall be kept by the Deputy Principal Clerk.

(2) Where evidence is taken under paragraph (1) of this rule, the court or the commissioner, as the case may be, shall certify the grounds of the claim made under section 3(1)(b) of the Act of 1975.

(3) On certification under paragraph (2), the deputy Principal Clerk shall send the certificate to the requesting court with a request to it to determine the claim.

(4) On receipt of the determination from the requesting court, the Deputy Principal Clerk shall—

(a) give written intimation of the determination to the witness or haver who made the claim; and

(b) in accordance with the determination, send the document in which the evidence is recorded to, as the case may be—

(i) the requesting court, or

(ii) where the claim is upheld, the witness or haver.

Applications for evidence for proceedings under the European Patent Convention

66.7. Where the court makes an order under section 1 of the Act of 1975 as applied by section 92(1) of the Patents Act 1977(**33**), an officer of the European Patent Office may apply by motion—

(a) to examine any witness; or

(b) to request the court or commissioner, as the case may be, to put specified questions to any witness.

CHAPTER 67

APPLICATIONS UNDER THE ADOPTION (SCOTLAND) ACT 1978

PART I GENERAL PROVISIONS

Application and interpretation of this Chapter

67.1.—(1) This Chapter applies to applications under the Adoption (Scotland) Act 1978(**34**).

(2) In this Chapter, unless the context otherwise requires—

“the Act of 1978” means the Adoption (Scotland) Act 1978;

“freeing for adoption order” means an order made in accordance with section 18(1) of that Act;

“Her Majesty’s Forces” means the Royal Navy, the regular armed forces as defined in section 225 of the Army Act 1955(**35**), the regular air force as defined in section 223 of the Air Force Act 1955(**36**) and the Queen Alexandra’s Royal Naval Nursing Services;

“parental rights” has the meaning assigned in section 8 of the Law Reform (Parent and Child) (Scotland) Act 1986(**37**);

“section 49 order” means an order made in accordance with section 49(1) of the Act of 1978(**38**).

(33) 1977 c. 37.

(34) 1978 c. 28.

(35) 1955 c. 18.

(36) 1955 c. 19.

(37) 1986 c. 9; section 8 was amended by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 1, paragraph 43.

(38) Section 49(1) of the Act of 1978 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 42.

Disapplication of certain rules to this Chapter

67.2. Unless otherwise provided in this Chapter, the following rules shall not apply to a petition or note to which this Chapter applies:–

- rule 14.5 (first order in petitions),
- rule 14.6(1)(d) (period of notice for lodging answers where service by advertisement),
- rule 14.7 (intimation and service of petitions),
- rule 14.8 (procedure where answers lodged),
- rule 14.9 (unopposed petitions).

Confidentiality of documents in process

67.3. Unless the court otherwise directs, in any cause to which this Chapter applies–

- (a) any document lodged in process, including a report by a local authority, an adoption agency, a reporting officer or a curator *ad litem*, shall be treated as confidential and open only to the court, the parties, the reporting officer and the curator *ad litem*; and
- (b) a reporting officer or curator *ad litem* shall treat any information obtained by him in relation to the cause as confidential, and shall not disclose any such information to any person unless it is necessary for the proper execution of his duties.

Selection of reporting officer or curator *ad litem*

67.4. Where the court appoints a reporting officer or a curator *ad litem*, such person shall be selected from a panel established under the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 1984⁽³⁹⁾ unless the court considers that it would be appropriate to appoint a person who is not on the panel.

Form of agreements and consents

67.5.—(1) An agreement by a parent or guardian–

- (a) for the purposes of section 16(1)(b) of the Act of 1978 (agreement to adoption), shall be in form 67.5–A;
- (b) for the purposes of section 16(1)(b), by virtue of section 49⁽⁴⁰⁾ of that Act (adoption of child abroad), shall be in Form 67.5–A; or
- (c) for the purposes of section 18(1)(a) of that Act (agreement to freeing for adoption), shall be in form 67.5–B.

(2) A consent–

- (a) by a child for the purposes of section 12(8) of the Act of 1978⁽⁴¹⁾ (consent to adoption), shall be in Form 67.5–C;
- (b) by a parent or guardian for the purposes of section 18(2)(a) of that Act (consent to application for freeing for adoption), shall be in Form 67.5–D; or
- (c) by a child for the purposes of section 18(8) of that Act⁽⁴²⁾ (consent to freeing for adoption), shall be in Form 67.5–E.

(3) An agreement or consent referred to in this rule which is executed furth of Scotland shall be witnessed–

⁽³⁹⁾ S.I. 1984/566, amended by S.I. 1985/1556.

⁽⁴⁰⁾ Section 49 of the Act of 1978 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 42.

⁽⁴¹⁾ Section 12(8) of the Act of 1978 was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3)(a).

⁽⁴²⁾ Section 18(8) of the Act of 1978 was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3)(b).

- (a) where it is executed in England, Wales or Northern Ireland, by a justice of the peace or commissioner for oaths;
- (b) where it is executed furth of the United Kingdom—
 - (i) in the case of a parent or guardian serving in Her Majesty’s Forces, by an officer holding a commission in those forces; or
 - (ii) by a British consular official or any person authorised, by the law of the country where the agreement or consent is executed, to administer an oath for any legal purpose.

Orders for evidence

67.6.—(1) In a cause to which this Chapter applies, the court may, before determining the cause, order—

- (a) production of further documents (including affidavits); or
- (b) parole evidence.

(2) A party may apply by motion for the evidence of a person to be received in evidence by affidavit; and the court may make such order as it thinks fit.

Expenses

67.7. In a cause to which this Chapter applies, the court may make such order as to expenses, including the expenses of a local authority or an adoption agency which prepared a report, a reporting officer, a curator *ad litem*, or any other person who attended a hearing, as it thinks fit.

PART IIFREEING FOR ADOPTION

Interpretation of this Part

67.8. In this Part, “petition” means the petition referred to in rule 67.9(1).

Applications for freeing for adoption order

67.9.—(1) An application under section 18(1) of the Act of 1978 (freeing child for adoption) shall be made by petition.

(2) The petition shall include averments in relation to, or refer to a report or other documents produced which deal with—

- (a) whether the petition is presented with the consent of a parent or guardian;
- (b) whether the petitioner is applying for dispensation with the agreement of a parent or guardian under section 18(2)(b) of the Act of 1978 (agreement to freeing for adoption) and the ground on which dispensation is sought;
- (c) how the needs of the child came to the notice of the petitioner;
- (d) any relevant family circumstances of the child;
- (e) a description of the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
- (f) the discussion by the petitioner with the parents or guardians of the child and, if appropriate, with the child about their wishes and the alternatives to adoption;
- (g) the knowledge of the petitioner of the position of other relatives or persons likely to be involved;
- (h) the search by the petitioner for any parent or guardian who cannot be found;

- (i) the likelihood of placement of the child for adoption and whether a petition for an adoption order is likely in the near future;
 - (j) the arrangements of the petitioner for the care of the child in the event of the granting of the prayer of the petition;
 - (k) whether the petitioner has given each parent or guardian who can be found an opportunity to make a declaration for the purposes of section 18(6) of the Act of 1978⁽⁴³⁾ (declaration of preference not to be involved in future questions concerning the adoption);
 - (l) the enquiries by the petitioner into the circumstances of any reputed father; and
 - (m) whether the petitioner intends to give notice to a former parent or guardian under section 19(2) and (3) of that Act (progress reports).
- (3) On presentation of the petition, there shall be lodged in process as a production—
- (a) an extract or a certified copy of any entry in the register of births relating to the child; and
 - (b) any consent of a parent or guardian required by section 18(2)(a) of the Act of 1978 (consent to freeing for adoption).

Appointment of reporting officer and curator *ad litem*

- 67.10.**—(1) On presentation of the petition, the court shall pronounce an interlocutor—
- (a) appointing a reporting officer; and
 - (b) appointing a curator *ad litem* where it appears desirable in order to safeguard the interests of the child.
- (2) Where a curator *ad litem* is appointed, the court may order—
- (a) the petitioner,
 - (b) a local authority, or
 - (c) the reporting officer,

to make available to the curator *ad litem* any report or information in relation to the child and the natural father and mother of the child.

(3) A person may, before presenting the petition, apply by letter to the Deputy Principal Clerk for the appointment of a reporting officer.

- (4) An application under paragraph (3) shall—
- (a) set out the reasons for which the appointment is sought;
 - (b) not require to be intimated to any person;
 - (c) be accompanied by an interlocutor sheet; and
 - (d) be placed by the Deputy Principal Clerk before the Lord Ordinary for his decision.

(5) The Deputy Principal Clerk shall give written intimation to the applicant under paragraph (3) of the decision of the Lord Ordinary.

(6) The decision of the Lord Ordinary on an application under paragraph (3) shall be final and not subject to review.

(7) The letter and the interlocutor sheet in an application under paragraph (3) shall be kept in the Petition Department and subsequently placed in the process of the petition.

⁽⁴³⁾ Section 18(6) of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraph 40.

Duties of reporting officer and curator *ad litem*

67.11.—(1) A reporting officer appointed under rule 67.10 shall—

- (a) inquire into the facts and circumstances averred in the petition;
- (b) ascertain the whereabouts of each parent or guardian and, if practicable, meet him;
- (c) witness any execution in Scotland of any agreement in Form 67.5–B by a parent or guardian under section 18(1)(a) of the Act of 1978 (agreement to freeing for adoption) and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved and, where the reporting officer has been appointed before the petition has been presented, any consent in Form 67.5–D by a parent or guardian under section 18(2)(a) of that Act (consent to freeing for adoption);
- (d) where a parent or guardian is furth of Scotland, confirm his views in writing, ensure that any agreement under section 18(1) of the Act of 1978 is witnessed in accordance with rule 67.5(3) and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (e) ensure that each parent or guardian who can be found and who has executed an agreement for the purposes of section 18(1)(a) of the Act of 1978 understands that he may renounce that agreement at any time before a freeing for adoption order is made;
- (f) witness any execution in Scotland of a consent of child in Form 67.5–E under section 18(8) of the Act of 1978 (consent to freeing for adoption) and ensure that he understands the consequences of that consent;
- (g) where a child in respect of whom a consent under section 18(8) of the Act of 1978 is required is furth of Scotland confirm his consent in writing and ensure that the consent is witnessed in accordance with rule 67.5(3);
- (h) consider whether the petitioner has made every reasonable effort to find every person whose agreement is required;
- (i) investigate whether there are any other persons with a relevant interest and whether they should be informed of the petition;
- (j) ascertain whether the petitioner has considered the position of any reputed father;
- (k) where the father of the child does not have parental rights, consider the prospect of any application by him for parental rights and whether such an application would be likely to be refused;
- (l) discuss alternatives to adoption with each parent or guardian who can be found;
- (m) explain the consequences of a freeing for adoption order to each parent or guardian who can be found;
- (n) ensure that each parent or guardian who can be found understands he may be able to apply under section 20 of the Act of 1978⁽⁴⁴⁾ and rule 67.14 for revocation of a freeing for adoption order, and the procedure for making such an application;
- (o) ensure that each parent or guardian who can be found has been given an opportunity to make a declaration under section 18(6) of the Act of 1978 that he prefers not to be involved in future questions concerning the adoption of the child;
- (p) consider why the application is for a freeing for adoption order and not a full adoption order;
- (q) consider whether the account by the petitioner of the likelihood of arranging adoption after a freeing for adoption order is correct;

⁽⁴⁴⁾ Section 20 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 36.

- (r) consider whether any payment or reward prohibited by section 51 of the Act of 1978 (prohibition on certain payments) has been received or agreed upon;
 - (s) ensure that each parent or guardian who can be found is aware of the date (if known) of the hearing to determine the application if he wishes to appear, and confirm that such person whose agreement is required and has not been dispensed with understands that he may withdraw his agreement at any time before the freeing for adoption order is made;
 - (t) draw to the attention of the court any matter which may be of assistance; and
 - (u) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (2) A curator *ad litem* appointed under rule 67.10(1)(b) shall—
- (a) safeguard generally the interests of the child;
 - (b) inquire, so far as he considers necessary, into the facts and circumstances averred in the petition;
 - (c) confirm any consent by a child under section 18(8) of the Act of 1978 (consent to freeing for adoption);
 - (d) inquire into any matters not averred in the petition which appear to him to be relevant to the making of a freeing for adoption order;
 - (e) ascertain the current circumstances and care of the child;
 - (f) where the agreement or consent of a parent or guardian or the consent of a child is sought to be dispensed with, consider whether the ground of dispensation has been made out;
 - (g) consider whether, in his opinion, the child should be present at the hearing to determine the petition;
 - (h) perform such other duties as appear to him to be necessary or as the court may require; and
 - (i) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (3) The reporting officer shall, on completion of his report, send to the Deputy Principal Clerk—
- (a) the report and a copy of it for each party;
 - (b) any agreement for the purposes of section 18(1)(a) of the Act of 1978 (agreement of parent or guardian to freeing for adoption);
 - (c) any declaration for the purposes of section 18(6) of the Act of 1978 (declaration of preference not to be involved in future questions concerning adoption); and
 - (d) any consent under section 18(8) of the Act of 1978 (consent of child to freeing for adoption).
- (4) The curator *ad litem* shall, on completion of his report, send the report, and a copy of it for each party, to the Deputy Principal Clerk.

Declaration of preference not to be involved

67.12.—(1) A declaration under section 18(6) or 19(4) of the Act of 1978 (declaration of preference not to be involved in future questions concerning adoption) shall be in Form 67.12.

(2) A declaration referred to in paragraph (1) which is executed furth of Scotland shall be witnessed in accordance with rule 67.5(3).

(3) The making of a declaration referred to in paragraph (1) shall be recorded in an interlocutor pronounced by the court.

(4) For the purposes of section 19(4)(a) of the Act of 1978, the adoption agency shall—

- (a) lodge the declaration, and
 - (b) apply to the court by motion,
- in the process of the petition to which the declaration relates to have that declaration recorded.

Hearing of freeing for adoption petition

67.13.—(1) On receipt of the reports mentioned in rule 67.11(3) and (4), the Deputy Principal Clerk shall—

- (a) cause the reports and any other documents to be lodged in process;
- (b) give written intimation to each party of the lodging of those documents and make them available to each party; and
- (c) within 7 days thereafter, cause—
 - (i) the petition to be put out on the By Order Roll before the Lord Ordinary; and
 - (ii) written intimation of the date of the hearing on the By Order Roll to be given to each party.

(2) At the hearing on the By Order Roll, the court—

- (a) shall pronounce an interlocutor appointing the petition to a hearing to determine the petition; and
- (b) may, in such interlocutor—
 - (i) order any person whose agreement or consent is required to be given or dispensed with to attend the hearing;
 - (ii) order intimation of the date of the hearing to any person not mentioned in paragraph (3)(a), (b) or (c); and
 - (iii) order the reporting officer or curator *ad litem*, as the case may be, to perform any additional duties to assist the court in determining the petition.

(3) The petitioner shall intimate the date of the hearing ordered under paragraph (2)(a) in Form 67.13 to—

- (a) every person whose whereabouts are known to him and whose agreement or consent is required to be given or dispensed with;
- (b) the reporting officer appointed under rule 67.10(1)(a);
- (c) any curator *ad litem* appointed under rule 67.10(1)(b); and
- (d) any person on whom intimation was ordered under paragraph (2)(b)(ii) of this rule.

(4) At the hearing ordered under paragraph (2)(a)—

- (a) the petitioner, the reporting officer and, where one has been appointed, the curator *ad litem* shall, if required by the court, appear and may be represented;
- (b) any person required by the court to attend the hearing shall appear and may be represented; and
- (c) any other person to whom intimation was made under paragraph (3)(a) or (d) may appear or be represented.

Applications for revocation of freeing for adoption order

67.14.—(1) An application under section 20(1) of the Act of 1978 (application for revocation of freeing for adoption order) shall be made by note.

(2) On presentation of a note under paragraph (1), the court shall pronounce an interlocutor—

Status: This is the original version (as it was originally made).

- (a) ordering service of the note on—
 - (i) the petitioner;
 - (ii) any person who appeared or was represented at the hearing for the freeing for adoption order except a parent or guardian who has made a declaration under section 18(6) or 19(4) of the Act of 1978 (declaration of preference not to be involved in future questions concerning adoption); and
 - (iii) the adoption agency having the parental rights and duties in respect of the child or any substitute agency; and
- (b) where it appears desirable in order to safeguard the interests of the child, appointing a curator *ad litem*.
- (3) A note under paragraph (1) shall not be intimated on the walls of the court or advertised.
- (4) Where a curator *ad litem* is appointed under paragraph (2)(b), the court may order—
 - (a) the adoption agency,
 - (b) a local authority, or
 - (c) the reporting officer appointed in the petition,
 to make available to the curator *ad litem* any report or information in relation to the child and the natural father and mother of the child.
- (5) A curator *ad litem* appointed under paragraph (2)(b) shall—
 - (a) inquire into the facts and circumstances averred in the note;
 - (b) ascertain whether 12 months have elapsed between the making of the freeing for adoption order and the date of presentation of the note;
 - (c) where a previous application under section 20(1) of the Act of 1978 was refused, inquire whether there has been any change of circumstances or other reason for the current application of which the court should be aware in determining the note;
 - (d) inquire into any other matter which appears to him to be relevant for determination of the note;
 - (e) consider whether, in his opinion, the child should be present at the hearing to determine the note;
 - (f) perform such other duties as appear to him to be necessary or as the court may require; and
 - (g) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (6) The curator *ad litem* shall, on completion of his report, send the report, and a copy of it for each party, to the Deputy Principal Clerk.

Hearing of application for revocation of freeing for adoption order

67.15.—(1) Where no curator *ad litem* has been appointed under rule 67.14(2)(b), the noter shall, within 7 days after the expiry of the period of notice for lodging answers, apply by motion for a hearing to determine the note.

- (2) Where a curator *ad litem* has been appointed under rule 67.14(2)(b)—
 - (a) the Deputy Principal Clerk shall—
 - (i) cause the report sent to him under rule 67.14(5) to be lodged in process; and
 - (ii) give written intimation of the lodging of the report to the noter and any person on whom service was executed by virtue of rule 67.14(2)(a) and make that report available to them; and

(b) within 7 days after receipt of the intimation under sub-paragraph (a)(ii), the noter shall apply by motion for a hearing to determine the note.

(3) Where a noter has previously made an application under section 20(1) of the Act of 1978 (application for revocation of freeing for adoption order) which has been refused by any court, he shall, in his motion under paragraph (1) or (2), seek leave under section 20(5) of that Act to allow the note to proceed.

(4) On a date being fixed for a hearing to determine the note, the noter shall intimate the date of the hearing in Form 67.15 to any person to whom intimation was given by virtue of rule 67.14(2).

(5) At the hearing to determine the note, the noter and any person who received intimation under paragraph (4) shall appear and may be represented.

Applications to place child for adoption

67.16. An application under section 20(2) of the Act of 1978 (application by adoption agency for leave to place a child) shall be made by motion.

Applications for transfer of parental rights and duties between adoption agencies

67.17. An application under section 21 of the Act of 1978⁽⁴⁵⁾ (transfer of parental rights and duties between adoption agencies) shall be made by note.

Applications relating to return, removal or prohibition of removal of child

67.18. An application under section 29 of the Act of 1978⁽⁴⁶⁾ (order to return a child to, or not to remove a child from, the care of the applicant)–

- (a) in relation to a breach of section 27(2) of the Act of 1978⁽⁴⁷⁾ (restrictions on removal of child where application for freeing for adoption order pending), an application under section 29 of that Act, or
- (b) an application for leave under section 27(2) of that Act (leave to remove a child where application for freeing for adoption order pending),

shall be made by note.

PART III ADOPTION

Interpretation of this Part

67.19. In this Part, unless the context otherwise requires, “the petition” means the petition referred to in rule 67.22(1).

Protection of identity of petitioner

67.20.—(1) Where a person, who seeks to apply for an adoption order, wishes to prevent his identity being disclosed to any person whose agreement is required under section 16(1)(b) of the Act of 1978 (agreement of parent or guardian to adoption), he may, before presenting a petition, apply by letter to the Deputy Principal Clerk for a serial number to be assigned to him.

(2) On receipt of such a letter, the Deputy Principal Clerk shall assign a serial number to the applicant and shall enter a note of it opposite the name of the applicant in a register of serial numbers.

⁽⁴⁵⁾ Section 21 of the Act of 1978 (c. 28) was substituted by the Children Act 1989 (c. 41), Schedule 10, paragraph 37.

⁽⁴⁶⁾ Section 29 of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983, Schedule 2, paragraphs 43 and 44 and by the Children Act 1989, Schedule 10, paragraph 39.

⁽⁴⁷⁾ Section 27(2) of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraph 43.

- (3) Where a serial number has been assigned under paragraph (2)–
 - (a) the record of the serial number and the person to whom it applies shall be treated as confidential and disclosed only to the court;
 - (b) any agreement under section 16(1)(b) of the Act of 1978 shall not name or design the petitioner but shall refer to him by means of the serial number; and
 - (c) it shall be used to name or design the petitioner for all purposes connected with the petition.

Reports by local authority or adoption agency

67.21.—(1) A report by a local authority under section 22(2), or by an adoption agency under section 23, of the Act of 1978 shall include the following matters:–

- (a) information about how the needs of the child came to the notice of the local authority or the adoption agency;
- (b) the family circumstances of the child;
- (c) where the child was placed for adoption by an adoption agency, a description of the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
- (d) where the child is not subject to a freeing for adoption order, an account of the discussion with the parents or guardians of the child about their wishes and the alternatives to adoption;
- (e) where appropriate, an account of the discussion with the child about his wishes and, if the child is of or over the age of 12 years, his capability to decide to consent to the making of the adoption order;
- (f) the position of other relatives or persons likely to be involved;
- (g) an account of the search for a parent or guardian who cannot be found;
- (h) information about the mutual suitability of the petitioner and the child for the relationship created by adoption and the ability of the petitioner to bring up the child including an assessment of the personality of the petitioner and, where appropriate, that of the child;
- (i) particulars of all members of the household of the petitioner and their relationship to the petitioner;
- (j) a description of the accommodation in the home of the petitioner;
- (k) where a sole petitioner is married, why the other spouse has not joined in the petition;
- (l) whether the petitioner understands the nature and effect of an adoption order and in particular that the order, if made, will make the petitioner responsible for the maintenance and upbringing of the child;
- (m) whether the means and standing of the petitioner are such as to enable him to maintain and bring up the child suitably;
- (n) what right or interest in property the child has;
- (o) whether any payment or reward prohibited by section 51 of the Act of 1978 (prohibition on certain payments), other than an approved adoption allowance, has been received or agreed upon;
- (p) whether the life of the child has been insured and for what sum;
- (q) the religious persuasion, if any, of the petitioner;
- (r) considerations arising from the difference in age between the petitioner and the child if this is more or less than the normal difference in age between parents and children;

- (s) whether adoption is likely to safeguard and promote the welfare of the child throughout its childhood; and
 - (t) any other information which may be of assistance to the court.
- (2) On completion of the report referred to in paragraph (1), the local authority or the adoption agency, as the case may be, shall send the report, and a copy of it for each party, to the Deputy Principal Clerk.
- (3) On receipt of the report referred to in paragraph (2), the Deputy Principal Clerk shall—
- (a) where the petition has been presented, cause the report to be lodged in process; and
 - (b) where the petition has not yet been presented, cause the report to be retained in the Petition Department for lodging in process when the petition is presented.

Applications for adoption order

- 67.22.**—(1) An application for an adoption order shall be made by petition in Form 67.22.
- (2) On presentation of the petition, there shall be lodged in process as productions—
- (a) an extract or a certified copy of any entry in the register of births relating to the birth of the child;
 - (b) an extract or a certified copy of any entry in the register of births relating to the birth of the petitioner;
 - (c) where the petition is by a married couple, an extract or a certified copy of the entry in the register of marriages relating to their marriage;
 - (d) where the child was not placed for adoption with the applicant by an adoption agency, a medical report showing the physical and mental health of the child (including any special needs) and his emotional, behavioural and educational development;
 - (e) a medical certificate of the health of the petitioner except where the petitioner is a parent of the child; and
 - (f) where the child has been freed for adoption, a certified copy of the interlocutor granting the freeing for adoption order in respect of that child.

Notice of petition and appointment of reporting officer and curator *ad litem*

- 67.23.**—(1) On the presentation of the petition, the court shall pronounce an interlocutor—
- (a) requiring the petitioner to serve a notice in Form 67.23—
 - (i) where the child has been placed for adoption, on the adoption agency which placed the child; and
 - (ii) where the child has not been placed for adoption, on the local authority within whose area the petitioner has his home;
 - (b) appointing a reporting officer unless the child is free for adoption and under the age of 12 years; and
 - (c) appointing a curator *ad litem* where it appears desirable in order to safeguard the interests of the child.
- (2) Where a curator *ad litem* is appointed under paragraph (1), the court may order—
- (a) the adoption agency,
 - (b) the local authority, or
 - (c) the reporting officer,

to make available to the curator *ad litem* any report or information in relation to the child and the natural father and mother of the child.

(3) A person may, before presenting the petition, apply by letter to the Deputy Principal Clerk for the appointment of a reporting officer.

(4) An application under paragraph (3) shall—

- (a) set out the reasons for which the appointment is sought;
- (b) not require to be intimated to any person;
- (c) be accompanied by an interlocutor sheet; and
- (d) be placed by the Deputy Principal Clerk before the Lord Ordinary for his decision.

(5) The Deputy Principal Clerk shall give written intimation to the applicant under paragraph (3) of the decision of the Lord Ordinary.

(6) The decision of the Lord Ordinary on an application under paragraph (3) shall be final and not subject to review.

(7) The letter and the interlocutor sheet in an application under paragraph (3) shall be kept in the Petition Department and subsequently placed in the process of the petition.

Duties of reporting officer and curator *ad litem*

67.24.—(1) A reporting officer appointed under rule 67.23(1)(b) shall, where appropriate—

- (a) inquire into the facts and circumstances averred in the petition and the report of the local authority or adoption agency;
- (b) where the child is not free for adoption, ascertain the whereabouts of each parent or guardian and, if practicable, meet him;
- (c) witness any execution in Scotland of any agreement in Form 67.5–A by a parent or guardian under section 16(1)(b) of the Act of 1978 (agreement to adoption), and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (d) where a parent or guardian is furth of Scotland, confirm his views in writing, ensure that any agreement under section 16(1)(b) of the Act of 1978 is witnessed in accordance with rule 67.5(3) and investigate whether the agreement is given freely, unconditionally and with full understanding of what is involved;
- (e) witness any consent of a child in Form 67.5–C under section 12(8) of the Act of 1978⁽⁴⁸⁾
- (f) ensure that each parent or guardian whose agreement is required understands that in agreeing to the adoption he is giving up all future claims to the child and that all parental rights and duties will vest in the adopter;
- (g) where the child is not free for adoption, consider whether the local authority or adoption agency has made every reasonable effort to find every person whose agreement is required;
- (h) investigate whether there are any other persons with a relevant interest and whether they should be informed of the petition;
- (i) ascertain from any parent or guardian who can be found whether alternatives to adoption have been discussed with him;
- (j) ensure that each parent or guardian whose agreement is required or may be dispensed with is aware of the date (if known) of the hearing to determine the application if he wishes to appear, and confirm that such person whose agreement is required and has not been

⁽⁴⁸⁾ Section 12(8) of the Act of 1978 (c. 28) was substituted by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 2(3) (a).

dispensed with understands that he may withdraw his agreement at any time before the adoption order is made;

- (k) draw to the attention of the court any matter which may be of assistance; and
- (l) prepare a report in relation to the exercise of his duties within such period as the court may specify.

(2) A curator *ad litem* appointed under rule 67.23(1)(c) shall—

- (a) safeguard generally the interests of the child;
- (b) inquire, so far as he considers necessary, into the facts and circumstances averred in the petition;
- (c) ascertain particulars of the condition of, and accommodation in, the home of the petitioner;
- (d) ascertain particulars of all members of the household of the petitioner and their relationship to the petitioner;
- (e) where a sole petitioner is married, ascertain why the other spouse has not joined in the petition;
- (f) ascertain whether the means and status of the petitioner are sufficient to enable him to maintain and bring up the child suitably;
- (g) ascertain any rights or interests in property of the child;
- (h) ascertain whether a payment or reward prohibited by section 51 of the Act of 1978 (prohibition on certain payments) has been received or agreed upon;
- (i) establish that the petitioner understands that the nature and effect of an adoption order is to transfer the parental rights and duties in relation to the child to the petitioner and make him responsible for the maintenance and upbringing of the child;
- (j) where applicable, ascertain when the mother of the child ceased to have the care and possession of the child and to whom care and possession were transferred;
- (k) ascertain whether the proposed adoption is likely to safeguard and promote the welfare of the child throughout his childhood;
- (l) ascertain whether the life of the child has been insured and for what sum;
- (m) ascertain whether it may be in the interests of the child that the court should pronounce an interlocutor making an order under section 25 of the Act of 1978 (interim orders), or make an adoption order subject to particular conditions including the making of special provision for the child, or whether an order for custody should be made;
- (n) where the petitioner is not ordinarily resident in the United Kingdom, ascertain whether a report has been obtained on the house and living conditions of the petitioner from a reliable agency in the country of his ordinary residence;
- (o) ascertain the reasons why the petitioner wishes to adopt the child;
- (p) ascertain the religious persuasion, if any, of the petitioner;
- (q) where the difference in age between the petitioner and the child is greater or less than the normal difference between parent and child, assess the implications of that difference in relation to the petition;
- (r) consider any other matter, including the personality of the petitioner and where appropriate, that of the child which might affect the suitability of the petitioner to be a parent bringing up the child;
- (s) ascertain, so far as practicable, the wishes and feelings of the child regarding the proposed adoption;

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- (t) ascertain, where the father of the child does not have parental rights, the likelihood of the father gaining any such parental rights, whether by marriage or as the result of any order by any court;
 - (u) where the agreement of a parent or guardian or the consent of a child is sought to be dispensed with, consider whether the ground of dispensation has been made out;
 - (v) consider whether, in his opinion, the child should be present at the hearing to determine the petition;
 - (w) perform such other duties as appear to him to be necessary or as the court may require; and
 - (x) prepare a report in relation to the exercise of his duties within such period as the court may specify.
- (3) The reporting officer shall, on completion of his report, send to the Deputy Principal Clerk—
- (a) the report and a copy of it for each party;
 - (b) any agreement for the purposes of section 16(1)(b) of the Act of 1978 (agreement of parent or guardian to adoption); and
 - (c) any consent under section 12(8) of the Act of 1978 (consent of child to adoption).
- (4) The curator *ad litem* shall, on completion of his report, send the report, and a copy of it for each party, to the Deputy Principal Clerk.

Hearing of adoption petition

67.25.—(1) On receipt of the reports referred to in rules 67.21 and 67.24, the Deputy Principal Clerk shall—

- (a) cause the reports and any other documents to be lodged in process;
 - (b) give written intimation to each party of the lodging of those documents and make them available to each party; and
 - (c) within 7 days thereafter, cause—
 - (i) the petition to be put out on the By Order Roll before the Lord Ordinary; and
 - (ii) written intimation of the date of the hearing on the By Order Roll to be given to each party.
- (2) At the hearing on the By Order Roll, the court—
- (a) shall pronounce an interlocutor appointing the petition to a hearing to determine the petition; and
 - (b) may, in such interlocutor—
 - (i) order any person whose agreement or consent is required to be given or dispensed with to attend the hearing;
 - (ii) order intimation of the date of the hearing to any person not mentioned in paragraph (3)(a), (b), (c) or (d); and
 - (iii) order the reporting officer or curator *ad litem* to perform additional duties to assist the court in determining the petition.
- (3) The petitioner shall intimate the date of the hearing ordered under paragraph (2)(a) in Form 67.25 to—
- (a) every person whose whereabouts are known to him and whose agreement or consent is required to be given or dispensed with;
 - (b) the reporting officer appointed under rule 67.23(1)(b);
 - (c) any curator *ad litem* appointed under rule 67.23(1)(c);

- (d) the local authority or adoption agency referred to in rule 67.21; and
 - (e) any person on whom intimation has been ordered under paragraph (2)(b)(ii).
- (4) At the hearing ordered under paragraph (2)(a)–
- (a) the petitioner, the adoption agency, the reporting officer and, where one has been appointed, the curator *ad litem* shall, if required by the court, appear and may be represented;
 - (b) any person required by the court to attend the hearing shall appear and may be represented;
 - (c) any other person to whom intimation was made under paragraph (3)(a) or (e) may appear or be represented.

Supervision by or committal to care of local authority

67.26.—(1) Where, in relation to a child under the age of 16 years, the court refuses to make an adoption order and considers–

- (a) that the child should be placed under the supervision of a specified local authority, or
- (b) that the child should be committed to the care of a specified local authority,

the court shall order intimation of the terms of the proposed order to be made to the local authority and give the local authority an opportunity to make representations.

(2) Any representations of the local authority shall be made by minute.

(3) On the expiry of the period allowed for answers to a minute under paragraph (2), the cause shall be put out on the By Order Roll before the Lord Ordinary for a hearing to determine the matter.

Applications under section 49(1) of the Act of 1978

67.27.—(1) An application under section 49(1) of the Act of 1978⁽⁴⁹⁾ (application to adopt a child abroad) shall be made by petition.

(2) The provisions of this Part shall, with the necessary modifications, apply to an application under section 49(1) of the Act of 1978 as they apply to an application for an adoption order.

(3) Evidence that the child in respect of whom the application is made may be adopted under the law of or in the country in which the petitioner is domiciled may be given by a signed statement by a person qualified in the law of that country.

Applications for return, removal or prohibition of removal of child

67.28.—(1) An application under section 29 of the Act of 1978⁽⁵⁰⁾ (order to return a child to, or not to remove a child from, the care of the applicant) shall be made–

- (a) in relation to a breach of section 27(1) or 28(1) of that Act⁽⁵¹⁾ (restrictions on removal of child where application for adoption order pending), by note in the process of the petition for an adoption order or a section 49 order to which it relates; or
- (b) in relation to a breach of section 28(3) (restriction on removal where child was or is in care of the local authority) of that Act, by petition.

(2) An application for leave–

- (a) under section 27(1) or 28 of the Act of 1978 (leave to remove a child) shall be made by note in the process of the petition for an adoption order or a section 49 order to which it relates;

⁽⁴⁹⁾ Section 49(1) of the Act of 1978 was amended by the Children Act 1989 (c. 41), Schedule 10, paragraph 42.

⁽⁵⁰⁾ Section 29 of the Act of 1978 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2, paragraphs 43 and 44 and by the Children Act 1989 (c. 41), Schedule 10, paragraph 39.

⁽⁵¹⁾ Sections 27(1) and 28(1) of the Act of 1978 were amended by the said Act of 1983, Schedule 2, paragraph 43.

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- (b) under section 30(2) of that Act (leave to adoption agency to give notice of intention to remove child) shall be made by note in the process of the petition for an adoption order or the application for a section 49 order to which it relates.
- (3) Subject to paragraph (4), rule 67.2 (disapplication of certain rules to this Chapter) shall not apply to an application mentioned in paragraph (1) or (2) of this rule.
- (4) An application mentioned in paragraph (1) or (2) shall not be intimated on the walls of the court or advertised.

Applications to amend or revoke a direction in, or revoke, an adoption order

- 67.29.**—(1) An application—
- (a) under paragraph 4(1) of Schedule 1 to the Act of 1978 (amendment, or revocation of a direction in, an adoption order), or
 - (b) under section 46 of that Act⁽⁵²⁾ (revocation of an adoption order on legitimation),
- shall be made by petition.
- (2) Subject to paragraph (3), rule 67.2 (disapplication of certain rules to this Chapter) shall not apply to an application mentioned in paragraph (1) of this rule.
- (3) An application mentioned in paragraph (1) shall not be intimated on the walls of the court or advertised.

Registration of certified copy interlocutor

- 67.30.** On the court pronouncing an interlocutor making—
- (a) an adoption order,
 - (b) an amendment to, or a revocation of a direction in, an adoption order,
 - (c) a revocation of an adoption order,
 - (d) a section 49 order, or
 - (e) a Convention adoption order,
- the clerk of court shall forthwith send a certified copy of that interlocutor to the Registrar General for Scotland in a sealed envelope marked “confidential”.

Extract of order

- 67.31.** An extract of an adoption order or a section 49 order shall not be issued except by order of the court on an application to it—
- (a) where there is a petition for the adoption order or the section 49 order, as the case may be, depending before the court, by motion; or
 - (b) where there is no such petition depending before the court, by petition.

Procedure after intimation to Registrar General or issue of extract

- 67.32.**—(1) After a certified copy of an interlocutor mentioned in rule 67.29 has been sent to the Registrar General for Scotland, the clerk of court or the Extractor, as the case may be, shall—
- (a) place the whole process in an envelope bearing only—
 - (i) the name of the petitioner;

⁽⁵²⁾ Section 46(1) of the Act of 1978 was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9), Schedule 1, paragraph 18(3).

- (ii) the full name of the child to whom the process relates; and
 - (iii) the date of the order; and
 - (b) seal the envelope and mark it “confidential”.
- (2) No person shall open a process referred to in paragraph (1) or inspect its contents within 100 years after the date of the adoption order or the section 49 order, as the case may be, except—
- (a) the person adopted under the order after he has reached the age of 17 years;
 - (b) any other person or body entitled under section 45(5) of the Act of 1978 to access to the registers and books kept under section 45(4) of that Act, with the written authority of the adopted person;
 - (c) the Deputy Principal Clerk or Extractor, as the case may be, on the written application to him by an adoption agency with the written agreement of the adopted person for the purpose of ascertaining the name of the adoption agency responsible for the placement of that person for adoption;
 - (d) by order of the court on an application made by petition presented by another court or authority (whether within the United Kingdom or not) having the power to authorise an adoption for the purpose of obtaining information in connection with an application to it for adoption;
 - (e) by order of the court on an application made by petition presented by any person; and
 - (f) a person who is authorised in writing by the Secretary of State to obtain information from the process for the purpose of research designed to improve the working of adoption law and practice.

PART IV CONVENTION ADOPTION ORDERS

Interpretation of this Part

67.33.—(1) In this Part—

“Convention country” has the meaning assigned in section 65(1) of the Act of 1978;

“the petition” means the petition referred to in rule 67.35 or 67.41, as the case may be.

(2) Any reference in this Part to the nationality of a person who is not solely a United Kingdom national means the nationality of that person as determined in accordance with section 63 of the Act of 1978.

Application of Part III to this Part

67.34. Part III (adoption), except the following rules, shall apply to the petition:—

rule 67.19 (interpretation of Part III),

rule 67.20 (protection of identity of petitioner),

rule 67.27 (applications under section 49(1) of the Act of 1978),

rule 67.29 (applications to amend or revoke a direction in, or revoke, an adoption order).

Applications for Convention adoption order

67.35.—(1) An application for a Convention adoption order shall be made by petition in Form 67.22.

(2) The petition shall include averments in relation to—

(a) the nationality of the petitioner;

(b) the nationality of the child;

- (c) the place and the country where the petitioner habitually resides;
 - (d) the place and the country where the child habitually resides;
 - (e) whether the child is, or has been, married;
 - (f) where the petitioner is a national of a Convention country, or where both petitioners are nationals of the same Convention country, whether there is a specified provision within the meaning of section 17(8) of the Act of 1978 in respect of that country which prohibits the adoption; and
 - (g) where the child is not a United Kingdom national, any provision relating to consents and consultations, of the internal law with respect to adoption of the Convention country of which the child is a national.
- (3) The prayer of the petition shall include a crave that the court direct the Registrar General for Scotland—
- (a) to insert the words “Convention Order” in the entry to be made by him in the Adopted Children Register regarding the adoption;
 - (b) to intimate the terms of the order to the appropriate authorities referred to in rule 67.39(2) or (3) or 67.41(5)(b) (designated authorities of Convention country), as the case may be.

Investigations by curator *ad litem*

67.36.—(1) The curator *ad litem* appointed under rule 67.23(1)(b) by virtue of rule 67.34 (application of Part III to this Part) shall also investigate the averments referred to in rule 67.35(2) and shall include the results of his investigations in his report.

(2) Where in the course of his investigations, the curator *ad litem* requires a report from any authority outside Great Britain, he shall request the local authority to request that other authority to provide that report.

Evidence of nationality

67.37. There shall be lodged in process as productions—

- (a) any document relied on as evidence of the nationality of the petitioner or that of the child; and
- (b) where the nationality of the petitioner or that of the child is of a Convention country, a signed statement by a person qualified in the law of that country confirming such nationality under that law.

Petition in respect of a non-U.K. child

67.38.—(1) This rule applies to a petition where the child is not a United Kingdom national.

(2) On presentation of the petition, there shall be lodged in process as a production a signed statement by a person qualified in the law of the Convention country of which the child is a national setting out the consent or consultation required by the internal law of that country with respect to adoption.

(3) A consent referred to in section 17(7) of the Act of 1978 shall be in a form which complies with any requirement of the internal law with respect to adoption of the Convention country of which the child is a national, but where the court is not satisfied that such consent has been made with full understanding of what is involved, it may call for further evidence.

(4) A document mentioned in paragraph (2) or (3) may be received in evidence without being spoken to.

(5) Where a consent or consultation referred to in paragraph (2) or (3) could properly be dispensed with under the internal law of the country concerned, the court may dispense with that consent or consultation in accordance with the provisions of that law.

(6) Where the court pronounces an interlocutor appointing the petition to a hearing under rule 67.25(2)(a) by virtue of rule 67.34 (application of Part III to this Part), the requirements of rule 67.25(3) (intimation of date of hearing to certain persons) shall include a requirement to intimate the date of the hearing in Form 67.25 to—

- (a) any person whose consent is referred to in section 17(7) of the Act of 1978 but who has not given such consent;
- (b) any person who, in accordance with the internal law with respect to adoption of the Convention country of which the child is a national, has to be consulted, but does not have to consent to, the adoption.

(7) For the purposes of section 17(7)(a) of the Act of 1978, the proper officer of the court shall be the Deputy Principal Clerk.

Additional notice to Registrar General

67.39.—(1) The Deputy Principal Clerk shall send to the Registrar General for Scotland—

- (a) with any Convention adoption order, a notice specifying the authorities mentioned in paragraph (2) and requesting him to inform them of the terms of the order;
- (b) with any order made under section 46(2) of the Act of 1978 revoking a Convention adoption order, a notice specifying the authorities mentioned in paragraph (3) of this rule and requesting him to inform them of the terms of the order under that section.

(2) The authorities referred to in paragraph (1)(a) are the designated authorities of any Convention country—

- (a) of which the child is a national;
- (b) in which the child was born;
- (c) in which a petitioner habitually resides; or
- (d) of which a petitioner is a national.

(3) The authorities referred to in paragraph (1)(b) are the designated authorities of any Convention country—

- (a) of which the adopted person is a national; or
- (b) in which the adopted person was born.

Interim orders

67.40. Where the petitioner is a national, or both petitioners are nationals, of a Convention country, the court shall take account of any specified provision (as defined in section 17(8) of the Act of 1978⁽⁵³⁾) of the internal law of that country before making any order under section 25 of that Act (interim orders).

Revocation or annulment of regulated adoptions

67.41.—(1) This rule applies to an application for an order under section 46(2) (revocation of regulated adoption), or section 47 (annulment etc. of regulated adoption, Convention adoption order or overseas adoption), of the Act of 1978.

(53) 1978 c. 28.

(2) An application mentioned in paragraph (1) shall be made by petition.

(3) An application under section 47(1) of the Act of 1978 (annulment) shall not, except with the leave of the court, be made later than two years after the date of the regulated adoption, to which it relates.

(4) Where the adopted person is under the age of 18 years on the date of the presentation of a petition under this rule, the court shall appoint a curator *ad litem* with the duties mentioned in rule 67.24(2).

(5) On the court pronouncing an interlocutor making an order referred to in paragraph (1), the Deputy Principal Clerk shall—

- (a) send a notice of the order to the Registrar General for Scotland specifying—
 - (i) the date of the adoption;
 - (ii) the name and address of the authority which granted the adoption;
 - (iii) the names of the adopter or adopters and of the adopted person as given in that petition;
 - (iv) the country in which the adoption was granted;
 - (v) the country of which the adopted person is a national; and
 - (vi) the country in which the adopted person was born; and
- (b) where any such country is a Convention country, request the Registrar General for Scotland to inform the designated authorities of that country of the terms of the order.

CHAPTER 68

APPLICATIONS UNDER THE SOLICITORS (SCOTLAND) ACT 1980

Application and interpretation of this Chapter

68.1.—(1) This Chapter applies to an application or appeal under the Solicitors (Scotland) Act 1980⁽⁵⁴⁾.

(2) In this Chapter—

- “the Act of 1980” means the Solicitors (Scotland) Act 1980;
- “the Council” means the Council of the Law Society of Scotland;
- “the Discipline Tribunal” means the tribunal constituted under section 50 of the Act of 1980.

Applications and appeals under the Act of 1980

68.2.—(1) An application or appeal under the Act of 1980 shall be made by petition.

(2) An appeal under any of the following provisions of the Act of 1980 shall specify the date on which the decision appealed against was intimated to the petitioner:—

- (a) section 16(2) (appeal in respect of issue of practising certificate);
- (b) section 39A(8)⁽⁵⁵⁾ (appeal against withdrawal of practising certificate);
- (c) section 40(3)⁽⁵⁶⁾ (appeal against decision to withdraw practising certificate or to refuse to terminate suspension);

⁽⁵⁴⁾ 1980 c. 46.

⁽⁵⁵⁾ Section 39A of the Act of 1980 was inserted by the Solicitors (Scotland) Act 1988 (c. 42), section 4.

⁽⁵⁶⁾ Section 40(3) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 1, paragraph 18.

- (d) section 54(1)(57) (appeal against decision of tribunal relating to discipline); and
- (e) paragraph 3 of Schedule 2 (appeal in respect of restoration to roll of solicitors).

(3) An application under paragraph 5(4) of Schedule 3 to the Act of 1980 (application for order for return of documents) shall specify the date on which the notice was served on the petitioner.

(4) An application under section 54(2) of the Act of 1980 (application to vary or quash direction of the tribunal) shall specify the date on which the decision containing the direction or order was intimated to the petitioner.

Applications for admission as notary public

68.3.—(1) An application under section 57(2) of the Act of 1980(58) (application for admission as notary public) shall be made by either the Council on behalf of named persons seeking appointment as notaries public or the person seeking appointment as a notary public.

(2) The Council shall—

- (a) nominate authorised representatives to administer the oath of the office of notary public;
- (b) issue all commissions as notary public;
- (c) keep the register of notaries public; and
- (d) on request by a notary public, and on payment of such reasonable fee as the Council may impose, supply him with a duly certified and docquetted protocol book of ninety one folios.

Intimation and service in causes under this Chapter

68.4.—(1) A petition to which this Chapter applies shall be brought before a Division of the Inner House in chambers, and the Division may, without hearing parties and subject to the following paragraphs, make such order for intimation and service as it thinks fit.

(2) In a cause under any of the following provisions of the Act of 1980, the court shall order service of the petition on the Council:—

- (a) section 16(1)(59) (application following refusal of practising certificate to body corporate);
- (b) section 19(8) (appeal in respect of decision of Council in relation to suspension);
- (c) section 39A(8) (appeal against withdrawal of practising certificate);
- (d) section 40(3) (appeal against decision to withdraw practising certificate or to refuse to terminate suspension); and
- (e) paragraph 5(4) of Schedule 3 (application for order for return of documents).

(3) In an appeal under section 54(1) (appeal against decision of tribunal relating to discipline), or in an application under section 54(2)(60) (application to vary or quash direction of the tribunal), of the Act of 1980, the court shall—

- (a) order service on the Discipline Tribunal and the Law Society of Scotland; and
- (b) ordain the Discipline Tribunal to lodge in process within the period for lodging answers—

(57) Section 54(1) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 29.

(58) Section 57(2) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 37.

(59) Section 16(1) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 1.

(60) Section 54(2) of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 29.

- (i) the decision of the Discipline Tribunal in respect of which the appeal or application is made; and
- (ii) if available, the notes of evidence adduced before the Discipline Tribunal.

(4) In an application under any of the following provisions of the Act of 1980, the court shall order service of the petition on the respondent:—

- (a) section 41(61) (application for appointment of judicial factor);
- (b) paragraph 5(1) of Schedule 3 (application for order to produce documents); and
- (c) paragraph 12 of Schedule 4 (petition to cite witnesses for recovery of evidence).

(5) In an application under section 55(3) of the Act of 1980 (application for restoration to roll of solicitors), the court shall order service on the Discipline Tribunal and the Council.

Procedure after order for intimation and service

68.5. The court shall, after an order for intimation and service under rule 68.4, proceed on the petition summarily in such manner as it thinks fit.

Appeals under section 54(1) of the Act of 1980

68.6. In an appeal under section 54(1) of the Act of 1980 (appeal against decision of tribunal relating to discipline)—

- (a) the court may substitute any other punishment for that imposed by the decision appealed against, or make any order in relation to it which it thinks fit;
- (b) where the petitioner is a person or one of the persons who complained of the alleged professional misconduct of the solicitor, the court may order that person to give security for expenses (including the cost of extending the notes of evidence adduced before the Discipline Tribunal) as a condition of proceeding with the petition.

Remits for further inquiry

68.7.—(1) In an application or appeal under the Act of 1980, the court may remit to any person to make further inquiry into the facts, or to take further evidence and to report to the Court.

(2) On completion of a report made under paragraph (1), the person to whom the remit was made shall send his report and three copies of it, and a copy of it for each party, to the Deputy Principal Clerk.

(3) On receipt of such a report, the Deputy Principal Clerk shall—

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that he may uplift a copy of the report from process.

(4) After the lodging of such a report, any party may apply by motion for an order in respect of the report or for further procedure.

(61) Section 41 of the Act of 1980 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Schedule 1, paragraph 19 and by the Solicitors (Scotland) Act 1988 (c. 42), Schedule 1, paragraph 13 and Schedule 2.

CHAPTER 69

ELECTION PETITIONS

Interpretation of this Chapter

69.1. In this Chapter—

- “the Act of 1983” means the Representation of the People Act 1983⁽⁶²⁾;
- “election court” has the meaning assigned in section 123 of the Act of 1983;
- “election petition” means a petition presented under Part III of the Act of 1983.

Form of election petitions

69.2.—(1) An election petition shall be in Form 69.2.

(2) Such a petition shall—

- (a) specify the name, designation and address of—
 - (i) each petitioner, and
 - (ii) each person referred to as, or deemed to be, the respondent by virtue of section 121(2) of the Act of 1983; and
- (b) set out in numbered paragraphs—
 - (i) the title of the petitioner under section 121(1) of the Act of 1983 to present the petition;
 - (ii) the proceedings at, and the result of, the election; and
 - (iii) the facts relied on in support of the prayer of the petition.

Presentation of petition

69.3. The election petition shall be lodged in the Petition Department with—

- (a) a process;
- (b) six copies of the petition; and
- (c) a letter signed by or on behalf of the petitioner—
 - (i) giving the name and address of a solicitor whom he authorises to act on his behalf or stating that he acts for himself, as the case may be; and
 - (ii) specifying an address within Scotland at which notices addressed to him may be delivered.

Security for expenses

69.4.—(1) On presentation of an election petition, the petitioner shall apply by motion for—

- (a) an order for intimation and service of the petition within such period as the court thinks fit after the giving of security,
- (b) for an order for the respondent to lodge any objections in writing under section 136(4) of the Act of 1983⁽⁶³⁾ (objections to form of security) within such period as the court thinks fit, and

⁽⁶²⁾ 1983 c. 2.

⁽⁶³⁾ Section 136(4) of the Act of 1983 was amended by the Representation of the People Act 1985 (c. 50), Schedule 4, paragraph 48(e).

(c) the fixing of the amount of security for expenses;
and the petition shall be placed forthwith before the Lord Ordinary or the vacation judge, in court or in chambers, who shall fix the security to be given.

(2) A motion under paragraph (1) shall not be intimated to any person.

(3) Where the security to be given by the petitioner under section 136 of the Act of 1983 is given in whole or in part by bond of caution, the bond shall be in Form 69.4.

Service and intimation of election petition

69.5.—(1) On serving the election petition on the respondent under subsection (3) of section 136 of the Act of 1983, the petitioner shall intimate a copy of each of the documents mentioned in that subsection to the Lord Advocate.

(2) The notice of presentation of the petition mentioned in section 136(3) of the Act of 1983⁽⁶⁴⁾ shall be in Form 69.5.

(3) Within 5 days after serving the petition under section 136 of the Act of 1983, the petitioner shall lodge in process an execution copy of the election petition containing the certificate of service and a copy of the notice mentioned in that subsection which was served on the respondent.

Objections to form of security

69.6.—(1) Where the respondent makes an objection under section 136(4) of the Act of 1983 (objection to form of security), he shall—

- (a) set out in writing the grounds of the objection;
- (b) lodge the objection in process; and
- (c) intimate a copy of the objection to the petitioner.

(2) As soon as possible after the lodging of an objection under paragraph (1), the Keeper of the Rolls shall—

- (a) fix a diet for a hearing on the objections before one of the judges on the rota for the trial of election petitions or the vacation judge; and
- (b) give written intimation of the time and place of the diet to the parties.

(3) The period within which the petitioner may, under section 136(7) of the Act of 1983⁽⁶⁵⁾, remove the objection shall be such period from the date of the decision on the objection as the court thinks fit.

Consequences of failure to give security etc.

69.7. If no security is given, or an objection to a security is allowed and not removed, the respondent may apply by motion to have the prayer of the petition refused.

List of election petitions

69.8.—(1) In preparing the list of election petitions in terms of section 138(1) of the Act of 1983, the Deputy Principal Clerk shall insert the names of the solicitors, if any, acting for the petitioner and respondent, and the addresses, if any, to which any notices may be sent.

(2) The list of election petitions may be inspected in the Petition Department at any time during its normal office hours.

⁽⁶⁴⁾ Section 136(3) of the Act of 1983 was substituted by the Representation of the People Act 1985, Schedule 4, paragraph 48(d).

⁽⁶⁵⁾ Section 136(7) of the Act of 1983 was amended by the Representation of the People Act 1985, Schedule 4, paragraph 48(e).

Time and place of trial

69.9.—(1) The time and place of the trial of an election petition shall be fixed by the Keeper of the Rolls, who shall give written intimation of the date of the trial by post to—

- (a) the parties;
- (b) the Lord Advocate;
- (c) the returning officer for the relevant constituency; and
- (d) the House of Commons shorthand writer.

(2) On receipt of intimation given under paragraph (1), the returning officer shall forthwith publish the date of the diet of trial in the constituency to which it relates.

Postponement of trial

69.10.—(1) The election court or any of the judges on the rota for the trial of election petitions, may, at its or his own instance or on the motion of a party, postpone the trial of a petition to such day as may be specified.

(2) Written intimation of such postponement shall be given by the Keeper of the Rolls to the returning officer who shall forthwith publish the postponement and its new date in the constituency.

Procedure where seat claimed

69.11.—(1) Where a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of, and the party defending, the return, not less than 6 days before the date of the trial, shall each—

- (a) lodge in process a list of the voters intended to be objected to, and of the objections to each voter; and
- (b) intimate a copy of that list to—
 - (i) every other party; and
 - (ii) the Lord Advocate.

(2) No evidence shall be allowed to be given against any vote or in support of any objection which is not specified in the list, except by leave of the election court or, on a motion heard before the date of the trial, of any of the judges on the rota for the trial of election petitions, on such terms as to amendment of the list, postponement of the trial and payment of expenses as may be ordered.

Evidence under section 139(5) of the Act of 1983

69.12.—(1) Where the respondent intends to give evidence permitted under section 139(5) of the Act of 1983 (evidence to prove person not duly elected), he shall, not less than 6 days before the date of the trial—

- (a) lodge in process a list of the objections to the election on which he intends to rely; and
- (b) intimate a copy of that list to—
 - (i) every other party; and
 - (ii) the Lord Advocate.

(2) No evidence shall be allowed to be given on behalf of the respondent in support of any objection to the return not specified in the list, except with leave of the election court or, on a motion heard before the date of the trial, of any of the judges on the rota for the trial of election petitions, on such terms as to amendment of the list, postponement of the trial and payment of expenses as may be ordered.

Lodging of statement of evidence to be led

69.13.—(1) Subject to paragraph (2), any party shall, not less than 6 days before the date of the trial, lodge in process a statement of the matters on which he intends to lead evidence.

(2) Before lodging such a statement in process, the party proposing to lodge it shall intimate a copy of the statement to—

- (a) every other party; and
- (b) the Lord Advocate.

Evidence at trial

69.14.—(1) No evidence shall be led at the trial of an election petition other than matters contained in—

- (a) the list lodged under rule 69.11 (procedure where seat claimed) or 69.12 (evidence under section 139(5) of the Act of 1983),
- (b) the statement lodged under rule 69.13 (statement of evidence to be led), or
- (c) matters which have been sufficiently set out in the petition,

except with the leave of the election court or one of the judges on the rota for the trial of election petitions, on such conditions as to postponement of the trial, payment of expenses or otherwise, as may be ordered.

(2) The admissibility of any evidence sought to be led on the matters referred to in paragraph (1) shall be within the discretion of the election court.

Warrant to cite witnesses

69.15. The warrant for the citation of a witness to the trial of an election petition shall be granted on the motion of any party and shall be in Form 69.15.

Clerk of court at trial

69.16. At an election court held for the trial of an election petition, a clerk of session nominated by the Principal Clerk and appointed by the court shall discharge the duties of clerk of court of the election court.

Expenses of witnesses

69.17.—(1) The prescribed officer for the purposes of section 143(1) of the Act of 1983 shall be the clerk of session appointed to act as clerk of court under rule 69.16.

(2) The expenses of a witness permitted under section 143(1) of the Act of 1983 shall be ascertained by the clerk of court.

(3) The expenses allowed under section 143(1) of the Act of 1983 shall, in the first instance, be paid by the party adducing that witness.

Applications for special case

69.18. An application under section 146(1) of the Act of 1983 for a special case, shall be made by motion to the Inner House or the vacation judge.

Applications for leave to withdraw election petitions

69.19.—(1) A notice of intention to withdraw an election petition under section 147(2) of the Act of 1983 shall be in Form 69.19–A.

(2) A copy of such notice shall be intimated by the petitioners to—

- (a) the respondent;
- (b) the Lord Advocate;
- (c) the returning officer for the relevant constituency; and
- (d) the Deputy Principal Clerk.

(3) On receipt of a notice under paragraph (2), the returning officer shall publish it in the constituency to which it relates.

(4) An application for leave to withdraw an election petition shall—

- (a) be in Form 69.19–B;
- (b) state the ground on which the application to withdraw is made;
- (c) be signed by the person making the application and by the consenters, if any, or by their respective solicitors; and
- (d) be lodged in the process of the election petition.

Applications to be substituted as petitioner on withdrawal

69.20.—(1) A person who seeks to apply under section 150(1) of the Act of 1983 to be substituted as a petitioner, shall, within 5 days after the date on which the notice of intention to withdraw has been given under section 147(2) of the Act of 1983 and rule 69.19 (applications for leave to withdraw election petitions), give notice in writing signed by him or on his behalf to the Deputy Principal Clerk of his intention to apply, at the hearing of the application for leave to withdraw, to be substituted as the petitioner.

(2) A copy of the notice given under paragraph (1) shall be intimated by the applicant to—

- (a) the respondent;
- (b) the Lord Advocate; and
- (c) the returning officer for the relevant constituency.

(3) Any informality in such a notice shall not defeat an application to be substituted as the petitioner if it is made at the hearing of the application to withdraw, subject to such order as to postponement of that hearing and expenses as the election court thinks fit.

Hearing of applications for leave to withdraw

69.21.—(1) Subject to paragraph (2), the time and place for hearing an application for leave to withdraw an election petition shall be fixed by one of the judges on the rota for the trial of election petitions or by the vacation judge, who shall hear and determine the application unless he considers that the application should be determined by the Inner House.

(2) The time fixed under paragraph (1) shall not be earlier than 7 days after the expiry of the period specified in rule 69.20.

(3) The Keeper of the Rolls shall give written intimation of the diet fixed under paragraph (1) to—

- (a) the petitioner;
- (b) the respondent;
- (c) the Lord Advocate;

- (d) the returning officer for the relevant constituency; and
- (e) to any person who has given notice under rule 69.20 of his intention to apply to be substituted as the petitioner.

Security of substituted petitioner

69.22.—(1) The period within which security shall be given on behalf of a substituted petitioner before he proceeds with the petition shall be 5 days after the order of substitution.

(2) The substituted petitioner shall lodge the letter referred to in rule 69.3(c) (name and address of solicitor etc.) within 5 days after the order of substitution.

Death of petitioner

69.23.—(1) In the event of the death of the petitioner or the surviving petitioner, the notice for the purpose of section 152(3) of the Act of 1983 (notice of abatement of petition by death) shall be intimated in Form 69.23 by the solicitor acting for the petitioner, the respondent, the returning officer or any other person interested to whose knowledge the death of the petitioner shall come, to, as the case may be—

- (a) the respondent;
- (b) the Lord Advocate;
- (c) the returning officer for the relevant constituency; and
- (d) the Deputy Principal Clerk.

(2) The returning officer shall, on receipt of such a notice, or, where he is giving notice under paragraph (1), on intimating such notice to those persons mentioned in that paragraph, publish the notice in the constituency to which it relates.

Applications to be substituted on death of petitioner

69.24.—(1) An application to be substituted as a petitioner on the death of the petitioner or surviving petitioner shall be made by motion within 5 days after the publication of the notice.

(2) A motion under paragraph (1) shall be intimated to—

- (a) the respondent;
- (b) the Lord Advocate; and
- (c) the returning officer for the relevant constituency where he is not a respondent.

Notice that respondent does not oppose

69.25.—(1) A notice, for the purposes of section 153(1) of the Act of 1983, by a respondent other than a returning officer, that he does not intend to oppose an election petition shall be—

- (a) signed by him; and
- (b) lodged in process not less than 6 days before the date of the trial.

(2) Where a respondent lodges a notice under paragraph (1), he shall forthwith intimate a copy of it to—

- (a) the petitioner;
- (b) any other respondent;
- (c) the Lord Advocate; and
- (d) the returning officer for the relevant constituency.

(3) On receipt of a notice under paragraph (1), the returning officer shall publish it in the constituency to which it relates.

Death or peerage of respondent

69.26.—(1) Where, for the purposes of section 153(1) of the Act of 1983—

- (a) a respondent other than a returning officer dies,
- (b) in the case of a parliamentary election, a respondent other than a returning officer is summoned to Parliament as a Peer of Great Britain, or
- (c) a respondent other than a returning officer has vacated his seat following a resolution by the House of Commons,

the agent for the respondent shall give notice of that fact in the constituency to which the election petition relates.

(2) Such a notice shall be published in at least one newspaper circulating in the constituency, and by intimating a copy of the notice, signed by him to—

- (a) the petitioner;
- (b) any other respondent;
- (c) the Lord Advocate;
- (d) the returning officer for the relevant constituency; and
- (e) the Deputy Principal Clerk.

Applications to be admitted as respondent

69.27. The period of time within which a person may apply to be admitted as a respondent under section 153 of the Act of 1983 shall be—

- (a) 5 days after the notice is intimated under rule 69.25 (notice that respondent does not oppose);
- (b) 10 days after the notice is intimated under rule 69.26 (death or peerage of respondent); or
- (c) such other period as the court thinks fit.

Expenses in election petitions

69.28. Where any expenses are awarded by the election court in the course of proceedings under the Act of 1983, such an award shall be deemed equivalent to a finding of expenses in the Court of Session.

Motions in election petitions

69.29.—(1) Subject to any other provision in this Chapter or the Act of 1983, all applications shall be dealt with by motion.

(2) Subject to the provisions of this Chapter, Chapter 23 (motions) shall apply to a motion in an election petition.

(3) A motion in an election petition shall be intimated to—

- (a) the Lord Advocate; and
- (b) the returning officer for the relevant constituency.

Intimation to Lord Advocate

69.30. All applications to the court in an election petition other than a motion under rule 69.4(1) (security for expenses) shall be intimated to the Lord Advocate; and the Lord Advocate shall be entitled to appear or be represented at the hearing of that application.

Evidence of publication by returning officer

69.31.—(1) Where a returning officer publishes a notice in accordance with a provision in this Chapter or an order of the election court, he shall forthwith send to the Deputy Principal Clerk a letter—

- (a) certifying that the appropriate notice has been published; and
- (b) detailing the manner in which the publication has been made.

(2) Where publication has been made by inserting a notice in a newspaper or other publication, the letter under paragraph (1) shall be accompanied by—

- (a) a copy of the newspaper or other publication containing the notice; or
- (b) a certificate of publication by the publisher stating the date of publication and the text of the notice.

*CHAPTER 70**APPLICATIONS UNDER THE CHILD ABDUCTION AND CUSTODY ACT 1985***PART I GENERAL PROVISIONS****Interpretation of this Chapter**

70.1. In this Chapter—

“the Act of 1985” means the Child Abduction and Custody Act 1985⁽⁶⁶⁾;

“the European Convention” means the convention defined in section 12(1) of the Act of 1985 and as set out in Schedule 2 to the Act of 1985;

“the Hague Convention” means the convention defined in section 1(1) of the Act of 1985 and as set out in Schedule 1 to the Act of 1985;

“relevant authority” means—

- (a) in the United Kingdom, a sheriff court, a children’s hearing within the meaning of Part III of the Social Work (Scotland) Act 1968⁽⁶⁷⁾, the High Court, a county court or magistrates’ court in England and Wales, the High Court, a county court or magistrates’ court in Northern Ireland, or the Secretary of State, as the case may be; or
- (b) in a specified dependent territory, the appropriate authority or the appropriate court as defined in an Order in Council made under section 28 of the Act of 1985;

“specified dependent territory” means a dependent territory specified in an Order in Council made under section 28 of the Act of 1985.

Translations of documents

70.2. Where any document lodged in process in a cause to which this Chapter applies is in a language other than English, there shall be lodged with that document a translation into English

⁽⁶⁶⁾ 1985 c. 60.

⁽⁶⁷⁾ 1968 c. 49.

certified as correct by the translator; and the certificate shall include his full name, address and qualifications.

Applications for certified copy or extract

70.3.—(1) An application for a certified copy or extract of a decree or any other interlocutor relating to a child, in respect of whom the applicant wishes to apply under the Hague Convention or the European Convention in another Contracting State, shall be made by letter to the Deputy Principal Clerk.

(2) A certified copy or extract issued on an application under paragraph (1) shall be supplied free of charge.

Disclosure of information

70.4. Where the court pronounces an interlocutor under section 24A of the Act of 1985⁽⁶⁸⁾ (order to a person to disclose information to the court as to a child's whereabouts), it may order that person to appear before it or to lodge an affidavit.

PART III INTERNATIONAL CHILD ABDUCTION (THE HAGUE CONVENTION)

Form of applications under this Part

70.5.—(1) An application for the return of a child under the Hague Convention shall be made by petition and—

- (a) shall include averments in relation to—
 - (i) the identity of the petitioner and the person alleged to have removed or retained the child;
 - (ii) the identity of the child and his date of birth;
 - (iii) the whereabouts or suspected whereabouts of the child;
 - (iv) the date on which the child is alleged to have been wrongfully removed or retained;
 - (v) the grounds on which the petition is based; and
 - (vi) any civil cause in dependence before any other court or authority in respect of the child, or any proceedings mentioned in section 9 of the Act of 1985⁽⁶⁹⁾ relating to the merits of the rights of custody of the child in or before a relevant authority; and
- (b) there shall be produced with the petition and lodged as a production—
 - (i) a certified or authorised copy of any relevant decision or agreement; and
 - (ii) a certificate or affidavit from a Central Authority or other competent authority of the Contracting State where the child habitually resides concerning the relevant law of that State.

(2) An application for access to a child under the Hague Convention shall be made by petition and—

- (a) shall include averments in relation to—
 - (i) the identity of the petitioner;
 - (ii) the identity of the child and his date of birth;
 - (iii) the parents or guardians of the child;

⁽⁶⁸⁾ 1985 c. 60; section 24A was inserted by the Family Law Act 1986 (c. 55), section 67(4).

⁽⁶⁹⁾ Section 9 of the Act of 1985 was amended by the Family Law Act 1986 (c. 55), Schedule 1, paragraph 28 and by the Children Act 1989 (c. 41), Schedule 13, paragraph 47 and Schedule 15.

Status: This is the original version (as it was originally made).

- (iv) the whereabouts of the child;
- (v) the factual and legal grounds on which access is sought; and
- (vi) any civil cause in dependence before any other court or authority in respect of the child, or any proceedings mentioned in section 9 of the Act of 1985 relating to the merits of the rights of custody of the child in or before a relevant authority; and
- (b) there shall be produced with the petition and lodged as a production a certified copy of any relevant decision or agreement.
- (3) An application under section 8 of the Act of 1985 (application for declarator that removal or retention of child was wrongful) shall be made by petition and—
 - (a) shall include averments in relation to—
 - (i) the identity of the petitioner and of the person who is alleged to have removed or retained the child;
 - (ii) the identity of the child and his date of birth;
 - (iii) the whereabouts or suspected whereabouts of the child;
 - (iv) the date on which the child is alleged to have been wrongfully removed or retained;
 - (v) the proceedings which gave custody to the petitioner; and
 - (vi) the proceedings under the Hague Convention in relation to which the petition is necessary; and
 - (b) there shall be produced with the petition any relevant document.

Period of notice, service of causes and first hearing under this Part

70.6.—(1) Subject to rule 14.6(2), the period of notice for lodging answers to a petition to which rule 70.5 applies shall be 4 days.

(2) Such a petition shall be served on—

- (a) the person alleged to have brought the child into the United Kingdom;
- (b) the person with whom the child is presumed to be;
- (c) any parent or guardian of the child if he or she is within the United Kingdom, or a specified dependent territory and not otherwise a party;
- (d) the chief executive of the local authority, and the reporter to the children's panel, in the local authority area in which the child resides; and
- (e) any other person who may have an interest in the child.

(3) The first order under rule 14.5 (first order in petitions) in a petition to which rule 70.5 applies shall specify a date within 7 days after the expiry of the period of notice for a hearing to determine the further progress of the petition.

Notice of other proceedings

70.7.—(1) Where a petition is presented under paragraph (1) of rule 70.5 and there are proceedings mentioned in section 9 of the Act of 1985 relating to the merits of the rights of custody of the child depending in or before a relevant authority, the court shall give written intimation of the petition and, in due course of the outcome of the petition, to that relevant authority.

(2) Where the court receives a notice equivalent to that under paragraph (1) from a relevant authority, all proceedings in any cause mentioned in section 9 of the Act of 1985 relating to the merits of the rights of custody of the child shall be sisted by the court until the dismissal of the proceedings

in that other court under the Hague Convention; and the Deputy Principal Clerk shall give written intimation to each party of the result and of any such dismissal.

Transfer of causes

70.8.—(1) At any stage of a cause mentioned in paragraph (1) of rule 70.5, the court may, at its own instance or on the motion of any party, pronounce an interlocutor transmitting the cause to the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory, as the case may be.

(2) Where a cause is transferred under paragraph (1), the Deputy Principal Clerk shall—

- (a) transmit the process to the appropriate officer of the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified territory, as the case may be;
- (b) give written intimation of such transfer to each party; and
- (c) certify on the interlocutor sheet that such written intimation has been given.

(3) Where a cause is transferred under paragraph (1), the question of expenses shall not be determined by the court, but shall be at the discretion of the court to which the cause is transferred.

(4) Where such a cause is transferred to the court from the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory—

- (a) the Deputy Principal Clerk shall, on receipt of the order transferring the cause and any documents in the cause, give written intimation to each party of the transfer;
- (b) the cause shall be deemed to have been commenced by petition; and
- (c) the Deputy Principal Clerk shall, within two sederunt days of the receipt of it, cause it to be put out on the By Order Roll before the Lord Ordinary.

PART III RECOGNITION AND ENFORCEMENT OF CUSTODY DECISIONS (THE EUROPEAN CONVENTION)

Form of applications under this Part

70.9.—(1) An application under any of the following provisions shall be made by petition:—

- (a) section 15 of the Act of 1985 (application to declare a decree for custody not to be recognised);
- (b) section 16 of the Act of 1985 (application for registration of custody decision); and
- (c) section 18 of the Act of 1985 (application for enforcement of custody decision).

(2) An application under section 17(4) of the Act of 1985 (application for variation or revocation of registered decision), shall be made by note in the process of the petition for registration.

(3) An application under section 23(2) of the Act of 1985 (application in custody proceedings for declarator that removal of a child was unlawful), shall be made—

- (a) by minute in the process of a cause depending before the court commenced by summons; or
- (b) by note in the process of a cause depending before the court commenced by petition.

(4) In an application mentioned in this rule—

- (a) the petition, minute or note, as the case may be, shall include averments in relation to—
 - (i) the identity of the petitioner, minuter or noter, as the case may be, and his interest in the cause;
 - (ii) the identity of the child and his date of birth;
 - (iii) the parents or guardians of the child;

- (iv) the order which is required to be registered, enforced, declared unlawful, declared not recognised, varied or revoked, as the case may be;
 - (v) the whereabouts or suspected whereabouts of the child; and
 - (vi) any civil cause in dependence before any other court or authority in respect of the child, or any proceedings specified in section 20(2) of the Act of 1985⁽⁷⁰⁾ in dependence in or before a relevant authority; and
- (b) there shall be produced with the petition, minute or note, as the case may be—
- (i) a certified or authorised copy of any decision to be registered or enforced;
 - (ii) where a decision to be registered was given in the absence of the person against whom the decision was made or in the absence of his legal representative, a document which establishes (subject to Article 9(1)(a) of the European Convention) that that person was duly served with the document which instituted the original proceedings;
 - (iii) a certificate or affidavit to the effect that any decision to be registered is enforceable in accordance with the law of the State in which the decision was made; and
 - (iv) any other relevant document.

Period of notice, service of causes and first hearing under this Part

70.10.—(1) Subject to rule 14.6(2), the period of notice for lodging answers in a petition to which rule 70.9 applies shall be 4 days.

(2) Such a petition shall be served on—

- (a) the person alleged to have brought the child into, or removed the child from, the United Kingdom, or a specified dependent territory, as the case may be;
- (b) the person with whom the child is presumed to be in the United Kingdom or a specified dependent territory;
- (c) the mother and father of the child if he or she is within the United Kingdom, or a specified dependent territory, and not otherwise a party;
- (d) the chief executive of the local authority, and the reporter to the children's panel, in the local authority area in which the child resides; and
- (e) any other person who may have an interest in the child.

(3) The first order under rule 14.5 (first order in petitions) in a petition to which rule 70.9 applies shall specify a date within 7 days after the expiry of the period of notice for a hearing to determine the further progress of the petition.

Registration

70.11. Where the court pronounces an interlocutor ordering registration under section 16 of the Act of 1985, the Deputy Principal Clerk shall record that interlocutor in a register of decisions pronounced under that Act.

Other proceedings

70.12.—(1) Where a petition is presented under section 16 (application for registration and enforcement of custody decision), or section 18 (application for enforcement of a custody decision), of the Act of 1985 and there are proceedings²³ mentioned in section 20(2) of that Act depending or such proceedings are commenced after the petition has been presented—

⁽⁷⁰⁾ Section 20(2) was amended by the Children Act 1989 (c. 41), Schedule 13, paragraph 57 and Schedule 15.

- (a) the petitioner shall inform the court by including averments or lodging an affidavit, as the case may be, to that effect containing a concise statement of the nature of those proceedings; and
 - (b) the court shall give written intimation of the petition and, in due course of the outcome of the petition, to the relevant authority.
- (2) Where the court receives a notice equivalent to that under paragraph (1)(b) from the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory, the Deputy Principal Clerk shall give written intimation to each party to any cause which is one mentioned in section 20(2) of the Act of 1985.

Transfers

70.13.—(1) At any stage of a cause mentioned in rule 70.9, the court may, at its own instance or on the motion of any party, pronounce an interlocutor transferring the cause to the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory, as the case may be.

- (2) Where a cause is transferred under paragraph (1), the Deputy Principal Clerk shall forthwith—
- (a) transmit the process to the appropriate officer of the High Court in England and Wales or Northern Ireland, or the appropriate court of a specified dependent territory, as the case may be;
 - (b) give written intimation of such transfer to each party; and
 - (c) certify on the interlocutor sheet that such written intimation has been given.
- (3) Where a cause is transferred under paragraph (1), the question of expenses shall not be determined by the court, but shall be at the discretion of the court to which the case is transferred.
- (4) Where such a cause is transferred to the court from the High Court in England and Wales or Northern Ireland, or the appropriate court of a dependent territory—
- (a) the Deputy Principal Clerk shall, on receipt of the order transferring the cause and any papers in the cause, give written intimation to the parties of the transfer;
 - (b) the cause shall be deemed to have been commenced by petition; and
 - (c) the Deputy Principal Clerk shall, within two days of the receipt of it, cause it to be put out on the By Order Roll before the Lord Ordinary.

Variation and revocation of registered decision

70.14.—(1) Where a decision registered under section 16 of the Act of 1985 is varied or revoked by an authority in the Contracting State in which the decision was made, the court shall—

- (a) on cancelling the registration of a decision which it has been notified has been revoked, give written intimation of that cancellation to—
 - (i) the person appearing to the court to have actual custody of the child;
 - (ii) the petitioner in the petition for registration; and
 - (iii) any other party to that petition; and
 - (b) on being notified of the variation of a decision, give written intimation to—
 - (i) the person having custody in fact of the child; and
 - (ii) any party to the petition for registration of the decision, of the variation.
- (2) Any person to whom intimation of a variation has been given under paragraph (1)(b) may apply by note for the purpose of making representations before the registration is varied.

(3) An application under section 17(4) of the Act of 1985 (application to cancel or vary registration) shall be made by note.

CHAPTER 71

REGISTRATION AND ENFORCEMENT OF CUSTODY ORDERS UNDER THE FAMILY LAW ACT 1986

Interpretation of this Chapter

71.1. In this Chapter—

“the Act of 1986” means the Family Law Act 1986⁽⁷¹⁾;

“appropriate court” means the High Court in England and Wales or the High Court in Northern Ireland or, in relation to a specified dependent territory, the corresponding court in that territory, as the case may be;

“custody order” has the meaning assigned in section 32 of the Act of 1986;

“proper officer” means the Secretary of the principal registry of the Family Division of the High Court in England and Wales or the Master (care and protection) of the High Court in Northern Ireland or, in relation to a specified dependent territory, the corresponding officer of the appropriate court in that territory, as the case may be;

“register” means the custody orders register kept under rule 71.2;

“specified dependent territory” means a dependent territory specified in an Order in Council made under section 43 of the Act of 1986.

Custody orders register

71.2.—(1) The Deputy Principal Clerk shall maintain a register to be called the custody orders register for the purposes of Chapter V of Part I of the Act of 1986⁽⁷²⁾.

(2) In Part I of the register there shall be recorded applications for registration of a custody order in another part of the United Kingdom; and in Part II of the register there shall be recorded custody orders registered for enforcement in Scotland.

(3) The register may be inspected by—

- (a) the person who applied for registration; and
- (b) any other person who satisfies the Deputy Principal Clerk that he has an interest to do so.

Applications for registration of custody orders in another court

71.3.—(1) An application under section 27 of the Act of 1986 to register a custody order made by the Court of Session in an appropriate court shall be made by letter to the Deputy Principal Clerk.

(2) An application under paragraph (1) shall be accompanied by—

- (a) a copy of the letter of application;
- (b) an affidavit by the applicant;
- (c) a copy of that affidavit;
- (d) a certified copy of the interlocutor of the custody order;

⁽⁷¹⁾ 1986 c. 55.

⁽⁷²⁾ Part I was amended by the Children Act 1989 (c. 41), Schedule 13, paragraph 2.

- (e) a certified copy of the interlocutor of any variation which is in force in respect of the custody order; and
 - (f) any other document relevant to the application and a copy of it.
- (3) An affidavit required under this rule shall set out—
- (a) the name and address of the applicant and his right under the custody order;
 - (b) the name and date of birth of the child in respect of whom the custody order was made, the present whereabouts or suspected whereabouts of the child and the name of any person with whom he is alleged to be;
 - (c) the name and address of any other person who has an interest in the custody order;
 - (d) whether the custody order is to be registered in England and Wales, Northern Ireland or a specified dependent territory, and the court in which it is to be registered;
 - (e) whether the custody order is in force;
 - (f) whether the custody order is already registered and, if so, where it is registered; and
 - (g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the custody order is to be registered.
- (4) Where the Deputy Principal Clerk refuses to send an application under this rule to the appropriate court on the ground that the custody order is no longer in force, he shall give written intimation to the applicant; and the applicant shall have the right to have the application brought before the Lord Ordinary for determination.
- (5) The Deputy Principal Clerk shall retain the letter of application under this rule and any documents which accompany it and which are not transmitted to the appropriate court under section 27(3) of the Act of 1986.

Transmission of applications for registration

- 71.4.**—(1) Where the Deputy Principal Clerk is satisfied that the custody order is in force, he shall send the documents mentioned in section 27(3) of the Act of 1986 to the proper officer of the court in which the custody order is to be registered.
- (2) For the purposes of section 27(3)(b) of the Act of 1986, the prescribed particulars of any variation which is in force in respect of a custody order shall be a certified copy of the interlocutor of any such variation.
- (3) On sending an application under paragraph (1), the Deputy Principal Clerk shall make an entry in Part I of the register recording the date and particulars of the application and the custody order.
- (4) On receiving notification from a proper officer of an appropriate court that the custody order has been registered in that court under section 27(4) of the Act of 1986, the Deputy Principal Clerk shall record the date of registration in Part I of the register.

Registration of custody orders from another court

- 71.5.**—(1) The prescribed officer under section 27(4) of the Act of 1986 shall be the Deputy Principal Clerk.
- (2) Where the Deputy Principal Clerk receives a certified copy of a custody order from a court for registration under section 27(4) of the Act of 1986, he shall enter the following particulars in Part II of the register:—
- (a) the name and address of the applicant and his interest under the custody order;
 - (b) a brief description of the nature of the custody order, its date and the court which made it; and

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- (c) the name and whereabouts or suspected whereabouts of the child who is the subject of the custody order, his date of birth and the date on which he will attain the age of 16 years.
- (3) On registering the custody order, the Deputy Principal Clerk shall—
 - (a) retain the application and the documents which accompanied it; and
 - (b) give written intimation to—
 - (i) the court from which he received the application, and
 - (ii) the applicant who applied for registration,
 that the custody order has been registered.
- (4) Where the Deputy Principal Clerk gives written intimation to an applicant under paragraph (3), he shall state the date when the registration of the custody order will automatically cease to have effect on the child attaining the age of 16 years.

Cancellation or variation of registered custody orders

71.6.—(1) Where the Court of Session revokes, recalls or varies a custody order which it has made, the Deputy Principal Clerk, on being informed by the party who applied for the revocation, recall or variation that the custody order has been registered in an appropriate court, shall—

- (a) send a certified copy of the interlocutor of the revocation, recall or variation, as the case may be, to the proper officer of the court in which the custody order is registered;
 - (b) record the transmission of the certified copy of that interlocutor in Part I of the register; and
 - (c) record the revocation, recall or variation, as the case may be, in Part I of the register.
- (2) On receiving notification from the proper officer of the court in which the custody order is registered that he has amended his record, the Deputy Principal Clerk shall record the fact that the amendment has been made in Part II of the register.
- (3) Where the Deputy Principal Clerk receives a certified copy of an order which revokes, recalls or varies a custody order registered in the Court of Session from an appropriate court, he shall—
- (a) note the change and its date in Part II of the register; and
 - (b) give written intimation to—
 - (i) the court from which he received the certified copy of the order which revokes, recalls or varies, as the case may be, the custody order,
 - (ii) the person who applied for registration of the custody order, and
 - (iii) the person, if different, who applied for the revocation, recall or variation, as the case may be, of the custody order,
 that he has amended the register.
- (4) An application to the Court of Session under section 28(2) of the Act of 1986 to cancel all or a part of the registration of a custody order which it has registered shall be made by petition and shall be served on—

- (a) the person who applied for registration, if he is not the petitioner; and
 - (b) any other interested person.
- (5) Where, under section 28(2) of the Act of 1986, the court cancels all or a part of the registration of a custody order which it has registered, the Deputy Principal Clerk shall—
- (a) note the cancellation and its date in Part II of the register; and
 - (b) give written intimation to—
 - (i) the court which made the custody order;

- (ii) the person who applied for registration; and
- (iii) the person, if different, who applied for cancellation of the custody order.

Enforcement of registered custody orders in Scotland

71.7.—(1) An application under section 29(1) of the Act of 1986 to enforce a custody order registered in the Court of Session shall be made by petition.

(2) Where the petitioner in an application under paragraph (1) is not the person who applied for registration of the custody order, the petition shall be served on that person.

Applications to sist or refuse enforcement proceedings

71.8.—(1) An application under section 30(1) of the Act of 1986 to sist enforcement proceedings, or under section 31(1) or (2) of the Act of 1986 to dismiss a petition for enforcement of a custody order, shall be made by lodging answers at any time in the process of the petition for enforcement; and the answers shall be served on every other party and, if he is not a party, the applicant for registration of the custody order.

(2) An application under section 30(3) of the Act of 1986 (recall of sist of enforcement proceedings) shall be made by motion.

(3) Where the court pronounces an interlocutor under section 30(2) or (3) or section 31(3) of the Act of 1986, the Deputy Principal Clerk shall—

- (a) make an entry in Part II of the register noting the terms of the interlocutor and the date; and
- (b) give written intimation to—
 - (i) the person who applied for registration where he was not a party to the application under section 30(1) or section 31(1) or (2) of the Act of 1986; and
 - (ii) the court from which the application for registration was received, of the terms of the interlocutor.

Orders for disclosure of information

71.9. Where the court makes an order under section 33(1) of the Act of 1986 (order on person to disclose information as to child's whereabouts), it may ordain the person against whom the order was made to appear before it or to lodge an affidavit.

Applications for interdict under section 35(3) of the Act of 1986

71.10. An application by a person mentioned in section 35(4)(b) or (c) of the Act of 1986⁽⁷³⁾ for interdict or interim interdict under section 35(3) of the Act of 1986 (prohibition of removal of child from United Kingdom) shall be made—

- (a) by note in the process of a petition depending before the court to which this Chapter applies; or
- (b) where there is no such depending process, by petition.

⁽⁷³⁾ Section 35(4)(b) was amended by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), Schedule 2, paragraph 47.

CHAPTER 72**BANKRUPTCY (SCOTLAND) ACT 1985****Interpretation of this Chapter**

72.1.—(1) In this Chapter, “the Act of 1985” means the Bankruptcy (Scotland) Act 1985⁽⁷⁴⁾.

(2) Unless the context otherwise requires, words and expressions used in this Chapter which are also used in the Act of 1985 have the same meaning as in that Act.

First order in petitions for sequestration

72.2. A petition for sequestration to which subsection (2) of section 12 of the Act of 1985 (petition for sequestration of debtor’s estate by creditor or trustee) applies shall, on being presented, be brought before the Lord Ordinary in court or in chambers for an order for a warrant to cite the debtor as required by that subsection.

Notice of concurrent proceedings

72.3. A person seeking to bring to the attention of the court a fact referred to in section 10(1) of the Act of 1985⁽⁷⁵⁾ (concurrent proceedings for sequestration or analogous remedy) shall do so by motion in the process of the petition which may be affected.

Applications for transfer or remit of sequestration

72.4.—(1) An application under section 15(2) (transfer of sequestration from one sheriff to another), or section 63(3)(b) (application for a direction to remit an application under section 63(1)), of the Act of 1985 from the sheriff to the court shall be made—

- (a) where sequestration has been awarded by the court, by motion; or
- (b) where sequestration has been awarded by the sheriff, by petition.

(2) The applicant under section 15(2) of the Act of 1985 shall intimate such motion to or serve such petition on—

- (a) the debtor;
- (b) any person who was a petitioner or concurred in the petition for sequestration;
- (c) the interim trustee or permanent trustee;
- (d) the Accountant in Bankruptcy; and
- (e) the sheriff clerk.

(3) A copy of the application under section 63(1) of the Act of 1985 (application to sheriff to cure defects in procedure), certified by the sheriff clerk, shall be lodged with any application under section 63(3)(b) of that Act.

(4) Where the court has determined an application under section 15(2) or section 63(3)(b) of the Act of 1985, the applicant shall intimate a certified copy of the interlocutor of the court forthwith to—

- (a) the sheriff clerk; and
- (b) the Accountant in Bankruptcy.

(5) Where the court grants an application under section 15(2) of the Act of 1985, the sheriff clerk shall, on receipt of a certified copy of the interlocutor of the court, transmit those parts of

⁽⁷⁴⁾ 1985 c. 66.

⁽⁷⁵⁾ Section 10(1) was amended by the Financial Services Act 1986 (c. 60), Schedule 16, paragraph 29.

the sequestration process in his custody to the sheriff clerk of the sheriff court specified in the interlocutor.

(6) Where the court grants an application under section 63(3)(b) of the Act of 1985, the sheriff clerk shall, on receipt of a certified copy of the interlocutor of the court, transmit the application under section 63(1) of that Act, and those parts of the sequestration process in his custody, to the Deputy Principal Clerk.

(7) Where the court has determined the matters raised by the application under section 63(1) of the Act of 1985—

- (a) the applicant under section 63(3)(b) of that Act shall intimate a certified copy of the interlocutor of the court forthwith to—
 - (i) the sheriff clerk; and
 - (ii) the Accountant in Bankruptcy; and
- (b) the Deputy Principal Clerk shall transmit the parts of process transmitted to him under paragraph (6) to the sheriff clerk.

Holding of sederunt book by Accountant in Bankruptcy

72.5. The Accountant in Bankruptcy shall hold the sederunt book for a period of at least 6 months from the date he receives it from the permanent trustee by virtue of section 57(1) of the Act of 1985 and—

- (a) shall make it available for public inspection during office hours; and
- (b) may allow such extracts to be made of entries in the Sederunt Book by such persons as he thinks fit.

Prescribed forms

72.6.—(1) The register of insolvencies kept by the Accountant in Bankruptcy under section 1A(1) (b) of the Act of 1985⁽⁷⁶⁾ shall contain the information required in Form 72.6–A.

(2) An undertaking by the interim trustee under section 2(3)(c) of the Act of 1985⁽⁷⁷⁾ shall be in Form 72.6–B.

(3) The memorandum to be sent by a permanent trustee to the Keeper of the Register of Inhibitions and Adjudications under section 14(4) of the Act of 1985⁽⁷⁸⁾ shall be in Form 72.6–C.

(4) A notice by a trustee under a trust deed for creditors to be recorded in the Register of Inhibitions and Adjudications under paragraph 2(1) of Schedule 5 to the Act of 1985 (registration of notice of inhibition) shall be in Form 72.6–D.

(5) A notice under paragraph 2(2) of Schedule 5 to the Act of 1985 recalling a notice registered under paragraph 2(1) of that Schedule shall be in Form 72.6–E.

⁽⁷⁶⁾ Section 1A of the Act of 1985 was inserted by the Bankruptcy (Scotland) Act 1993 (c. 6), section 1.

⁽⁷⁷⁾ Section 2(3)(c) of the Act of 1985 was substituted by the Act of 1993, section 2.

⁽⁷⁸⁾ Section 14(4) of the Act of 1985 was amended by the Act of 1993, Schedule 1, paragraph 3.

CHAPTER 73**RECTIFICATION OF DOCUMENTS****Application of this Chapter**

73.1. This Chapter applies to an application under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985(**79**) (rectification of defectively expressed documents).

Form of applications

73.2.—(1) Subject to paragraph (2), an application to which this Chapter applies shall be made by petition.

(2) An application to which this Chapter applies may be made in an action by a conclusion ancillary to other conclusions in a summons.

CHAPTER 74**COMPANIES****PART I GENERAL PROVISIONS****Application and interpretation of this Chapter**

74.1.—(1) This Chapter applies to causes under—

(a) the following provisions of the Insolvency Act 1986(**80**):—

- (i) Part I (company voluntary arrangements);
- (ii) Part II (administration orders);
- (iii) Part III (receivership); and
- (iv) Chapter VI of Part IV (winding up by the court); and

(b) the Company Directors Disqualification Act 1986(**81**).

(2) In this Chapter—

“the Act of 1986” means the Insolvency Act 1986;

“the Insolvency Rules” means the Insolvency (Scotland) Rules 1986(**82**);

“registered office” means—

- (i) the place specified in the statement of the company delivered to the register of companies under section 10 of the Companies Act 1985(**83**) as the intended place of its registered office on incorporation, or
- (ii) where notice has been given by the company to the registrar of companies under section 287 of the Companies Act 1985(**84**) of a change of registered office, the place specified in the last such notice.

(3) Unless the context otherwise requires, words and expressions used in this Chapter which are also used in the Act of 1986 or the Insolvency Rules have the same meaning as in that Act or those Rules, as the case may be.

(79) 1985 c. 73.

(80) 1986 c. 46.

(81) 1986 c. 45.

(82) S.I. 1986/1915, amended by S.I. 1987/1921.

(83) 1985 c. 6.

(84) Section 287 was substituted by the Companies Act 1989 (c. 40), section 136.

Proceedings before insolvency judge

74.2. All proceedings in the Outer House in a cause under or by virtue of the Act of 1986 or the Company Directors Disqualification Act 1986 shall be brought before a judge of the court nominated by the Lord President as the insolvency judge or, where the insolvency judge is not available, any other judge of the court (including the vacation judge); and “insolvency judge” shall be construed accordingly.

Notices and reports, etc., sent to the court

74.3. Where, under the Act of 1986 or the Insolvency Rules—

- (a) notice of a fact is to be given to the court,
- (b) a report is to be made, or sent, to the court, or
- (c) any other document is to be sent to the court,

it shall be sent to the Deputy Principal Clerk who shall cause it to be lodged in the process to which it relates.

PART IICOMPANY VOLUNTARY ARRANGEMENTS

Lodging of nominee’s report (company not in liquidation etc.)

74.4.—(1) This rule applies where the company is not being wound up by the court and an administration order is not in force in respect of it pronounced by the court.

(2) A report of a nominee submitted to the court under section 2(2) of the Act of 1986 (procedure where nominee is not the liquidator or administrator) shall be—

- (a) lodged, with a covering letter, in the Petition Department;
- (b) marked by the clerk of session receiving it with the date on which it is received; and
- (c) placed before the insolvency judge for consideration of any direction which he may make under section 3(1) of that Act (which relates to the summoning of meetings).

(3) An application by a nominee to extend the time within which he may submit his report under section 2(2) of the Act of 1986 shall be made by letter addressed to the Deputy Principal Clerk who shall—

- (a) place the letter before the insolvency judge for determination;
- (b) intimate that determination by a written reply; and
- (c) attach the letter, and a copy of the reply, to the nominee’s report when it is subsequently lodged.

Lodging of nominee’s report (company in liquidation etc.)

74.5.—(1) This rule applies where the company is being wound up by the court or there is an administration order in force in respect of it pronounced by the court.

(2) In this rule, “process” means the process of the petition under section 9⁽⁸⁵⁾ (petition for administration order), or section 124⁽⁸⁶⁾ (petition to wind up a company), of the Act of 1986, as the case may be.

(3) A report of a nominee submitted to the court under section 2(2) of the Act of 1986 (procedure where nominee is not the liquidator or administrator) shall be—

⁽⁸⁵⁾ Section 9 was amended by the Criminal Justice Act 1988 (c. 33), section 62(2) and by the Companies Act 1989 (c. 40), Schedule 16, paragraph 3(2).

⁽⁸⁶⁾ Section 124 was amended by the said Act of 1988, section 62(2) and by the said Act of 1989, section 60(2).

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- (a) lodged in process; and
 - (b) placed before the insolvency judge for consideration of any direction which he may make under section 3(1) of that Act.
- (4) An application by a nominee to extend the time within which he may submit his report under section 2(2) of the Act of 1986 shall be made by letter addressed to the Deputy Principal Clerk who shall—
- (a) place the letter before the insolvency judge for determination;
 - (b) intimate that determination by a written reply; and
 - (c) lodge the letter, and a copy of the reply, in the process of the petition to which it relates.

Inspection of nominee's report

74.6. A person who states in a letter addressed to the Deputy Principal Clerk that he is a creditor, member or director of the company or his agent, may, on payment of the appropriate fee, inspect the nominee's report lodged under rule 74.4(2) (company not in liquidation etc.) 74.5(3) (company in liquidation etc.), as the case may be.

Report of meetings to approve arrangement

74.7. The report of the result of a meeting to be sent to the court under section 4(6) of the Act of 1986 shall be sent to the Deputy Principal Clerk who shall lodge it—

- (a) in a case to which rule 74.4 (lodging of nominee's report (company not in liquidation etc.)) applies, with the nominee's report lodged under that rule; or
- (b) in a case to which rule 74.5 (lodging of nominee's report (company in liquidation etc.)) applies, in process as defined by paragraph (2) of that rule.

Abstracts of supervisor's receipts and payments and notices of completion of arrangement

74.8. An abstract of receipts and payments prepared by a supervisor and sent to the court under rule 1.21(2) of the Insolvency Rules or a notice of completion of the arrangement (and a copy of the supervisor's report) to be sent to the court under rule 1.23(3) of those Rules shall be sent to the Deputy Principal Clerk who shall cause it to be lodged—

- (a) in a case to which rule 74.4 (lodging of nominee's report (company not in liquidation etc.)) applies, with the nominee's report lodged under that rule; or
- (b) in a case to which rule 74.5 (lodging of nominee's report (company in liquidation etc.)) applies, in process as defined by paragraph (2) of that rule.

Form of other applications

74.9.—(1) An application to which this rule applies shall be made—

- (a) where the company is not being wound up by the court and an administration order is not in force in respect of it pronounced by the court, by petition; or
 - (b) where the company is being wound up by the court or there is an administration order in force in respect of it pronounced by the court, by note in the process to which it relates.
- (2) This rule applies to an application under—
- (a) section 2(4) of the Act of 1986 (for the replacement of a nominee);
 - (b) section 6 of that Act (to challenge a decision made in relation to an arrangement);
 - (c) section 7(3) of that Act (to challenge the actings of a supervisor);

- (d) section 7(4)(a) of that Act (by a supervisor for directions);
- (e) section 7(5) of that Act (for the appointment of a supervisor);
- (f) rule 1.21(5) of the Insolvency Rules (to dispense with sending abstracts or reports or to vary the dates on which the obligation to send abstracts or reports arises);
- (g) rule 1.23(4) of those Rules (to extend the period for sending a notice of implementation of arrangement or report); or
- (h) any other provision in the Act of 1986 or the Insolvency Rules relating to company voluntary arrangements not mentioned in this Part.

PART IIIADMINISTRATION ORDERS

Form of petition for administration order

74.10.—(1) In this Part, “the petition” means a petition under section 9 of the Act of 1986 (petition for an administration order).

(2) The petition shall include averments in relation to—

- (a) the petitioner and the capacity in which he presents the petition, if other than the company;
- (b) whether it is believed that the company is, or is likely to become, unable to pay its debts and the grounds of that belief;
- (c) which of the purposes specified in section 8(3) of the Act of 1986 is expected to be achieved by the making of an administration order;
- (d) the company’s financial position specifying, so far as known, assets and liabilities, including contingent and prospective liabilities;
- (e) any security known or believed to be held by creditors of the company, whether in any case the security confers power on the holder to appoint a receiver, and whether a receiver has been appointed;
- (f) so far as known to the petitioner, whether any steps have been taken for the winding up the company;
- (g) other matters which, in the opinion of the petitioner, will assist the court in deciding whether to grant an administration order;
- (h) whether an independent report on the affairs of the company has been prepared under rule 2.1 of the Insolvency Rules and, if not, an explanation why not; and
- (i) the name and address of the person proposed to be appointed, and his qualification to act, as administrator.

(2) Where a report has been prepared under rule 2.1 of the Insolvency Rules, a copy of that report shall be lodged with the petition.

Notice of petition

74.11. Where—

- (a) the petition is to be served on a person mentioned in rule 2.2 of the Insolvency Rules, and
- (b) by virtue of paragraph (2) of that rule, notice requires to be given to that person,

it shall be sufficient for the petitioner, where such notice and service is to be executed by post, to enclose the statutory notice and a copy of the petition in one envelope and to certify the giving of such notice and the execution of such service by one certificate.

Report of proposals of administrator

74.12.—(1) A report of the meeting to approve the proposals of the administrator to be sent to the court under section 24(4) of the Act of 1986 shall be sent to the Deputy Principal Clerk of Session, who shall—

- (a) cause it to be lodged in the process of the petition to which it relates; and
- (b) give written intimation to the parties of the receipt and lodging of the report.

(2) Where a report under section 24(4) of the Act of 1986 discloses that the meeting has declined to approve the proposals of the administrator, the Keeper of the Rolls shall put the cause out on the By Order Roll for determination by the insolvency judge for any order he may make under section 24(5) of that Act.

Abstracts of administrator's receipts and payments

74.13. An abstract of receipts and payments of an administrator to be sent to the court under rule 2.17(1) of the Insolvency Rules shall be sent to the Deputy Principal Clerk who shall—

- (a) cause it to be lodged in the process of the petition to which it relates; and
- (b) give written intimation to the parties of the receipt and lodging of the report.

Extension of time for accounts of receipts and payments

74.14. An application by an administrator under rule 2.17(2) of the Insolvency Rules to extend the period for sending an abstract of accounts of receipts and payments to the court under rule 2.17(1) of those Rules shall be made by motion.

Form of certain applications and appeals

74.15.—(1) An application under any of the following provisions shall be made by note:—

- (a) section 13(2) of the Act of 1986 (for an appointment to fill a vacancy in the office of administrator);
- (b) section 14(3) of that Act (by an administrator for directions);
- (c) section 15(2) of that Act (by an administrator for power to dispose of property subject to a security);
- (d) section 18(1) of that Act (by an administrator for discharge or variation of an administration order);
- (e) section 19(1) of that Act for removal from office of an administrator;
- (f) section 22(5) of that Act (for release from, or extension of time for fulfilling an obligation to submit a statement of affairs);
- (g) section 27(1) of that Act (for protection of the interests of creditors and members);
- (h) rule 2.16(3) of the Insolvency Rules (by an administrator for an increase of his remuneration); and
- (i) any other provision in the Act of 1986 or the Insolvency Rules relating to an administration order not mentioned in this Part.

(2) An appeal under rule 2.6(2) of the Insolvency Rules (appeal against decision of administrator as to expenses of submitting statement of affairs) shall be made by note.

(3) Where a petition for an administration order has been presented or an administration order has been made, any person having an interest who wishes to apply to the court for an order under

section 175(2) of the Companies Act 1989⁽⁸⁷⁾ shall apply by note in the process of the petition for the administration order.

(4) The court shall not make an order under section 175(2) of the Companies Act 1989 unless intimation has been made to such persons having an interest as the court thinks fit and any such person has had an opportunity to be heard.

PART IV RECEIVERS

Interpretation of this Part

74.16. In this Part, “the petition” means a petition under section 54(1) of the Act of 1986 (petition to appoint a receiver).

Petition to appoint a receiver

74.17. The petition shall include averments in relation to—

- (a) any floating charge and the property over which it is secured;
- (b) so far as known to the petitioner, whether any application for an administration order has been made in respect of the company;
- (c) other matters which, in the opinion of the petitioner, will assist the court in deciding whether to appoint a receiver; and
- (d) the name and address of the person proposed to be appointed, and his qualification to act, as receiver.

Intimation, service and advertisement under this Part

74.18.—(1) Unless the court otherwise directs, the order under rule 14.5 (first order in petitions) for intimation, service and advertisement of the petition shall include a requirement—

- (a) to serve the petition—
 - (i) on the company; and
 - (ii) where an application for an administration order has been presented, on that applicant and any respondent to that application; and
- (b) to advertise the petition forthwith—
 - (i) once in the Edinburgh Gazette; and
 - (ii) once in one or more of such newspapers as the court shall direct.

(2) Subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to the petition shall be 8 days.

(3) An advertisement under paragraph (1) shall include—

- (a) the name and address of the petitioner;
- (b) the name and address of the agent for the petitioner;
- (c) the date on which the petition was presented;
- (d) the nature of the order sought;
- (e) the period of notice for lodging answers; and
- (f) a statement that any person who intends to appear in the petition must lodge answers within the period of notice.

⁽⁸⁷⁾ 1989 c. 40.

Form of other applications and appeals**74.19.**—(1) An application under—

- (a) section 61(1) of the Act of 1986 (by a receiver for authority to dispose of property or an interest in property),
- (b) section 62 of that Act⁽⁸⁸⁾ (for removal of a receiver),
- (c) section 63(1) of that Act (by a receiver for directions),
- (d) section 69(1) of that Act (to enforce the receiver's duty to make returns etc.), or
- (e) any other provision of the Act of 1986 or the Insolvency Rules relating to receivers not mentioned in this Part,

shall, where the court has appointed the receiver, be made by note or, in any other case, by petition.

(2) An appeal against a decision of a receiver as to expenses of submitting a statement of affairs under rule 3.3(2) of the Insolvency Rules shall, where the receiver was appointed by the court, be made by note or, in any other case, by petition.

(3) An application by a receiver—

- (a) under section 67(1) or (2) of the Act of 1986 (to extend the time for sending a report),
- (b) under rule 3.9(2) of the Insolvency Rules (to extend the time for sending an abstract of his receipts and payments),

shall, where the court has appointed the receiver, be made by motion or, in any other case, by petition.

PART VWINDING UP OF COMPANIES**Interpretation of this Part**

74.20. In this Part, “the petition” means a petition under section 124 of the Act of 1986 (petition to wind up a company).

Petition to wind up a company**74.21.**—(1) The petition shall include averments in relation to—

- (a) the petitioner, if other than the company, and his title to present the petition;
- (b) in respect of the company—
 - (i) its current and any previous registered name;
 - (ii) the address of its registered office, and any previous such address within 6 months immediately before the presentation of the petition so far as known to the petitioner;
 - (iii) a statement of the nature of its business and objects, the amount of its capital (nominal and issued) indicating what part is called up, paid up or credited as paid up, and the amount of the assets of the company so far as known to the petitioner;
- (c) whether, to the knowledge of the petitioner, a receiver has been appointed in respect of any part of the property of the company or a liquidator has been appointed for the voluntary winding up of the company;
- (d) the grounds on which the petition proceeds; and
- (e) the name and address of the person proposed to be appointed, and his qualification to act, as interim liquidator.

⁽⁸⁸⁾ Section 62 was amended by the Companies Act 1989 (c. 40), Schedule 16, paragraph 3(3) and Schedule 24.

Intimation, service and advertisement under this Part

74.22.—(1) Unless the court otherwise directs, the order under rule 14.5 (first order in petitions) for intimation, service and advertisement of the petition shall include a requirement—

- (a) to serve the petition—
 - (i) where the petitioner is not the company, on the company;
 - (ii) where the company is being wound up voluntarily and a liquidator has been appointed, on the liquidator; and
 - (iii) where a receiver or administrator has been appointed, on the receiver or administrator, as the case may be;
- (b) where the company is an authorised institution or former authorised institution within the meaning assigned in section 106(1) of the Banking Act 1987⁽⁸⁹⁾ and the petitioner is not the Bank of England, to serve the petition on the Bank of England; and
- (c) to advertise the petition forthwith—
 - (i) once in the Edinburgh Gazette; and
 - (ii) once in one or more of such newspapers as the court shall direct.

(2) Subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to the petition shall be 8 days.

(3) An advertisement under paragraph (1) shall include—

- (a) the name and address of the petitioner and, where the petitioner is the company, its registered office;
- (b) the name and address of the agent for the petitioner;
- (c) the date on which the petition was presented;
- (d) the nature of the order sought;
- (e) where a provisional liquidator has been appointed by the court, his name, address and the date of his appointment;
- (f) the period of notice for lodging answers; and
- (g) a statement that any person who intends to appear in the petition must lodge answers within the period of notice.

Remits from one court to another

74.23.—(1) An application under section 120(3)(a)(i) of the Act of 1986⁽⁹⁰⁾ (application for remit of petition to a sheriff court) shall be made by motion.

(2) An application under—

- (a) section 120(3)(a)(ii) of the Act of 1986 (application for remit of petition from a sheriff court to the court), or
- (b) section 120(3)(b) of that Act (application for remit of petition from one sheriff court to another),

shall be made by petition.

Substitution of creditor or contributory for petitioner

74.24.—(1) Where a petitioner in the petition—

⁽⁸⁹⁾ 1987 c. 22.

⁽⁹⁰⁾ 1986 c. 46.

Status: This is the original version (as it was originally made).

(a) is subsequently found not entitled to present the petition,
 (b) fails to make intimation, service and advertisement as directed by the court,
 (c) moves or consents to withdraw the petition or to allow it to be dismissed or refused,
 (d) fails to appear when the petition is called for hearing, or
 (e) appears, but does not move for an order in terms of the prayer of the petition,
 the court may, on such terms as it thinks fit, sist as petitioner in place of the original petitioner any creditor or contributory who, in the opinion of the court, is entitled to present the petition.

(2) An application by a creditor or a contributory to be sisted under paragraph (1)–

- (a) may be made at any time before the petition is dismissed or refused, and
- (b) shall be made by note;

and, if necessary, the court may continue the petition for a specified period to allow a note to be presented.

Provisional liquidator

74.25.—(1) An application to appoint a provisional liquidator under section 135 of the Act of 1986 may be made–

- (a) by the petitioner, in the prayer of the petition or, if made after the petition has been presented, by note; or
- (b) by a creditor or contributory of the company, the company, the Secretary of State or a person entitled under any enactment to present a petition, by note.

(2) The application mentioned in paragraph (1) shall include averments in relation to–

- (a) the grounds for the appointment of the provisional liquidator;
- (b) the name and address of the person proposed to be appointed, and his qualification to act, as provisional liquidator; and
- (c) whether, to the knowledge of the applicant, an administrator has been appointed to the company or a receiver has been appointed in respect of any part of its property or a liquidator has been appointed voluntarily to wind it up.

(3) Where the court decides to appoint a provisional liquidator–

- (a) it shall pronounce an interlocutor making the appointment and specifying the functions to be carried out by him in relation to the affairs of the company; and
- (b) the applicant shall forthwith send a certified copy of such interlocutor to the person appointed.

(4) On receiving a certified copy of an interlocutor pronounced under paragraph (3), the provisional liquidator shall intimate his appointment forthwith–

- (a) once in the Edinburgh Gazette; and
- (b) once in one or more of such newspapers as the court has directed.

(5) An application for the discharge of a provisional liquidator shall be made by note.

Appointment of a liquidator

74.26.—(1) Where the court pronounces an interlocutor appointing a liquidator–

- (a) the Deputy Principal Clerk shall send a certified copy of that interlocutor to the liquidator;

- (b) the court may, for the purposes of rule 4.18(4) of the Insolvency Rules (liquidator to give notice of appointment), give such direction as it thinks fit as to advertisement of such appointment.

(2) An application to appoint a liquidator under section 139(4) of the Act of 1986 shall be made by note.

Applications and appeals in relation to a statement of affairs

74.27.—(1) An application under section 131(5) of the Act of 1986 for—

- (a) release from an obligation imposed under section 131(1) or (2) of that Act, or
- (b) an extension of time for the submission of a statement of affairs,

shall be made by note.

(2) A note under paragraph (1) shall be served on the liquidator or provisional liquidator, as the case may be, who may lodge—

- (a) answers to the note; or
- (b) a report on any matters which he considers should be drawn to the attention of the court.

(3) Where the liquidator or provisional liquidator lodges a report under paragraph (2), he shall forthwith send a copy of it to the noter.

(4) Where the liquidator or the provisional liquidator does not appear at any hearing on the note, a certified copy of the interlocutor disposing of the note shall be sent to him forthwith by the noter.

(5) An appeal under rule 4.9(6) of the Insolvency Rules (appeal against refusal by liquidator of allowance towards expenses of preparing statement of affairs) shall be made by note.

Appeals against adjudication of claims

74.28.—(1) An appeal under section 49(6) of the Bankruptcy (Scotland) Act 1985⁽⁹¹⁾ as applied by rule 4.16 of the Insolvency Rules (appeal by a creditor or contributory of the company against a decision of the liquidator), shall be made by note.

(2) A note under paragraph (1) shall be served on the liquidator.

(3) On such a note being served on him, the liquidator shall send the claim in question, and a copy of his adjudication, forthwith to the Deputy Principal Clerk who shall cause them to be lodged in process.

(4) After the note has been disposed of, the Deputy Principal Clerk shall return the claim and the adjudication to the liquidator with a copy of the interlocutor disposing of the note.

Removal of liquidator

74.29. An application by a creditor of the company for an order—

- (a) under section 171(3) of the Act of 1986 (order directing a liquidator to summon a meeting of creditors for the purpose of removing him), or
- (b) under section 172 of that Act (order for removal of a liquidator),

shall be made by note.

Application in relation to remuneration of liquidator

74.30.—(1) An application—

(91) 1985 c. 66.

Status: This is the original version (as it was originally made).

- (a) by a liquidator under rule 4.34 of the Insolvency Rules (application to increase remuneration), or
- (b) by a creditor of the company under rule 4.35 of those Rules (application to reduce liquidator's remuneration),

shall be made by note.

- (2) A note under paragraph (1)(b) shall be served on the liquidator.

Application to appoint a special manager

74.31.—(1) An application under section 177 of the Act of 1986 (application for the appointment of a special manager) shall be made by note.

(2) A bond of caution certified by the noter under rule 4.70(4) of the Insolvency Rules shall be sent to the Petition Department by the noter.

(3) After the Deputy Principal Clerk has satisfied himself as to the sufficiency of caution under rule 33.7(1) of these Rules, the clerk of session shall issue to the person appointed to be special manager a certified copy of the interlocutor appointing him.

(4) A special manager may, before the expiry of the period for finding caution, apply to the insolvency judge for an extension of that period.

Other applications

74.32.—(1) An application under the Act of 1986 or any subordinate legislation made under that Act, or Part VII of the Companies Act 1989, in relation to a winding up by the court not mentioned in this Part shall—

- (a) if made by a party to the petition, be made by motion; or
- (b) in any other case, be made by note.

(2) At the hearing of a motion under paragraph (1)(a), the court may order that the application be made by note; and, in such a case, shall make an order for the lodging of answers to the note in process within such period as it thinks fit.

PART VIDISQUALIFICATION OF COMPANY DIRECTORS

Applications in relation to disqualification orders

74.33. An application—

- (a) under section 3(2) of the Company Directors Disqualification Act 1986 (for disqualification for persistent breaches of companies legislation);
- (b) under section 6(1) of that Act (to disqualify unfit directors of insolvent companies);
- (c) under section 8 of that Act⁽⁹²⁾ (for disqualification of unfit director after investigation of a company);
- (d) under section 11(1) of that Act (for leave by an undischarged bankrupt to be concerned in a company),
- (e) for leave under that Act; or
- (f) by the Secretary of State under rule 4(2) of the Insolvent Companies (Reports on Conduct of Directors (No. 2) (Scotland) Rules 1986⁽⁹³⁾ (application for direction to comply with requirements to furnish information etc.),

⁽⁹²⁾ Section 8 was amended by the Financial Services Act 1986 (c. 60), section 198(2) and by the Companies Act 1989 (c. 40), Section 79.

⁽⁹³⁾ S.I. 1986/1916.

shall be made by petition.

Intimation, service and advertisement under this Part

74.34.—(1) Rule 74.22, except paragraphs (1)(c) and (2) of that rule, shall apply to the intimation, service and advertisement of a petition referred to in rule 74.33 (applications in relation to disqualification orders) as it applies to a petition under that rule.

(2) A petition presented under rule 74.33 shall be intimated to the Secretary of State for Trade and Industry unless it is presented by him.

CHAPTER 75

APPLICATIONS UNDER THE FINANCIAL SERVICES ACT 1986

Application and interpretation of this Chapter

75.1.—(1) This Chapter applies to an application, under the Financial Services Act 1986⁽⁹⁴⁾, mentioned in rule 75.2.

(2) In this Chapter—

“the Act of 1986” means the Financial Services Act 1986;

“designated agency” has the meaning assigned in section 114(3) of the Act of 1986.

Form of applications under the Act of 1986

75.2.—(1) An application under any of the following provisions of the Act of 1986 shall be made by petition:—

- (a) sections 6, 61, 71(1), 91(4), 104(4), 131(8) and 184(8) (applications by Secretary of State or designated agency for interdict or restitution);
- (b) sections 12, 20, 37(8) and 39(8) (applications by Secretary of State or designated agency for compliance orders);
- (c) section 93 (applications by Secretary of State or designated agency to remove or replace a manager or trustee or to wind up a unit trust scheme); and
- (d) Schedule 11⁽⁹⁵⁾—
 - (i) paragraph 6(1) (applications by the Friendly Societies Commission for compliance orders);
 - (ii) paragraph 7(4) (applications by recognised self regulating organisations to set aside a direction);
 - (iii) paragraph 22 (applications by the Friendly Societies Commission 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 the Friendly Societies Commission for interdict or restitution).

(2) Certification by inspectors or the court by virtue of section 94(3)⁽⁹⁶⁾, or under section 178(1)⁽⁹⁷⁾, of the Act of 1986 shall be made by petition.

⁽⁹⁴⁾ 1986 c. 60.

⁽⁹⁵⁾ Schedule 11 was amended by the Friendly Societies Act 1992 (c. 40), Schedule 18.

⁽⁹⁶⁾ Section 94(3) was amended by the Companies Act 1989 (c. 40), Schedule 24.

⁽⁹⁷⁾ Section 178 was amended by the Criminal Justice Act 1993 (c. 36), Schedule 5, paragraph 10.

Intimation and service

75.3. An order under any of the following provisions of the Act of 1986 shall only be made following intimation and service of the petition to the person against whom the order is to be made:—

- (a) section 6 (interdict and restitution orders);
- (b) section 61 (interdict and restitution orders);
- (c) section 71(1) (orders in respect of breach of prohibition or requirement);
- (d) section 91(4) (orders in respect of contravention of a direction);
- (e) section 104(4) (orders in respect of contravention of a requirement);
- (f) section 131(8) (orders in respect of contravention of restrictions on promotion of contracts of insurance);
- (g) section 184(8) (orders in respect of contravention of notice of restriction of investment or insurance business); and
- (h) paragraph 22 of Schedule 11 (interdict of regulated friendly society).

Questions relating to interpretation of rules or regulations

75.4. 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, shall be given the opportunity to make representations to the court by lodging answers to the petition.

*CHAPTER 76**CAUSES IN RELATION TO CONFISCATION OF PROCEEDS OF CRIME***PART I CAUSES UNDER THE CRIMINAL JUSTICE (SCOTLAND) ACT 1987****Interpretation of this Part**

76.1. In this Part—

“the Act of 1987” means the Criminal Justice (Scotland) Act 1987⁽⁹⁸⁾;

“administrator” and “restraint order” shall be construed respectively in accordance with section 47(1) of the Act of 1987.

Disapplication of certain rules to this Part

76.2. The following rules shall not apply to a petition or note mentioned in this Part:—

- rule 14.5 (first order in petitions),
- rule 14.6(1) (period of notice for lodging answers),
- rule 14.7 (intimation and service of petitions),
- rule 14.9 (unopposed petitions).

Applications for restraint orders

76.3.—(1) An application under section 8(1) of the Act of 1987 (application for restraint order) shall be made by petition.

(98) 1987 c. 41.

(2) Where the court pronounces an interlocutor making a restraint order, the Lord Advocate shall serve a certified copy of that interlocutor on every person named in the interlocutor as restrained by the order.

Applications in relation to protective measures

76.4.—(1) An application under any of the following provisions of the Act of 1987 shall be made by note in the process containing the interlocutor making the restraint order to which the application relates:—

- (a) section 8(2) (variation or recall of restraint order);
- (b) section 8(5) (recall of restraint order); and
- (c) section 11(5) (recall or restriction of arrestment or inhibition).

(2) In respect of an application by note under paragraph (1) by a person having an interest for an order under section 8(2)(b) of the Act of 1987—

- (a) the note shall be lodged in process within 21 days after service of the restraint order on that person; and
- (b) subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to the note shall be 14 days.

(3) An application under paragraph (1) by the Lord Advocate under section 8(2)(a) of the Act of 1987 to extend a restraint order shall not be intimated, served or advertised before the application is granted.

(4) An application under section 11(1) of the Act of 1987 by the Lord Advocate for warrant for arrestment or inhibition may be made—

- (a) in the prayer of the petition under section 8(1) of that Act; or
- (b) if made after the petition has been presented, by motion which shall not be intimated.

(5) An application under section 11(1) of the Act of 1987 to loose, restrict or recall an arrestment or to recall an inhibition shall be made by motion.

(6) An application under section 12 of the Act of 1987 (interdict) may be made—

- (a) in the prayer of the petition under section 8(1) of that Act; or
- (b) if made after the petition has been presented, by note in the process of that petition.

(7) An application by note under paragraph (6)(b) shall not be intimated, served or advertised before the application is granted.

(8) Where the court pronounces an interlocutor granting an application mentioned in paragraph (3) or (4), the Lord Advocate shall serve a certified copy of that interlocutor on the persons affected by it.

Applications for variation of confiscation order or compensation

76.5. An application under section 25(1) (variation of confiscation order), or section 26(1) (compensation), of the Act of 1987 shall be made by petition.

Applications for disclosure of information by government departments

76.6. An application under section 41 of the Act of 1987 (disclosure of information held by government departments) may be made—

- (a) by petition;

- (b) where there is a restraint order in force, by note in the process of the petition for that restraint order; or
- (c) where an administrator has been appointed, by note in the process of the petition to appoint him.

Applications for appointment of administrators

76.7.—(1) An application under section 13(1) of the Act of 1987 (appointment of administrators) shall be made—

- (a) where a restraint order has been made, by note in the process of the petition for that restraint order; or
- (b) in any other case, by petition.

(2) The notification to be made by the clerk of court under section 13(3)(a) of the Act of 1987 shall be made by intimation of a certified copy of the interlocutor to the person required to give possession of property to an administrator.

Incidental applications in an administration

76.8.—(1) An application under any of the following provisions of the Act of 1987 shall be made by note in the process of the petition for appointment of the administrator:—

- (a) section 13(1) (appointment not made in the petition for appointment of an administrator);
- (b) section 13(4) (making or altering a requirement or removal of administrator);
- (c) section 13(5) (appointment of new administrator on death, resignation or removal of administrator);
- (d) section 14(1)(n) (directions as to functions of administrator); and
- (e) section 16 (directions for application of proceeds).

(2) An application under any of the following provisions of the Act of 1987 shall be made in the prayer of the petition for appointment of an administrator under section 13(1) of the Act of 1987 or, if made after the petition has been presented, by note in that process:—

- (a) section 4(1)(o) (special powers of administrator);
- (b) section 14(3) (vesting of property in administrator); and
- (c) section 24 (orders of realisation of property).

Requirements where order to facilitate realisation of property considered

76.9. Where the court considers making an order under section 24(1) of the Act of 1987 (order to facilitate the realisation of property)—

- (a) the court shall fix a date for a hearing on the Motion Roll in the first instance; and
- (b) the petitioner or noter, as the case may be, shall serve a notice in Form 76.9 on any person who has an interest in the property.

Documents for Accountant of Court

76.10.—(1) A person who has lodged any document in the process of an application for the appointment of an administrator shall forthwith send a copy of that document to the Accountant of Court.

(2) The clerk of session in the Petition department shall transmit to the Accountant of Court any part of the process as the Accountant of Court may request in relation to an administration which

is in dependence before the court unless such part of the process is, at the time of request, required by the court.

Procedure for finding caution

76.11.—(1) Rule 61.9 (finding caution in judicial factories), except paragraph (4), shall, with the necessary modifications, apply to the finding of caution by an administrator under this Part as it applies to the finding of caution by a judicial factor.

(2) A certified copy of the interlocutor appointing an administrator shall not be issued by a clerk of session until the Accountant of Court has given written intimation to the Petition Department that caution has been found or other security given.

Administrator's title to act

76.12. An administrator shall not be entitled to act until he has obtained a certified copy of the interlocutor appointing him.

Duties of administrator

76.13.—(1) The administrator shall, as soon as possible, but within 3 months after the date of his appointment, lodge with the Accountant of Court—

- (a) an inventory of the property in respect of which he has been appointed;
- (b) all vouchers, securities, and other documents which are in his possession; and
- (c) a statement of that property which he has in his possession or intends to realise.

(2) An administrator shall maintain accounts of his intromissions with the property in his charge and shall, subject to paragraph (3)—

- (a) within 6 months after the date of his appointment, and
- (b) at 6 monthly intervals after the first account during the subsistence of his appointment,

lodge with the Accountant of Court an account of his intromissions in such form, with such supporting vouchers and other documents, as the Accountant of Court may require.

(3) The Accountant of Court may waive the lodging of an account where the administrator certifies that there have been no intromissions during a particular accounting period.

State of funds and scheme of division

76.14.—(1) The administrator shall—

- (a) where there are funds available for division, prepare a state of funds after application of sums in accordance with section 16(1) of the Act of 1987 and a scheme of division amongst those who held property which has been realised under that Act and lodge them and all relevant documents with the Accountant of Court; or
- (b) where there are no funds available for division, prepare a state of funds only and lodge it with the Accountant of Court, and give to the Accountant of Court such explanations as he shall require.

(2) The Accountant of court shall—

- (a) make a written report on the state of funds and any scheme of division including such observations as he considers appropriate for consideration by the Lord Ordinary; and
- (b) return the state of funds and any scheme of division to the administrator with his report.

(3) The administrator shall, on receiving the report of the Accountant of Court—

- (a) lodge in process the report, the state of funds and any scheme of division;
- (b) intimate a copy of it to the Lord Advocate; and
- (c) intimate to each person who held property which has been realised under the Act of 1987 a notice stating—
 - (i) that the state of funds and scheme of division or the state of funds only, as the case may be, and the report of the Accountant of Court, have been lodged in process;
 - (ii) the amount for which that person has been ranked, and whether he is to be paid in full, or by a dividend, and the amount of it, or that no funds are available for payment.

Objections to scheme of division

76.15.—(1) A person wishing to be heard by the court in relation to the distribution of property under section 16(2) of the Act of 1987 shall lodge a note of objection in the process to which the scheme of division relates within 21 days of the date of the notice intimated under rule 76.14(3)(c).

(2) After the period for lodging a note of objection has expired and no note of objection has been lodged, the administrator may apply by motion for approval of the scheme of division and state of funds, or the state of funds only, as the case may be.

(3) After the period for lodging a note of objection has expired and a note of objection has been lodged, the Lord Ordinary shall dispose of such objection after hearing any objector and the administrator and making such inquiry as he thinks fit.

(4) If any objection is sustained to any extent, the necessary alterations shall be made to the state of funds and any scheme of division and shall be approved by the Lord Ordinary.

Application for discharge of administrator

76.16.—(1) Where the scheme of division is approved by the court and the administrator has paid, delivered or conveyed to the persons entitled the sums or receipts allocated to them in the scheme, the administrator may apply for his discharge.

(2) An application for discharge of the administrator shall be made by note in the process of the application under section 13(1) of the Act of 1987.

Appeals against determination of outlays and remuneration

76.17.—(1) An appeal under section 18(2) of the Act of 1987 (appeal against a determination by the Accountant of Court), shall be made by note in the process of the petition under section 13(4) of the Act of 1987.

(2) Where a note is lodged under paragraph (1), the Keeper of the Rolls shall put the cause out on the By Order Roll on the first available day for a hearing before the Lord Ordinary.

Remits from High Court of Justiciary

76.18.—(1) This rule applies where the High Court of Justiciary remits a case to the court under section 3(5) of the Act of 1987 (question of fact or law on assessment of proceeds of drug trafficking).

(2) The Deputy Principal Clerk shall, on receiving a case remitted from the High Court of Justiciary, cause—

- (a) the case to be put out on the By Order Roll for hearing before a Division of the Inner House on the first available day for an order for further procedure; and
- (b) written intimation of the date of the hearing to be given to the prosecutor and the accused.

(3) Before the date of the hearing on the By Order Roll, the prosecutor shall lodge in the Petition Department—

- (a) a process in accordance with rule 4.4 (steps of process);
- (b) four copies of the relevant indictment; and
- (c) four copies of all other documents to be referred to by him at that hearing.

(4) Not later than 48 hours before any hearing to be held after the hearing on the By Order Roll, each party shall lodge four copies of any additional documents to be referred to by him at the later hearing.

(5) On the Inner House deciding the question in the case remitted to it, the Deputy Principal Clerk shall transmit the decision of the court to the Deputy Principal Clerk of Justiciary.

PART II APPLICATIONS UNDER THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989

Application and interpretation of this Part

76.19. In this Part—

- “the act of 1989” means the Prevention of Terrorism (Temporary Provisions) Act 1989⁽⁹⁹⁾;
- “administrator” shall be construed in accordance with paragraph 11(1)(b) of Schedule 4 to the Act of 1989;
- “restraint order” means an order made under paragraph 13(1) of Schedule 4 to the Act of 1989.

Disapplication of certain rules to this Part

76.20. The following rules shall not apply to a petition or note mentioned in this Part:—

- rule 14.5 (first order in petitions),
- rule 14.6 (1) (period of notice for lodging answers),
- rule 14.7 (intimation and service of petitions),
- rule 14.9 (unopposed petitions).

Applications for restraint orders

76.21.—(1) An application under paragraph 14(1) of Schedule 4 to the Act of 1989 (restraint order), shall be made by petition.

(2) Where the court pronounces an interlocutor making a restraint order, the Lord Advocate shall serve a certified copy of that interlocutor on every person named in the interlocutor as restrained by the order.

Applications in relation to protective measures

76.22.—(1) An application under any of the following provisions of Schedule 4 to the Act of 1989 shall be made by note in the process containing the interlocutor making the restraint order to which the application relates:—

- (a) paragraph 13(4) (discharge of a restraint order);
- (b) paragraph 14(2) (variation or recall of restraint order); and
- (c) paragraph 14(3) (recall of restraint order).

⁽⁹⁹⁾ 1989 c. 4.

(2) Subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to a note under paragraph (1)(b) by any person affected by a restraint order shall be 14 days.

(3) An application under paragraph 16(1) of Schedule 4 to the Act of 1989 (warrant for arrestment or inhibition) may be made—

- (a) in the prayer of the petition under paragraph 13(1) of Schedule 4 to the Act of 1989; or
- (b) if made after the petition has been presented, by motion which shall not be intimated.

(4) Any of the following applications under Schedule 4 to the Act of 1989 shall be made by motion:—

- (a) an application to loose or restrict or recall an arrestment or recall an inhibition under paragraph 16(1)(a); and
- (b) an application under paragraph 16(6)(a) (recall or restriction of arrestment and inhibition).

Applications for compensation

76.23. An application under paragraph 17(1) of Schedule 4 to the Act of 1989 (compensation) shall be made by petition.

Powers and duties of administrator

76.24. Subject to any condition or exception specified by the court, an administrator appointed under paragraph 11(1)(b) of Schedule 4 to the Act of 1989—

- (a) may take possession of the property in respect of which he has been appointed and of any document which—
 - (i) is in the possession or control of the person in whom the property is vested; and
 - (ii) relates to the property;
- (b) may have access to, and copy, any document relating to the property and not in such possession or control as is mentioned in sub-paragraph(a);
- (c) may bring, defend or continue any legal proceedings relating to the property;
- (d) may borrow money in so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property;
- (e) may, if the administrator considers that to do so would be beneficial for the management and the realisation of the property, enter into any contract, or execute any deed, with respect to the property;
- (f) may effect or maintain insurance policies with respect to the property;
- (g) may, where the person in whom the property is vested has not completed title to any of the property, complete title to it: provided that completion of title in the name of the person in whom the property is vested shall not validate by accretion any unperfected right in favour of any person other than the administrator;
- (h) may sell (but not to himself or an associate of his) the property and redeem any obligation secured on that property;
- (i) may discharge any of his functions through agents or employees: provided that the administrator shall be personally liable to meet the fees and expenses of any such agents or employees out of such remuneration as is payable to the administrator by virtue of paragraph 12(2) and (3) of Schedule 4 to the Act of 1989;
- (j) may take such professional advice as he considers necessary for the proper discharge of his functions;

- (k) may at any time apply to the court for directions with respect to the exercise of his powers and duties;
 - (l) may exercise any power conferred on him by the court whether such power was conferred at the time of his appointment or on his subsequent application to the court; and
 - (m) may do anything incidental to the above powers and duties.
- (2) Subject to the proviso to sub-paragraph (g) of paragraph (1)–
- (a) a person dealing with an administrator in good faith and for value shall not require to determine whether the administrator is acting within the powers mentioned in that sub-paragraph; and
 - (b) the validity of any title shall not be challengeable by reason only of the administrator having acted outwith those powers.
- (3) The exercise of a power mentioned in any of sub-paragraphs (c) to (h) of paragraph (1) shall be in the name of the person in whom the property is vested.

Duties of administrator in relation to accounts

76.25.—(1) The administrator shall, as soon as possible, but within 3 months after the date of his appointment, lodge with the Accountant of Court–

- (a) an inventory of the property in respect of which he has been appointed;
- (b) all land certificates, title deeds, vouchers and other documents which relate to that property and are in his possession; and
- (c) a statement of the property which he has in his possession or intends to realise.

(2) An administrator shall maintain accounts of his intromissions with the property in his charge and shall–

- (a) lodge an account of his intromissions with the Accountant of Court in such form as the Accountant of Court may require–
 - (i) 6 months after the date of his appointment; and
 - (ii) at 6 monthly intervals after the first account during the subsistence of his appointment, unless the Accountant of Court agrees to waive the lodging of an account where the administrator certifies that there have been no intromissions during a particular accounting period; and
- (b) lodge, with the account of his intromissions, all such supporting vouchers and other documents as the Accountant of Court may require.

Money received by administrator

76.26.—(1) Subject to paragraph (2), any money received by an administrator in the exercise of his powers and duties shall be deposited by him in an appropriate bank or institution, in the name of the person in whom the property is vested.

(2) The administrator may, at any time, retain in his hands a sum of money not exceeding £200.

(3) In paragraph (1), “appropriate bank or institution” means the Bank of England, an institution authorised under the Banking Act 1987⁽¹⁰⁰⁾ or a person for the time being specified in Schedule 2 to that Act.

⁽¹⁰⁰⁾ 1987 c. 22.

CHAPTER 77

SUMMARY TRIALS

Application of this Chapter

77.1. This Chapter applies to a petition under section 26 of the Act of 1988(**101**) (summary trials).

Disapplication of certain rules to this Chapter

77.2. The following rules shall not apply to a petition under this Chapter:—

- 14.5 (first order in petitions),
- 14.6 (period of notice for lodging answers),
- 14.7 (intimation and service of petitions),
- 14.8 (procedure where answers lodged),
- 14.9 (unopposed petitions).

Form of petition

77.3. A petition for a summary trial shall contain—

- (a) a concise narrative in numbered paragraphs of the facts or circumstances in relation to which the dispute or question arises;
- (b) where the parties are agreed on the facts—
 - (i) a statement to that effect; and
 - (ii) a note of the questions which have arisen between them;
- (c) where the parties are not agreed on the facts—
 - (i) a statement to that effect;
 - (ii) specification of the facts which are in dispute; and
 - (iii) a note of any further questions which may arise when the dispute of fact has been determined, or a reservation of such questions; and
- (d) a prayer that the dispute or question be referred to a particular Lord Ordinary for his determination.

Presentation to Lord Ordinary

77.4.—(1) The petition shall be placed before the Lord Ordinary named in the petition on the earliest available day but, subject to paragraph (2), within 7 days after the date of presentation of the petition.

(2) Where the last day of the period specified in paragraph (1) falls in vacation without the petition having been brought before the Lord Ordinary, the petition shall be placed before the Lord Ordinary on the first sederunt day of the following term.

(3) On the petition being placed before the Lord Ordinary, he shall—

- (a) where it appears that the parties are agreed on the facts, appoint the cause to be heard before him, in court or in chambers, on a date within 6 weeks (excluding days in vacation) after the date of the interlocutor appointing the hearing;

- (b) where it appears that the parties are not agreed on the facts, appoint a proof to be taken before him in court or in chambers.
- (4) The Lord Ordinary may take any hearing or proof, or any continuation of such hearing or proof, during session or vacation.

Procedure in summary trials

77.5. Subject to any other provision in this Chapter, the petition shall follow such procedure as the parties may, with the consent of the Lord Ordinary, agree, or, failing such agreement, as the Lord Ordinary shall direct.

Recording of evidence at proof

77.6. The evidence led at a proof allowed under rule 77.4(3)(b) shall not be recorded, unless the parties so agree.

Reports to Inner House

77.7.—(1) If at any stage of the cause it appears to the Lord Ordinary that the determination of the petition may affect the status of any person, the Lord Ordinary shall report the matter to the Inner House in accordance with Chapter 34.

(2) On receiving a report under paragraph (1), the Lord President may appoint the parties to show cause before a Division of the Inner House why the petition should proceed under section 26 of the Act of 1988; and the Inner House shall, after hearing parties and subject to any conditions as it thinks fit, direct that the petition shall proceed or refuse the prayer of the petition.

Disposal of petitions

77.8. Any decision of the Lord Ordinary shall be given effect to in an interlocutor and he may—

- (a) pronounce any interlocutor which he thinks fit to enable his decision to be carried into effect; and
- (b) dispose of all questions of expenses.

Finality of interlocutors

77.9. An interlocutor of the Lord Ordinary shall be final, binding only on the parties to the petition, and shall not be subject to review.

Transfer to another Lord Ordinary

77.10.—(1) In the event of the death, disability or absence of the Lord Ordinary before the petition has been determined, the petitioners may lodge a joint minute in Form 77.10 in process for the cause to be referred to another Lord Ordinary named in that minute.

(2) On such a joint minute being lodged in process, the cause shall be transferred to the Lord Ordinary named in that minute who shall take up the procedure at the point which had been reached by his predecessor.

(3) The Lord Ordinary to whom the cause is transferred under paragraph (2) may re-hear the evidence of any witness heard by his predecessor.

Agreement to adopt summary trial procedure in action in dependence

77.11.—(1) Where the parties to an action propose to adopt summary trial procedure by virtue of section 26(2) of the Act of 1988 (agreement to adopt summary trial procedure in action in dependence), they shall lodge in the process of the action a joint minute in Form 77.11.

(2) On such a joint minute being lodged in process, the Lord Ordinary shall pronounce an interlocutor directing that the action shall proceed as a summary trial.

(3) On an interlocutor being pronounced under paragraph (2), rules 77.3 to 77.10 shall, with the necessary modifications and the following modifications, apply to the further procedure in the action:—

- (a) subject to sub-paragraph (b) of this paragraph, in rule 77.4, for the word “petition” there shall be substituted the words “record or other pleading”; and
- (b) in rule 77.4, for the words “date of presentation of the petition”, there shall be substituted the words “date of the interlocutor pronounced under rule 77.11(2)”.

CHAPTER 78**SPECIAL CASES UNDER SECTION 27 OF THE COURT OF SESSION ACT 1988****Application of this Chapter**

78.1. This Chapter applies to a special case under section 27 of the Act of 1988.

Lodging and hearing of special case

78.2.—(1) A special case shall be lodged with a process in the General Department.

(2) A special case shall, without appearance, be put out for hearing in the Summar Roll before the Inner House.

Amendment of case

78.3.—(1) A special case may be amended by consent of the parties.

(2) Where parties seek to amend a special case, any one of them may apply by motion for leave to amend of consent.

Appointment of curator *ad litem* to party *incapax*

78.4.—(1) Where a party to a special case is *incapax* by reason of nonage, insanity or otherwise, it shall be the duty of the other parties (which duty may be performed by any of them), on the lodging of the special case under rule 78.2(1), to apply by motion for the appointment of a curator *ad litem* to such *incapax*.

(2) A curator *ad litem* appointed under paragraph (1) shall be given all necessary information and facilities by the other parties to enable him to perform his duties.

(3) Where a curator *ad litem* is satisfied that the special case is fully and accurately stated in relation to the interests of the *incapax*, he may sign it as curator *ad litem*.

(4) Where a curator *ad litem* is not given all necessary information and facilities by the other parties, or is not satisfied that the special case is fully and accurately stated in relation to the interest of the *incapax*, he shall report the position to the Inner House which may then recall his appointment and dispose of the special case as it thinks fit.

(5) An award of expenses—

- (a) may not be made against a curator *ad litem*; and
- (b) may be made in favour of a curator *ad litem* as the court thinks fit.

CHAPTER 79

APPLICATIONS UNDER THE ACCESS TO HEALTH RECORDS ACT 1990

Application and interpretation of this Chapter

79.1.—(1) This Chapter applies to an application under section 8(1) of the Access to Health Records Act 1990(**102**) (application for order for holder of health record to comply with requirement of the Act).

(2) In this Chapter—

“the Act of 1990” means the Access to Health Records Act 1990;

“the Regulations” means the Access to Health Records (Steps to Secure Compliance and Complaints Procedures) (Scotland) Regulations 1991(**103**);

“complaint” means a written notice of complaint under regulation 3 or 4 of the Regulations;

“report” means a report under regulation 6 of the Regulations.

Form of applications etc.

79.2.—(1) An application under section 8(1) of the Act of 1990 shall be made by petition.

(2) A petition under paragraph (1) shall state those steps prescribed in the Regulations which have been taken to secure compliance with the Act of 1990.

(3) On presentation of the petition, there shall be lodged in process as productions—

- (a) a copy of the application under section 3 (access to health record) or section 6 (correction of inaccurate health record), as the case may be, of the Act of 1990;
- (b) a copy of the complaint; and
- (c) if applicable, a copy of the report.

Time-limit for applications

79.3. An application under section 8(1) of the Act of 1990 may not be made unless the petition is presented—

- (a) where the applicant has received a report, within one year of the date after the report; or
- (b) where the applicant has not received a report, within 18 months after the date of the complaint.

(**102**) 1990 c. 23.
(**103**) S.I. 1991/2295.

CHAPTER 80**APPLICATIONS IN RESPECT OF QUALIFIED
CONVEYANCERS AND EXECUTRY PRACTITIONERS****Application and interpretation of this Chapter**

80.1.—(1) This Chapter applies to an application made under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽¹⁰⁴⁾ in respect of a qualified conveyancer or executry practitioner.

(2) In this Chapter, “the Act of 1990” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(3) The expressions “the Board”, “executry practitioner” and “qualified conveyancer” have the meanings assigned respectively in section 23 of the Act of 1990.

Applications and appeals in respect of qualified conveyancers and executry practitioners

80.2.—(1) Subject to paragraph (4), an application under any of the following provisions of the Act of 1990 shall be made by petition:—

- (a) section 17(6) (application following refusal to register as qualified conveyancer);
- (b) section 18(7) (application following refusal to register as executry practitioner);
- (c) section 20(7) (application for order to require practitioner to comply with direction);
- (d) section 20(11)(b) (application following review of certain decisions of Board following misconduct etc.);
- (e) section 21(5) (application following direction relating to assets);
- (f) section 21(7) (application to secure compliance with direction);
- (g) section 21(10) (application by the Board for interdict); and
- (h) paragraph 20 of Schedule 1 (application for order to produce documents).

(2) An application under section 17(6), 18(7) or 20(11)(b) of the Act of 1990 shall state the date on which the outcome of the review was intimated to the petitioner.

(3) An application under section 21(5) of the Act of 1990 shall state the date on which the direction was received by the petitioner.

(4) An application for leave under section 21(10) of the Act of 1990 shall be made by motion.

Intimation and service in petitions under this Chapter

80.3.—(1) A petition to which this Chapter applies shall be brought before a Division of the Inner House in chambers, and the Division may, without hearing parties and subject to the following paragraphs, make such order for intimation and service as it thinks fit.

(2) In an application under any of the following provisions of the Act of 1990, the court shall order service of the petition on the Board:—

- (a) section 17(6) (application in respect of review of refusal to register as qualified conveyancer);
- (b) section 18(7) (application following review of refusal to register as executry practitioner);
- (c) section 20(11)(b) (application following review of certain decisions of the Board following misconduct etc.); and
- (d) section 21(5) (application following direction relating to assets).

(104) 1986 c. 45.

(3) In an application under any of the following provisions of the Act of 1990, the court shall order service of the petition on the executry practitioner or qualified conveyancer, as the case may be:–

- (a) section 20(7) (application for order to require practitioner to comply with directions);
- (b) section 21(7) (application to secure compliance with direction); and
- (c) paragraph 20 of Schedule 1 (application for order to produce documents).

(4) In an application under section 21(10) of the Act of 1990 (application by the Board for interdict), the court shall order service of the petition on the executry or qualified practitioner, as the case may be, and on the bank, building society or other deposit holder.

Procedure after order for intimation and service

80.4. The court shall, after an order for intimation and service under rule 80.3, proceed on the petition summarily in such manner as it thinks fit.

Remit for further inquiry in petitions under this Chapter

80.5.—(1) In a petition to which this Chapter applies, the court may remit to any person to make further inquiry into the facts, or to take further evidence and to report to the court.

(2) On completion of a report made under paragraph (1), the person to whom the remit was made shall send his report and three copies of it, and a copy of it for each party, to the Deputy Principal Clerk.

(3) On receipt of such a report, the Deputy Principal Clerk shall–

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that he may uplift a copy of the report from process.

(4) After the lodging of such a report, any party may apply by motion for an order in respect of the report or for further procedure.